

Care Standards

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

CM
(ANONYMITY ORDER MADE)

Appellant

-v-

OFSTED

Respondent

[2013] 2096.EY

DECISION

BEFORE: Ms Melanie Plimmer
Mr Michael Flynn
Mr Jeffrey Cohen

REPRESENTATION: The Appellant was unrepresented.
The Respondent was represented by Mr Reed, a Solicitor Advocate.

Reporting order

1. There shall be a Restricted Reporting Order under Rule 14(1)(b) of the Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('the 2008 Rules') prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in England and Wales, of any matter likely to lead members of the public to identify any child or its family mentioned in the appeal.

The appeal

2. This is the appeal of CM, a registered child minder. She resides in the Chesterfield area. She appeals against a decision of Ofsted dated 2 September 2013, to cancel her registration as a child minder.

3. Ofsted issued CM with written notice of its intention to cancel her registration on 10 May 2013. CM objected to this and appeared before an Objection Panel on 13 August 2013, when she was represented by Counsel. The decision to cancel CM's registration was confirmed in a letter dated 30 August 2013.
4. The parties have helpfully agreed a detailed 'Scott Schedule' comprising 28 allegations ('the Schedule'). This sets out Ofsted's allegations against CM together with references to the relevant evidence Ofsted relies upon together with CM's responses to these allegations with references to the relevant evidence she relies upon. In summary, Ofsted contends that CM is no longer a suitable person to be a registered child minder. The allegations against her are wide ranging but a number of general themes have been identified by the decision maker in this case: (i) CM has been surrounded by incidents of violence and confrontation; (ii) CM has not acted honestly and openly with Ofsted; (iii) CM has not been able to meet the individual needs of children she has minded; (iv) CM has used inappropriate language and tone and continues to minimise the significance of this when speaking to both children and adults.

Anonymity

5. We have decided to anonymise the CM's name together with a number of witnesses who gave evidence before us. We have done this in order to preserve and protect the privacy of the young children involved in this case. This case raises a number of sensitive issues relevant to CM's children, children minded by CM and other children living in the area. This course has been taken with the consent of CM and Ofsted.

Hearing

6. The appeal was heard over the course of four days at Chesterfield Magistrate's Court. We adjusted the sitting times for each day to take into account CM's child care responsibilities (she has five of her own children). With a shortened lunch break and early starts, we were able to sit on most days for five to six hours.

Application to hold a private hearing

7. At the beginning of the hearing CM made an application to exclude the public from the hearing. She relied upon a letter from her GP dated 16 May 2014. This letter confirmed that CM had described to the GP heightened anxiety on leaving her home and panic attacks. CM had told the GP that she has been the victim of harassment from a number of people for four years. In light of this information the GP indicated that it would be preferable if CM did not have to be in the same room as these people. CM also relied on medical evidence to confirm that she was pregnant with a due date in October 2014.

8. CM submitted that she did not feel that she would be able to properly present her case if members of the public were permitted into the hearing room. CM reminded us that there were a number of allegations and counter allegations of harassment and intimidation by and against CM and that she felt that she was the victim of a long-standing and ongoing family feud. CM was visibly anxious and shaking when she made this application.
9. Mr Reed did not object to the application. He indicated that in an effort to keep the numbers in the court to a minimum the only person who would sit behind him for the duration of the proceedings would be Ms Audaer, the Principal Officer for Ofsted and the decision-maker in this case.
10. Having considered the application and Ofsted's neutrality to it, we unanimously decided to allow it. We noted that the starting point is that all hearings should be held in public and the important policy reasons behind this – see rule 26(1) of the 2008 Rules. The Tribunal has a discretion to hold a hearing in private (rule 26(3)). At the beginning of the hearing there were two members of the public at the hearing. They identified themselves as CM's ex-father-in-law and a woman well known to CM but whom she no longer spoke to. CM stated that she believed they were involved in the past in harassment toward her and that a feud continues. We must stress that we make no findings regarding these two individuals. CM has made allegations and we treat these as allegations only. These allegations are relevant because CM clearly held the perception that she would not be able to openly and clearly present her case with certain people present in the hearing room. She indicated that this would cause her such anxiety and distress that she would not be able to continue with the hearing.
11. We decided that a combination of features present in the case justified the exceptional course of holding the hearing in private. CM was clearly very anxious indeed. This had been reported to her GP who had written a letter in support. We note the limitations of this letter. The GP was merely reporting that which he had been told. CM is also pregnant. This is a case in which Ofsted have made a large number of serious and detailed allegations against CM. The documentation is extensive (comprising over 1000 pages). Ofsted is legally represented, CM was representing herself. In order for CM to be able to put her case as clearly and cogently as possible and in order to ensure she received a fair hearing we unanimously decided that it was important for the hearing to proceed in private.
12. As the hearing proceeded we kept our decision under review and decided that at all material times and in order to ensure that CM was able to properly present her case, it was proportionate and reasonable to hold the hearing in private. We of course balanced this against the public interest in having a public hearing.

Evidence and witnesses

13. The parties had helpfully worked together to prepare two helpful and carefully prepared bundles of extensive documentary evidence. Ofsted disclosed unused materials to CM and she was able to identify further relevant documentation that was placed before us.
14. We also heard live evidence from a number of witnesses as well as from CM. These witnesses fell broadly into two categories. First, five lay witnesses. These are mothers who live in the Chesterfield area. We have anonymised their names in order to maintain the confidentiality of matters relevant to the children involved. Both parties agreed to this course. Second, professional witnesses. These include Ms Noble (District Manager for Derbyshire County Council's Children's Services), Ms Wain (Head teacher), PC Sunderland as well as Ofsted's witnesses: Ms Audaer, Ms Stone, Ms Lawton, Ms Howard and Ms Holt.
15. We were also provided with a number of letters and statements from those supporting CM's suitability as a childminder as well as witness statements relied upon by Ofsted. We have considered all the evidence in the round, both written and oral.
16. We first heard from Ofsted's witnesses before hearing from CM herself. CM explained that she also wished to rely on statements written in support of her. Her mother did not feel able to attend to give evidence because she feared that this might result in difficulties to her registration as a childminder. CM indicated that the parents who supported her were unable to attend the hearing. One family was away in Turkey and the others did not feel able to attend the hearing. CM did not ask her husband to attend and he did not attend the hearing.
17. Both parties greatly assisted the Tribunal with their thorough preparation for the hearing. We were particularly impressed with CM's detailed knowledge of the documentation and the chronology of the relevant events. Once the public were excluded and CM settled into the proceedings she grew in confidence. We have no doubt that the adjustments made by the Tribunal together with the efforts made by both CM and Ofsted's representative Mr Reed, enabled CM to properly and fully respond to the allegations made against her by Ofsted over the course of the four days.
18. A theme running through this case has been the various allegations of intimidation and harassment that has caused varying levels of anxiety. The Tribunal has sought to make adjustments so as to make all witnesses as comfortable as possible. This includes CM. One parent was very reluctant to attend to give evidence and claimed to be in fear of CM. Her attendance at the hearing was secured by way of witness summons. Both parties accepted that in the circumstances it was

appropriate for the witness to give her evidence behind a screen and for the Tribunal chair to ask questions identified by CM as relevant.

Submissions

19. At the end of the evidence we heard helpful and detailed submissions from Mr Reed and then CM. They both cross-referenced the evidence to the Schedule. We reserved our decision, which we now provide with reasons.

Legal Framework

20. The legal framework for the registration and regulation of child minders is to be found in Part 3 of the Child Care Act 2006. It is uncontroversial that these new provisions sought to elevate and regularise the standard of child minding and the demands now made on child minders or potential child minders are significant.
21. The requirements are prescribed by the Childcare (Early Years Register) Regulations 2008 and include "...that the person registered is suitable...". Section 68(2) of the 2006 Act enables Ofsted to cancel a person's registration if it appears that this requirement cannot be satisfied.
22. Section 74(1) of the 2006 Act provides a right to appeal to this Tribunal. The legal burden remains vested in Ofsted, which must establish the facts upon which it relies to support cancellation. It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary. The standard of proof to be applied is the balance of probabilities. We must make our decision on the basis of all the evidence available to us at the date of the hearing and we are not restricted to the matters available to Ofsted when the cancellation decision was taken.
23. The powers of the Tribunal can be found in section 74(4) of the 2006 Act. Essentially the Tribunal may either confirm Ofsted's decision to cancel or direct that it shall not have effect. If the Tribunal decides that cancellation should not have effect, it may impose conditions on the appellant's registration, or vary or remove any of the current conditions.

Findings of fact

24. The Tribunal has been greatly assisted by the Schedule and we set out our findings of fact by reference to it. Before turning to each individual allegation we set out our broad assessment of the witnesses who appeared before us. The professional witnesses provided honest and straightforward evidence. Where they did not know an answer or were unsure they were candid in making that clear. We also found them to be measured witnesses, prepared to give CM the benefit of the doubt. We completely reject any allegation on the part of CM that the

professional (or lay) witnesses conspired against her. Where there is a conflict in account we prefer the evidence of the professional witnesses, each of whom was temperate, balanced and fair. There simply was no sign or hint of prejudice or conspiracy as alluded to by CM. On the contrary, all of Ofsted's witnesses impressed us as professional and objective. In analysing the accuracy and truth of their accounts we had in addition to their oral testimony their notes / tool-kits and, most significantly, the evidence of CM.

25. We did not find that the lay witnesses provided completely reliable evidence. Their evidence contained exaggerations and inconsistencies. We did not regard CM to be a wholly reliable witness. She was unwilling or unable to make clear admissions when she had made mistakes in the past. Her almost instinctive reaction was to deflect justified concerns about her behaviour and approach on to others. This was reflected in the way that she answered questions. We have no doubt that CM is an intelligent woman with a firm grasp of the Ofsted's expectations, yet when asked straightforward questions about specific incidents she was unwilling (even with the Tribunal's assistance) to answer pivotal questions directly. We formed the view that when this happened it was not because of an inability to answer questions directly but in order to avoid having to provide an answer that CM believed would cast her suitability as a childminder in a poor light. We nonetheless accept that CM provided some evidence upon which we could place reliance.

1. Allegations concerning Family 1 in 2004

26. There are a number of allegations concerning the CM's approach to children from Family 1. We do not find these to be proven.
27. Much of the evidence to support these allegations emanates from their mother, who attended to give evidence before us (although we have considered this evidence in the round with written statements and emails from other members of the family). We did not regard her to be a reliable witness for a number of reasons. We found her to be evasive when answering questions. She indicated that she referred CM to the police, social services and Ofsted after her children stopped being looked after by CM in October 2014. The complaints to Ofsted continued into 2005 and 2006. It is difficult to see why some of these concerns did not materialise into complaints at an earlier stage. For example, it was claimed that the children had cuts and bruises and one child was being bullied by CM's children. We bear in mind that children can disclose incidents some time after the event. In this particular case there were a number of incidents that would have been clear to the parents and could have been subject to an earlier complaint. The allegation seems to be that these matters were on going in the months up to October 2004 yet no complaint was made until after social services attended the home of Family 1 to investigate concerns raised by CM regarding the children. It is this event which seems to have precipitated

the removal of the children from CM's register without providing any notice. There was also a contractual dispute between Family 1 and CM regarding non-payment of fees, which led to a degree of animosity between CM and the mother of Family 1. We found the mother of Family 1 to be evasive when she was asked about the timing of her complaints concerning CM. We find that Ofsted's allegations 1a), b) and d) have not been made out.

28. In relation to allegation 1c) we accept that one of the children from Family 1 suffered a burn mark from a radiator whilst in the care of CM. There was a dispute between CM and the mother of Family 1 as to the cause of this burn. We do not accept that CM should be blamed for this burn mark on the evidence available to us. We note that this was investigated by Ofsted and four actions were issued and these appear to have been complied with at the time.
29. We do not accept the allegation at 1d) that CM made unjustified reports that Family 1's children were neglected and ill treated. We accept that Mrs Noble, District Manager, Derbyshire County Council Children's Services, provided us with straightforward and reliable evidence. She accepted that the reports were not malicious. Whilst no actions were taken regarding these reports and they were not found to be substantiated, we do not accept that CM acted maliciously in making the reports. We note that when the children were seen by social services one of them alleged that his father had hit him. This is of course a serious allegation and in our view it cannot be said that CM's reports regarding these children were in all the circumstances unjustified.
30. The records support CM's submission that she did not respond to Family 1's complaints by making an unjustified complaint. Indeed it appears that this worked the other way around. It was the mother of Family 1 who complained about CM after she came to the belief that she was visited by social services because CM had reported her concerns to social services.
31. We do not consider that any of these matters have been proven such as to call into question CM's suitability as a childminder.
32. However, Mrs Holt's evidence highlighted concerns about CM's presentation when making complaints. When making the referrals about Family 1 to social services, it was recorded that "*her [CM's] presenting verbalisation etc was concerning and was indicative of mental health problems*" (13/10/04). This prompted social services to take the unusual action of making an agency check. This highlighted concerns about CM herself in that the head teacher independently stated that "*she believed the child minder displays symptoms of instability / mental health*" (13/10/14). While we do not condone the linking of CM's behaviour to mental health issues, this provides evidence dating back ten years of CM's confrontational approach, whether or not the complaints were justified.

2. 2010 allegations

33. These have not been pursued by Ofsted and we therefore do not propose to say anything further about them.

3. Allegations concerning Family 2 in April 2010

34. These all relate to a few days in April 2010 when two children from Family 2 were looked after by CM. These allegations derive mainly from the mother of Family 2. We find that she has not provided reliable evidence. We consider that she has exaggerated some evidence and also provided inconsistent evidence. In an effort to demonstrate that CM was wrong when she said that the elder child behaved so inappropriately on the Wednesday that only the younger child was permitted to return, the mother was adamant that both children definitely returned on the Thursday. She was then reminded that her statement said that only the younger child went on the Thursday and resiled from her earlier evidence to the contrary. We also note that her statement omits any reference to why the elder child did not return after the Wednesday. She was able to remember a considerable amount of detail about that week but when she was asked why the elder child did not return she simply said she could not remember. This sits uneasily with her clear memory of events that week in other respects.
35. We find that communication mostly took place between CM and the children's grandfather (who did most of the dropping off and picking up of the children). We do not accept that the appropriate forms were not provided. The mother of Family 2 accepted she had not clarified this with the grandfather. We find that a number of misunderstandings may have developed because of the lack of direct communication with the parents. CM clearly stated that she spoke to the grandfather and said that the elder child's behaviour was inappropriate and disruptive to the younger children and he should not return on the Thursday. After this, the elder child did not return but the younger child returned for two more days. We infer from this that the mother must have received this message. We find it of some concern that the mother did not mention this in her statement and when pressed about it could not remember why only the younger child returned.
36. Having considered all the evidence in the round we do not accept that allegations 3a), b), c), e), f), g) and h) have been proven.
37. We however accept that CM has used the expression "*effing hell*" in the presence of minded children (allegation 3d). We accept this because it is consistent with other clear and credible evidence that CM has used inappropriate language in the presence of children and freely admits to using words like 'fucking' and 'frigging' in the presence of children, on the basis that they are not inappropriate as they are not 'swear words'. This is dealt with in more detail below.

38. We have noted the evidence that the younger child did not wish to go back to the child minders on the Friday and communicated this to his mother. We are concerned about this because it is consistent with the evidence said to be provided by at least two other children. We must consider this evidence in the round together with the evidence that at least three families have continued to use CM's services as a childminder for a very long time. This suggests that those children have been content to return to CM over an extended period. We are prepared to accept that this particular child probably indicated he did not wish to return to CM's house but on the evidence available to us it has not been proven that the reasons for this directly related to CM's care for the child.

4. Young child answers door in February 2010 and CM unaware of this for several minutes

39. CM has accepted this was a failing that has not been repeated. We accept this and in our view it is relevant in so far as it forms a minor part of the background picture.

5. Hazards in garden area in August 2010

40. CM fully accepted that her garden was unsuitable but claims that this was rectified. We accept this and find that it is relevant in so far as it forms a minor part of the background picture.

6. CM shouted at a child from Family 3, did not allow him to touch anything and did not even allow him to use the bathroom

41. This evidence emanates from the child's mother who attended to give evidence before us. She provided quite worrying evidence that her younger child became very distressed and made it clear that he did not wish to return to CM. When the child was asked to explain why, he is said to have told his mother that he was shouted at, told not to touch anything and he was also not allowed out of a room to use the bathroom. This mother was questioned about the disclosure that the child was not permitted to go to the bathroom. He was three at the time and it was suggested that if he was not allowed to go to the bathroom over the course of eight hours he would return home wet. She was therefore asked if he ever returned home wet at the relevant time. The mother simply said that she could not remember. We find this difficult to believe. It is difficult to see how the mother seemed to remember other details for that time but she could not remember whether or not her child returned home wet. A complaint was made to Ofsted but no further action was taken.
42. We bear in mind that this child made a similar disclosure to the child we discussed above (paragraph 35). We are prepared to accept that in a similar way to that child, this child probably indicated he did not wish to

return to CM's house but on the evidence available to us it has not been proven that the reasons for this directly related to CM's care for the child.

43. It is also alleged that the CM told the mother of this child that she "*had been fighting the night before*". This relates to an incident on 31 January 2012 when CM admits that she was the victim of an assault she says was perpetrated by her sister-in-law. During cross-examination the mother of Family 3 was not able to recall the exact words used by CM but thinks she said "*there had been fighting in the pub the night before*". This supports a cautious approach to this witness's evidence. In her statement she clearly states that CM told her she had been fighting whereas at the hearing she stated that CM said that there had been fighting. This does not take the matter much further and we deal with the fighting incident in 2012 involving CM in more detail below.

7. Facebook posting

44. CM accepts that she posted the following comments on 'Facebook' in January 2011:

"there's nothing hard about being a bully n that's exactly what ur nephew is, he picked on [] until our [] cracked him a fucker n he's not been back for more...im telling you [] may be small but he's like his mum he wont take no shit n if ur nephew comes again at him he'll get another one from [] as he's about the same size as my other lad don't be surprised if he hits him as well end of the day my kids are like me n ant fight for each other"

"...if iv got owt to say to your [] Ill fucking say it..."

"...if he hits [] agaoin don't be surprised if [] steps in n [] gives him another fuckin smack cos my [] has clearly told school if your kid touches [] one more time hes hitting him yeah I do stick up for myself and my own which includes my kids n family...if he keeps on with [] my [] is your [] size so he will step in n [] im no different from rest of my lot you fuck with our kids n u fuck with all of us..."

"as for my bitchiness yeah Ill admit I get it from my mum n [] n [] n [] are all the same when weve been crossed same as if you wrong my kids...my family is pretty fuckin fantastic as well [] n yeah MY family not ur fucker"

45. These posts were brought to the attention of Ofsted by CM's ex-husband. Ofsted accept that he has been responsible for a large number of malicious complaints and referrals, which have been found to be completely unsubstantiated. These posts are clearly relevant to CM's suitability as a childminder. It matters not that they may have been brought to the attention of Ofsted for malicious reasons. CM has admitted to being the author of these posts. In her evidence before us

CM sought to explain the context in which these posts were written. We acknowledge that in the posts CM was clearly stating that she did not approve of bullies and was trying to address what she saw as bullying by another child against her child. We accept that these posts were probably not written at a time when minded children were present and were written in response to some inflammatory posts. We also accept that the posts would be seen by a limited number of people. CM also said that they were taken down after a couple of hours, although the exchange of Facebook posts, which included four separate ones from CM, appears to have taken place over a period of three hours.

46. Having considered CM's evidence and the content of the posts carefully, we agree with Mr Reed that this is significant evidence for a number of reasons. First, it demonstrates that CM has used inappropriate language on a number of occasions and in a number of different contexts. She has freely used the word 'fuck' as a noun, verb and adjective. We reject CM's assertion that she does and has never used the word 'fuck'. Second, CM's reactions and responses to the other posts (which are equally if not more inappropriate) support a propensity to take an aggressive approach and an unwillingness or inability to avoid confrontation. CM described her approach in these posts as assertive. We disagree. We find that the posts demonstrate a determination to highlight and reinforce her and her family's aggression as something for others to be scared of. Third, the posts indicate that CM believes it is justified to fight for her family and for her children to fight for each other.
47. We regard these posts as a serious error of judgment on the part of CM. We do not consider that any of the comments can be described as 'throw away' or 'one off'. The use of inappropriate language and the espoused justification of retaliatory violence is repeated and clearly expressed. We are concerned that CM has sought to minimise the seriousness of the posts by stating that they were made in her "*own time*". Mr Reed asked a number of careful questions regarding the posts but CM was simply unwilling to answer his questions directly and kept emphasising that it was her son who was the victim and she was trying to protect her family. CM was unwilling to accept that which is obvious – these posts should never have been written. Repeated attempts to justify and minimise the significance of these posts before us years after the event causes us significant concerns as to CM's suitability to be a childminder.
48. We note that although an inspector visited CM on 26 January 2011 and spoke to her about these posts no further action was taken at this stage. We are surprised that no actions were put in place. We consider that this demonstrates that Ofsted took a lenient approach to CM at this point. This contrasts with CM's position that Ofsted "*had it in for her*" and were unsupportive. We find that these posts demonstrate a propensity to: use inappropriate language; aggression; endorse retaliatory violence; find it difficult to avoid confrontation. Importantly, in

answering questions about these posts CM did not seek to distance herself from them or indicate that she had changed since they were written. We are of the strong view that the general sentiment and attitude set out in these posts are representative of CM's current attitudes. This is a relevant factor to take into account when considering CM's suitability as a childminder.

8. Treatment of child from Family 4 in July 2011

49. This child's mother gave evidence before us. She said that CM refused to give her child anything to eat other than a sandwich she did not like and gave her a particular drink contrary to medical advice. She also alleged that CM reacted inappropriately to her child and accused her of pulling another child's hair when she was merely playing with it. We did not find the evidence from this child's mother to be reliable. She described CM's approach to food and drink as unacceptable yet she did not tell CM that she had been to a specialist and the child required a high calories diet. CM was questioned about her failure to show a record of the incident involving another child's hair to the child's mother. She said that she regarded this as a safeguarding concern and therefore did not need to show the record. CM was unable to reconcile this answer with the fact that if she regarded the incident as a safeguarding concern then there was no credible reason for failing to make a referral to social services.
50. We do not consider that we were provided with reliable evidence from CM or the child's mother regarding these allegations. We note that Ofsted took no further action when a complaint was made by the child's mother. We do not find this allegation proven.

9. The Appellant was involved in a fight in the presence of one of her own children in January 2012

51. We accept the CM's claim that she was the victim of an assault from her sister-in-law, and this took place in front of her children. The police report is consistent with CM's evidence and the fact that the sister-in-law was issued with a restorative justice order. We also accept that CM acted appropriately in response to the assault as she informed the police and Ofsted about the incident without delay.
52. This incident seems to mark the first of a series of violent incidents in the Chesterfield area in which CM and / or her husband have been involved. Although there is little to suggest that they were the instigators of any violence it is very concerning that there are a number of individuals within the local area who for various reasons have developed such a feud against CM and / or her husband that they have resorted to violence. We note that Ofsted took no further action against CM after this incident. We regard it as important because it marks the first occasion of violence arising out of the acknowledged feud. CM made it

clear to us that the feud continues and we find that the threat of violence against her and her husband remains.

10. Following an incident in the park in May 2012 concerning one of the CM's children, it is alleged that CM behaved inappropriately in that she
- a) encouraged her son to assault child 1 from Family 5
 - b) intervened in the physical altercation between the children such that child 2 from Family 5 suffered a bruised arm
 - c) reported the matter to the police after Ofsted contacted her about it
 - d) became irate with the police when subsequently discussing the matter
 - e) stated wrongly when interviewed by Ofsted that the mother of child 1 and child 2 fabricated the allegation that CM hit child 1

53. We have carefully considered all the evidence related to this incident. This included evidence from the mother of Family 5 and CM. We note that the mother of Family 5 has held and continues to hold a number of responsible positions in the local school. Her account of this incident is however rather different to the police report prepared after she reported the matter to the police. The police report underplayed the incident as a scuffle between children. It was also said that CM hit child 1 when this allegation was not repeated. The report also said that the mother of Family 5 agreed to pay for the jumper when she maintained she had not done this. We find that mother of Family 5 has not provided us with wholly reliable evidence. The allegations against CM remain and we must assess her own evidence responding to these allegations. We have also considered the various reports compiled from the police, social services and Ofsted as a result of this incident.
54. We find that a large group of children were playing in the park. Child 1 acted inappropriately such that CM's son's jumper was ripped. He returned home crying to tell his mother about this. CM was very concerned to know precisely who the children in the park were. CM told us that her son had identified and could name child 1 and two other children. CM claims that she returned to the park with her son solely in order to identify the other children. CM was unable to credibly explain why it was so important to immediately return to the park when she already had information relevant to three of the children. CM was unable to explain why she did not prioritise soothing her own son within the home. CM claims that upon returning to the park her son lunged at child 1 and a fight ensued which she could not prevent. We find that CM could and should have done more to avoid this further confrontation. We bear in mind CM's approach to fighting amongst children as contained in the Facebook posts above. We also bear in mind the note of the investigation into this incident by social services. Although this records that CM *"throughout gave a plausible account of the incident"* it also states that CM and her husband *"gave the impression that it was acceptable for [] to hit a child back if he was subject to being hit"* and *"[] returned to the park with his mother so he possibly felt more confident to hit [] back"*. We find that it is more likely than not that CM returned to

the park with her son not simply to identify the names of three other children but with a view to escalating conflict and confrontation.

55. Mr Reed asked CM whether with hindsight it would have better not to have gone to the park at all. CM was simply unwilling to directly answer this question. This question was reworded on a number of occasions and CM finally answered that maybe she should not have gone to the park and should have called the police instead. We are very concerned at CM's reluctance to clearly and readily accept that her own actions may have caused the situation between the children to escalate unnecessarily.
56. We also find that it is more likely than not that CM intervened in the physical altercation in an attempt to pull child 2 away from it. We note that child 2 was younger. We do not accept that there was any intention to injure child 2 on the part of CM. Indeed we note that during her evidence child 2's mother acknowledged that she did not think that the injury was done deliberately.
57. We accept that CM delayed in reporting this matter to the police and only did so after Ofsted contacted her.
58. We accept that the police log clearly stated that CM became irate when speaking to the police about their approach to this incident. It is noteworthy that she is reported to have gotten irate and then to have gotten "*further irate*" later on in the conversation. CM described her approach as assertive and not aggressive. We find that CM became unnecessarily angry and aggressive because she disagreed with the approach taken by the police. CM wanted the police to take further steps in the investigation of child 1 from Family 5 and their mother because she had reported CM to Ofsted.
59. We find that this incident causes us a number of concerns regarding CM's suitability as a childminder. CM took a confrontational approach toward fighting between children. When the police took an approach to the incident that she disagreed with she became irate.
60. We do not accept that any adverse inferences should be drawn from CM's indication to Ofsted that the mother of Family 5 had fabricated the allegation that CM hit child 1. The police report clearly states: "[] *has not assaulted anybody*". Mr Reed acknowledged this is capable of different interpretations. We agree. The question is whether CM genuinely believed that the mother of Family 5 no longer contended that CM had hit anyone. We find that CM was reasonably entitled to hold that view albeit she perhaps formulated this in overly robust terms but we do not find that the way in which this was eventually reported to Ofsted suggests that CM is unsuitable to be a childminder. We do however find the other allegations 10a) to d) proven and that these do reflect adversely on CM's suitability to be a childminder.

11. CM used inappropriate language to a local government complaints administrator in May 2012 and said “the fucking governors are fucking useless...the school don’t want to fucking know”.

61. CM is alleged to have used the word ‘fucking’ on three occasions during a conversation with this person (LG). This witness did not attend the hearing. She was the subject of a witness summons and produced a medical certificate stating that she is unfit to give evidence. In an email dated 23 May 2012 LG outlined an account of the incident. This email was exhibited as an attachment to Ms Stafford-Wood’s statement (the Head of Information and Quality Assurance at Derbyshire County Council). The email was carefully drafted. This described a phone call received from CM regarding a complaint about the mother of Family 5, having “*hurled a tirade of abuse*” at CM outside her home, after the fight in the park. CM was described as “*very, very angry during the original call*”. When LG rang her back to advise CM to complain to the Chair of the Governor’s the email records that she responded angrily using the word ‘f***ing’ three times. It is also recorded that she became “*more and more abusive with her language*” before hanging up the phone. In a more recent email LG confirmed that by ‘f...ing’ she meant ‘fucking’ but did not use that language because she did not believe the email monitoring system would permit it.
62. CM denies ever using this language to LG and explained that she must have misheard as she probably said the words ‘frigging’ or ‘furking’ instead. We reject this explanation. We find that the email accurately sets out what took place during those two telephone calls. We have found CM to have used inappropriate language on a number of occasions. It is difficult to see why LG would seek to manufacture this evidence. She had no regular on going contact with CM.
63. We are further concerned that CM could not accept that even if she had used the words ‘frigging’ or ‘furking’ instead of ‘fucking’ that this remained an inappropriate use of language and that the abuse contained within the phone calls simply could not be credibly explained or justified. Our concerns here are not limited to the use of inappropriate language but the way in which CM lost her temper. During cross-examination CM admitted that she believed that there was nothing inappropriate in using ‘frigging’ or ‘furking’ in the presence of children and she regularly did so. CM refused to acknowledge that children might repeat those words and it would be inappropriate for them to do so. CM’s failure to acknowledge the consequences that might flow from the use of inappropriate language and her consistent use of inappropriate language and tone reflects adversely on her suitability as a childminder.

12. Garden in an inappropriate state in June 2012

64. CM accepts that this is justified but explained that appropriate steps were taken not to use the garden. We accept this.

13. On 21 June 2012 a member of the extended family with whom CM had a long-standing feud swerved in front of her car whilst minded children were present and CM did not make the police aware of this.

65. CM admits both of these matters. We note that there is clear evidence that CM reported this to Ofsted that same day and indicated that she had not reported this to the police as she could not tell if this was done on purpose. We find this a reasonable explanation. We are however concerned that the family feud continued at this time and that it may have put minded children at risk.

14. The garden was still not suitable for use by minded children

66. CM explained to us that the delay was caused wholly by conflicting advice from Ofsted regarding the use of wood chippings. CM was unable to simply accept that it remained her responsibility to ensure the materials used in the garden were safe and this was not a matter for Ofsted to advise upon.

15. Incidents regarding the children from Family 6 in November 2012

67. Ms Wain gave clear and straightforward evidence that child 1 from Family 6 disclosed that CM had picked up his brother and thrown him on the sofa and that she does not like the children and treats them badly. We entirely accept that Ms Wain has accurately reported that which child 1 told her. We do not accept on the evidence available to us that child 1's allegations have been proven to the requisite standard. These allegations were investigated by social services. During that time Ofsted suspended CM as a childminder. This was lifted after a very short period when the allegations were found not to be substantiated. We are more concerned that CM has lodged a number of unjustified complaints against Ms Wain. Ms Wain acted in an entirely professional manner and we regard it as significant that CM retaliated against the report of a disclosure against her with an unjustified complaint against Ms Wain.

68. It is also alleged that CM subsequently and incorrectly asserted that child 1 withdrew the allegation or stated that he lied about the matter and also alleged that his father 'battered' him. Ms Wain accepted as do we that CM was told about this by the child's parents and in those circumstances it was reasonable for her to make this assertion to Ofsted. We therefore do not accept that this assertion was incorrectly made.

16. In November 2012 the Appellant was abusive for a second time to LG (a Local Government Complaints Administrator)

69. CM denies that she was abusive although she admits to calling LG incompetent. Having considered all the evidence in the round we find

that CM was again unjustifiably abusive to LG. This is consistent with her previous approach to LG.

17. In August 2013 attendance registers contained omissions and inaccuracies.

70. We do not regard these errors to be more than minor matters and do not consider that this weighs against CM's suitability as a childminder.

18. In August 2013 CM named Paul Ayres as responsible for a theft from her car but when he was arrested she denied naming him at all.

71. CM was adamant that when she rang the police she explained that she was told by others that Paul Ayers was responsible for a theft from her car. She therefore explained that when he was arrested she repeated that she had simply been told this by others. PC Sunderland has said that when he was arrested CM denied naming him at all.

72. The real point of concern is that PC Sunderland said that CM denied she had named him at all to the police. CM was asked to clarify this on a number of occasions. She simply repeated that she only gave information about him but did not name him as the person responsible. We think that this might just be based on a misunderstanding and that this does not adversely impact on CM's suitability as a childminder.

19. In August 2013 PC Sunderland reported to Ofsted that she did not consider the Appellant's property was suitable for childminding.

73. When PC Sunderland attended CM's property she described a number of concerns relevant to the suitability of the property for childminding. CM disputed much of this evidence and considered that PC Sunderland was either wrong or exaggerating. PC Sunderland candidly admitted that she did not seek any explanations from CM regarding the state of the property and merely reported her observations to Ofsted. She accepted that she took some two weeks to make the report and had her concerns been pressing ones she would have made the referral sooner.

74. We accept that PC Sunderland has provided an honest description of how she viewed the property. We accept that CM may have had a number of cogent explanations but it was not PC Sunderland's role to seek those from her. We find that PC Sunderland was entitled to report her concerns to Ofsted and that it was for Ofsted to investigate those concerns and where relevant seek explanations from CM.

75. We find that CM made an unjustified complaint about PC Sunderland following the report to Ofsted. PC Sunderland was simply passing on her concerns and she was entitled to do so. We regard this as significant in that it supports Ofsted's view that CM has a tendency to deflect concerns about her and her property by making complaints about others.

20. The Appellant did not provide an accurate account of the children on her register before the objection panel.

76. We find that this might well be based upon a misunderstanding and that it does not reflect adversely on CM's suitability as a childminder. CM explained that she wrongly assumed that the panel wanted to know how many children were actually in attendance and not how many were on the register.

21. At an unannounced inspection on 21 August 2013 Ms Lawton identified a number of serious concerns regarding the suitability of CM as a childminder and the suitability of her husband as her assistant.

77. We found Ms Lawton to be a compelling witness. Her evidence was fair, objective and balanced. She did not seek to exaggerate and we find that she provided us with honest evidence. She has set out a number of concerns in some detail and these have been listed as a) to t) in the Schedule. We have found Ofsted to have proven these to the requisite standard as we accept Ms Lawton's evidence in its entirety. In so doing we have considered the report of the Independent Adjudicator dated 14 April 2014. This acknowledged that CM was dissatisfied with the way Ofsted conducted this inspection and the subsequent complaint arising from it. The Adjudicator was satisfied that Ofsted gave due consideration to the majority of the concerns raised but did find that Ofsted should have given more consideration to the complaint of disability discrimination against CM's husband and there was some delay in Ofsted responding to part of the complaints process.

78. There are a number of concerns raised by Ms Lawton that we regard as particularly significant (the others being more minor). First, the premises and the children were in a disorganised state. There were no purposeful activities for the children and their needs were not being met. CM told us that she had recently returned from the park with the children and the unannounced visit interrupted the normal routine. We were impressed by the considered and gentle way that Ms Lawton provided her evidence. We note that the inspection lasted for about two hours and during that time little was done by CM or her husband to arrange any purposeful activities to meet the children's needs. The disorganisation and lack of purposeful activities remained during the course of the visit and cannot be credibly explained by a return from the park.

79. Second, in material respects the property contained a number of hazards for children. This included a small silver Monopoly piece, toys stored unsafely in the conservatory, a disorganised and hazardous shed and a paddling pool still full of water in the garden. CM was unwilling to agree that any of these were hazardous. She minimised the seriousness of the small silver piece and explained that it was the fault of the inspection because she was distracted by it. At no stage did CM

acknowledge that the Monopoly piece was a hazard and simply sought to blame Ofsted for doing the inspection at all. Ms Lawton clearly recalled the conservatory as not being locked when CM stated it was locked and the toys were therefore not hazardous to the children. We again accept Ms Lawton's evidence. We did not consider that CM demonstrated sufficient insight into the importance of ensuring a hazard free environment at all times for young children either at the time of the inspection or before us.

80. Third, CM was caring for nine children in total that day. We accept Ms Lawton's evidence that the children's needs were simply not being met during the visit for the reasons she has described in detail. It was CM's responsibility to ensure that their needs were being met. She introduced her husband as her assistant yet Ms Lawton observed him to play no proper role in caring for the children and simply watched the television throughout. CM sought to explain this by saying that he was off sick at the time. We find that CM has not been forthright with Ofsted about the role of her husband on the day of the inspection. We do not accept that she told Ms Lawton that her husband was off sick that day. We entirely accept Ms Lawton's evidence that he was introduced as her assistant. We do not accept that it would have been obvious that he was off sick because he was not wearing his prosthesis and had crutches next to him. There might be a number of explanations for this.
81. Fourth, the ground floor toilet was in a completely unsatisfactory condition. CM gave a lengthy explanation about this. She explained that her husband was getting this ready for decoration but was unable to explain which toilet facilities the older minded children would be able to access, as they were not permitted to use the upstairs bathroom. When CM was questioned about which toilet those children would use she said they had been in the park and then were due to go out. When it was pointed out that they might wish to go to the toilet upon return from the park, CM said that they could use the downstairs toilet. CM simply then refused to acknowledge that the downstairs toilet was not in a fit state to be used by anyone having already accepted as true that it contained a mop and dirty water, no toilet roll, soap or hand towel.

22. During the above inspection CM incorrectly identified two children present as her niece and nephew, and it has since been confirmed that they are not related to her.

82. Ms Lawton's recollection of what she was told by CM regarding these two particular children was clear. She said that they were not introduced as minded children but as CM's niece and nephew. We accept this. We are satisfied that this was probably done by CM for this reason: apart from these two children the other minded children were young and would not need to use the downstairs toilet. Those children who were not minded children used the upstairs toilet. CM therefore described the children as family members so as to justify their use of the upstairs toilet (reserved for family). It was only after the inspection that it came to light

that these children were not family members and CM had to acknowledge they were minded children. This reflects adversely upon CM's honesty with Ofsted and is one of a number of reasons why Ofsted does not have confidence that they can trust CM to be open and honest with them.

23. At around midnight on 31 August 2013 CM and her husband were involved in a violent incident in the vicinity of a public house.

83. We accept CM's evidence that she was not drinking but her husband was. We also accept it is more likely than not that they did not instigate the fighting. However we are of the firm view that CM and her husband could have done much more to try to avoid the situation involving them at all. CM admitted that her husband was so drunk that night that he spent the night in a police cell. They were aware that there were others with whom they had an on going feud in the public house and moved from room to room to avoid them when they should have simply left. CM was unable to credibly explain why she did not leave when she saw the various individuals in the pub. We entirely accept that CM was once again a victim of her sister-in-law's violence toward her. We however consider that CM and her husband could and should have done more to remove herself from the vicinity of the public house given the history between them and the on going feud.
84. We have not heard evidence from CM's husband. On the information available to us we have serious concerns about his suitability as a childminder's assistant. He has served a period of imprisonment for a violent offence when he was younger. He was given a waiver notwithstanding this but has been involved in fighting since then. CM admitted that he was arrested for a public order offence on this occasion because he threw a glass bottle. He was so drunk that he was not fit to be interviewed and spent the night in a police cell before returning home the next day at 10am. In addition to this he has taken a very limited role in pro actively caring for children during unannounced visits. He has consistently been described as simply watching television.
85. We accept that CM and her husband were both involved in violence and this is linked to an on going feud with members of CM's husband's extended family. We are satisfied from CM's evidence that this feud continues. We are satisfied that CM's husband was arrested by the police that night and then released on bail. We find that CM fully knew that her husband had been arrested that night. CM was evasive when describing this incident. She maintained that she did not know that her husband was arrested until Ms Holt's later inspection. We do not accept this. CM's own husband would have plainly known that he had been arrested when he was bailed the next morning. We find it fanciful that they would not have had a discussion about this when he had been taken to the police station in a very intoxicated state and it was accepted that he had thrown a bottle. We find it significant that CM

was not open and honest with Ofsted about this incident and this has been repeated before us.

24. At an unannounced visit on 19 September 2013 two Ofsted inspectors overheard CM say “don’t you fucking start” at or in the presence of two young children.

86. This was heard by two inspectors Ms Holt and Ms Howard. Both witnesses gave entirely reliable accounts. It is important to emphasise not just the word used but the manner in which it was used. Both witnesses emphasised that the emphasis was placed on the word ‘fucking’ and the comments was said in anger or frustration. The use of such language is consistent with CM’s Facebook posts. CM argued that the witnesses had conspired against her and fabricated this comment. The witnesses were both clear that they heard this sentence clearly. We find that both witnesses adopted an entirely professional approach. They heard slightly different words but the use of the word ‘fucking’ and the tone in which it was used was consistent. We prefer the evidence of the professional witnesses and accept that CM used this language in the presence of children.

25. CM and her husband were involved in an altercation at a different public house on 5 October 2013 and CM did not report this to Ofsted.

87. CM maintained before us that there was “*nothing*” to report to Ofsted. We found CM’s explanation incredible. CM accepted that her husband was head butted on this occasion. Indeed the police described the exact wording used by CM to report the matter - she described her husband as having been “*attacked*” and that they were “*assaulted*” (see the letter from the disclosure officer dated 28 January 2014). During cross-examination and in an attempt to explain that the incident was not serious and therefore did not justify being reported to Ofsted CM stated that the perpetrator “*did not mean to head but*” her husband. We also note that this is a similar explanation to one provided by CM in an email dated 12 March 2014 in which she claims that the male “*accidentally connected with my husband*”. This simply cannot be reconciled with the earlier evidence that there was an assault in relation to which the police were involved. When the incident was reported to the police CM did not say it was accidental.

88. In any event, whether it was accidental or not, CM knew that it was necessary to report this incident to Ofsted, yet she failed to do so. She had been provided with a letter from Ofsted just two weeks previously on 24 September 2013 (in response to her failure to report the police involvement on 31 August 2013) clearly stating “*we have now informed you that any police or social services involvement with you or members of your household we consider to be a significant event, which could affect suitability and therefore must be reported to Ofsted as soon as reasonable practicable to do so however in any event within 14 days at the latest*”. We find that CM deliberately omitted to report this event so

as to avoid a further inspection and this calls into question her openness and honesty with Ofsted.

26. During an inspection in October 2013 CM's husband responded to a child's squealing by saying "that what I really hate; it does my head in. children screaming".

89. CM accepted that this was said by her husband but that it was in response to a very shrill squeal from their daughter. Both Ms Holt and Ms Howard described this as an inappropriate reaction in the particular context. We accept that this is a strange reaction for an assistant of a registered childminder to demonstrate, particularly during the course of an inspection. We consider that it reflects adversely upon CM's suitability that she did not recognise that this was inappropriate and did not make this clear to her assistant / husband.

27. A number of potential witnesses have declined to make statements on the ground that they fear repercussions from CM or her associates if they do so.

90. Ofsted particularly emphasised that LG and mother of Family 6 were intimidated by CM. We accept that LG was intimidated by CM because of the inappropriate language and tone used in response to advice about the complaints system. We also accept that mother of Family 6 believed there might be reason to feel intimidated by CM although we do not consider we have sufficient evidence that CM behaved in a manner toward her that would directly lead to those concerns.

28. CM falsely indicated to the police that Ofsted found nothing unhygienic about the premises when they visited in August 2013.

91. We do not consider that CM was deliberately attempting to deceive anyone at this stage. She was simply trying to emphasise that Ms Lawton had not found the kitchen unhygienic in contrast to the report of PC Sunderland.

Conclusions

92. We bear in mind that there have been a significant number of unannounced inspections from 2009 in response to an unusually high volume of complaints (some of which were maliciously made by CM's ex-husband and members of her current husband's extended family). Ms Stone accepted that prior to 2013 only three relatively minor issues were identified and these were rectified. We also accept that CM has had a number of 'good' inspections in the past and her two most recent inspections have been 'satisfactory'. We also accept that a number of parents have been prepared to support CM in writing, in glowing terms. This evidence emanates from parents who have used CM as a childminder for many years. CM has asked us to find that if she was unsuitable, these parents would not have written such supportive letters and there would have been more serious incidents to report during the

large number of unannounced inspections. We accept that these are valid points persuasively made by CM but we must consider this evidence and all the updated evidence in the round.

93. We find that a number of significant themes have emerged from our findings of fact. These support our conclusion that CM is not suitable to be a registered childminder.
94. First, CM has attracted a considerable amount of confrontation over a number of years. She believes that she has been a victim of harassment and that her ex-husband and members of her current husband's extended family have been responsible for a number of malicious complaints and acts of violence as well as invasions of her privacy. Where a childminder is faced with such a plight it is particularly important that she is able to shield children from the effect of such conflicts and that she takes steps to avoid further potential conflict. CM told us herself that the conflicts remain. Indeed they remain to such an extent that she told us that the family members hardly go out and that apart from school the children are not allowed to play outside the home. There was a recent incident of damage to the family's car. CM has complained to various agencies (police, social services, Ofsted, her MP) about the family feud and has described it as harassment over recent years. It seems to have begun in January 2012 and continued until the present. We do not accept that CM is an entirely innocent victim in this on going feud. We do not consider that she has modified her own behaviour to avoid confrontational situations. CM has demonstrated an aggressive approach through her use of Facebook, her response to those in responsible positions and by her inappropriate use of language to a number of individuals. We consider that it is more likely than not that minded children will have to witness confrontations, violence or threats to violence arising out of the continuing feuds. These show no sign of disappearing. We are not satisfied that CM has demonstrated the requisite skills to modify her behaviour sufficiently to avoid unnecessary confrontation and this is likely to place minded children at risk.
95. Second, Ofsted has demonstrated that CM has not behaved in a manner conducive to meeting the needs of children in a warm secure, caring and consistent environment. Ms Lawton's unannounced inspection provides a snapshot of an environment that was not meeting the needs of children in CM's care. We note that there has been a satisfactory inspection since this time but we are satisfied that Ofsted has demonstrated that CM would be unable to consistently provide a suitable environment for children at her home. We consider that how CM behaves when she is childminding but also when she is not childminding indicates that she is unable to meet children's needs in an appropriate environment on a consistent basis. We are very concerned at the inappropriate language she has used and her failure to see that the regular use of words such as 'furking' and 'frigging' in front of children is inappropriate.

96. Third, we find that Ofsted are justified in concluding that they have lost trust and confidence in CM being honest and open with them. She has failed to notify Ofsted about serious incidents of violence involving her and her husband. She has failed to notify Ofsted when her husband / assistant was arrested for his involvement in violence and drunkenness. CM has also sought to retaliate to complaints made about her by making unjustified complaints against others including professionals. Ofsted has demonstrated that CM finds it very difficult to recognise the importance of an open relationship between a childminder and Ofsted. Childminding is an activity undertaken at home. The system relies on the regulator being able to have trust in the registered provider to act openly, honestly and with integrity. We find that Ofsted has demonstrated that CM's behaviour over a sustained period is such that CM no longer has an open and honest relationship with Ofsted.
97. Whilst acknowledging the positive aspects of the various inspections we are satisfied that given the serious nature of the themes to emerge from the allegations that have been made out by Ofsted to the relevant standard, together with the findings of facts we have set out above, CM is no longer suitable to be a childminder.
98. In considering whether the sanction imposed by Ofsted was proportionate we have regard to the duration of the concerns and the failure to demonstrate insight into their significance. Having had the benefit over several days of observing and listening to CM we must sadly conclude that the sanction imposed was and is appropriate. She will no doubt find this a very hard decision to accept. She has been a childminder for a lengthy period and some parents hold her in high regard.

Decision

99. We dismiss the appeal and there shall be no order as to costs.

Judge Melanie Plimmer
Lead Judge Care Standards / Primary Health Lists
First-tier Tribunal (Health, Education and Social Care)

29 May 2014