Care Standards

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

[2018] 3529.EY

Heard on 4-6 June and 4-5 July 2019 at Reading Hearing Centre

BEFORE
Judge S Goodrich
Specialist Member Mr J Hutchinson
Specialist Member Mr B Cairns

BETWEEN:

Mrs TW

Appellant

V

Ofsted

Respondent

DECISION AND REASONS

Representation

The Appellant: Mr Owusu, Counsel, instructed under the Direct Access Scheme
The Respondent: Mr Saigal, Solicitor, instructed by Ofsted Legal Services.

The Appeal

1. This is an appeal by Mrs W against the decision made on 15 November 2018 to cancel her registration on the Early Years Register to provide childcare as a child minder in domestic premises, and on both the compulsory and voluntary parts of the Childcare Register pursuant to Section 68 of the Childcare Act 2006. The right of appeal lies under section 74 of the Childcare Act 2006.

The Parties

2. The Appellant has been registered with Ofsted as a provider of childminding services since 16 February 2004. At time of the decision under appeal the

provider was providing childcare services at her home in which her husband and children, L, K and R also resided.

3. The Respondent is the Office for Standards in Education, Children's Services and Skills (Ofsted) and is the regulatory authority for childminding and childcare providers. Once a provider has been registered, Ofsted's role is to establish whether the person or entity registered continues to meet the requirements for registration, under the Regulations made pursuant to the Childcare Act 2006, and remains suitable for registration.

Restricted Reporting Order

4. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matters likely to lead members of the public to identify the children to whom reference will be made so as to protect their interests.

5. Consistent with this, the names of the Appellant and her family members will be anonymised in this decision and we have avoided any reference to geographical location.

6. This broad chronology is as follows:

   a) On 3 October 2007, the outcome on first inspection was judged to be "satisfactory".

   b) On 14 October 2010, the outcome on inspection was "good".

   c) The next inspection was brought forward because a complaint was received which related to the Appellant allegedly not supervising children properly, her abrupt manner, child safety and not meeting the health needs of children. On inspection on 24 June 2014 the outcome was "requires improvement". Actions were raised relating to ensuring that: children were adequately supervised; improving safeguarding procedures; improving partnerships with parents and making sure that complaints were dealt with appropriately.

   d) At the next inspection on 6 June 2016 the Appellant's provision was rated as "good".

   e) On 24 January 2018 a referral was made by the Local Authority Designated Officer (LADO) concerning an allegation that Mrs W had assaulted her son K. Paula Sissons, an Early Years Regulatory Inspector (EYRI), visited the Appellant on 9 February 2018. This resulted in a Notice to Improve (NTI) with actions requiring Mrs W to complete safeguarding training in order to improve her knowledge and understanding so that child welfare concerns can be identified, and to notify Ofsted of significant events.

   f) On 3 July 2018 Ofsted received a referral from the LADO concerning allegations made by her son R (concerning events on 1 July).

g) On 4 July 2018 the Appellant notified Ofsted that she had been assaulted by her husband on 1 July 2018, that her children were present and that her son R had alleged that she had kicked him.

h) On 5 July 2018 Mrs Kelly Marchmont, the EYRI on duty that day, spoke with the Appellant. Mrs W confirmed that she was recently divorced but that she and her husband continued living in the home which was also the childminding address. Mrs W informed her that she did not think the social worker had any concerns about her children and the matter would soon be closed.

i) Mrs Marchmont also spoke with Liz Roles, the social worker employed by the local Children Services Department (CSD) and was informed that: CAFCASS were involved; a (family court) hearing was scheduled; a section 47 investigation was ongoing; she would be recommending a Child Protection Conference.

j) On 5 July 2018, Lisa Troop, an Early Years Senior Officer, made the decision to suspend registration. Part of the rationale included the volatile home environment, and the view that if the appellant was unable to prevent or minimise the risk of harm to her own children, she could not be trusted to appropriately safeguard minded children.

k) On 13 July 2018 Mrs Marchmont carried out a suspension monitoring visit and a suitability review. Amongst other matters, she emphasised that to Mrs W that it was not Ofsted's role to prove or disprove the allegations that had been made. Her role was to ensure that Mrs W continued to meet the requirements of registration, and that included her overall suitability to be a registered childminder.

l) On 23 July 2018 L, K and R were made the subject of Interim Child Protection Plans (ICPP) due to the risk of emotional abuse.

m) On 7 August 2018 the Appellant provided Ofsted with a copy of the CAFCASS report. This included information about R not coping at school, thoughts/threats of self-harm and suicide, as well as extremely difficult behaviour towards staff and other pupils. It also included that the CAFCASS officer recommended a further section 7 report from the CSD.

n) At a review by Ofsted on 9 August 2018 the suspension was extended.

o) On 17 September David Wells, the social worker who was allocated to the case, filed his section 7 report.

p) On 25 September 2018 Ofsted extended the suspension. Ofsted also notified the Appellant of their intention to cancel her registration and explained why.

q) On 1 October 2018 the Appellant emailed Ofsted and explained in detail her objections to the Notice of Intention to cancel. In summary all the problems started occurring when she was not allowed to take her children to her old

home town. There had been a few months of "upset" and the boys were slowing coming to terms with their parents splitting up. So far as R school was concerned, there had been a few issues regarding children falling out. Several children had left the school as parents were not happy with the way the school was run. School and social services had decided that R did not need any professional mental health care and the majority of his behaviour was because he was upset with his parents getting a divorce. R was getting upset with his peers and the teachers because of the way they deal with children in class. R had never presented with these issues around her working hours or with the minded children, even when he was undergoing all these stresses. The impact could have been minimised had her husband agreed to her moving with the boys and sharing the equity in the home. He had tried to influence the minds of impressionable children with false allegations and false stories. She has always considered the safety and needs of children as paramount and is ready to undertake any steps to ensure this.

r) On 29 October 2018 the objections were considered by James Norman, an Early Years Senior Officer. He concluded that: the Appellant's household was not a conducive environment for children to learn and flourish; the Appellant lacked insight into the plight of her own children and how her behaviour may affect it; minded children are at risk of harm in her care; he was not assured that she would recognise a concern about a minded child or take appropriate action in response.

s) On 15 November 2018 the Notice of decision (NOD) to cancel registration was served.

t) On 30 November 2018 the Family Court made a Child Arrangements order as well as an Occupation order: for the two younger children to remain in the family home with their father, for Mrs W to vacate the home, and for K and R to have defined contact with Mrs W. (No order was made regarding L given his age).

u) On 18 December 2018 Mrs Marchmont carried out a visit at the new home of the Appellant where she lives with a new partner.

v) The children live with father and have contact with their mother who lives about 1.5 hours away. The CPP remained in place until the spring of 2018.

The Decision under Appeal

7. The notice of decision dated 15 November 2018 is a matter of record and we need not relate its contents in full. In summary, Ofsted was not satisfied that: Mrs W was able to safeguard minded children due to her being unable to safeguard her own children; she did not recognise the significance of the allegations made in July 2018; she continued to operate the following day despite allegations and cross allegations of assault between her and her husband; parents were not aware of the difficult home situation and were

unable to make informed choices; she had repeatedly minimised R's behaviour at school stating that it was attention seeking behaviour due to the divorce; she had minimised the difficulties at home stating that there had been no issues prior to 1 July and that the atmosphere was now calm. The concern was that if minded children disclosed cause for concern, she would be unable to identify the risk and take action to safeguard them. Concerns about her suitability remain even if the home situation is resolved. She had been unable to demonstrate that she can appropriately safeguard and prioritise the needs of children.

The Appeal

8. In section H of the Notice of Appeal the Appellant set out her case. This repeated many elements contained in the Objections email - (see 6 (q) above) - which we do not repeat here. In summary: the suspension of her license was based on the words of her children who had been proven to be fabricating stories: the (social services) case worker has clearly been biased and Ofsted have followed that lead; in May 2017 (CSD) were going to drop the "support/case against my children". She had not said to Ofsted on 13 July that the home situation was *"damaging"* to her children: she said it was *"stressful"* for the children.

The Hearing

9. We had received and read a large indexed and paginated bundle which included witness statements and other material, all of which we had read in advance.

10. We also received the witness statement of Mrs SS dated 27 May 2018 and the email from the Appellant dated 30 April 2019 which provided the statement of Mrs SS dated 27 April 2019.

The Application to Adjourn

11. The panel were aware that the Appellant had recently made an application to adjourn for various reasons regarding the need for further evidence, and that this had been refused by Judge Khan. Mr Owusu said that the application was renewed. We resolved to make our own decision.

12. The panel had read the bundle and was aware that the Appellant had referred to her "dyslexic brain" in her statements, as had her sister. The Appellant requested an adjournment in order that a psychologist or psychiatrist could make a diagnosis and advise the Tribunal regarding reasonable adjustments. The panel said that, subject to any representations on either side, the panel was minded to assume without more, that the Appellant suffers from a specific

learning difficulty (SpLD). It was minded, to make reasonable adjustments without the need for a formal diagnosis. It was also minded, to direct itself regarding the allowances that should be considered when evaluating the evidence of someone who suffers from a SpLD. The judge read the parties the guidance contained the Equal Treatment Bench Book under the heading "Dyslexia" and the nature of reasonable adjustments that could be made.

13. In the event Mr Owusu did not seek an adjournment in order to pursue a psychologist/psychiatric report regarding Dyslexia, or the transcript of the Family Court proceedings or judgement. The remaining aspect of Mr Owusu's application for an adjournment was based solely on the possible need for a report from an Independent Social Worker (ISW). In summary he submitted that an independent report would enable the panel to evaluate the weight to be attached to the evidence of David Wells, and the evidence other social workers, including of the Ofsted Inspector who had a background in social work. Mr Saigal opposed the application.

14. We considered all the submissions made and considered the application in the context of the overriding objective. We balanced all relevant factors including the need to ensure that the parties are on an equal footing so far as possible, and recognising that the core issue was that of fairness. We decided that in the overall context of the core issues we had to decide, it was not necessary for the proceedings to be adjourned to obtain the report of an independent social worker. We were not persuaded that such differences as there appeared to be between the opinions of the CAFCASS officer and Mr Wells, and/or the inspectors, would be likely to have any significant bearing on the core issues we had to decide in the context of the regulatory issues before us.

15. Having refused the application the panel then explained in detail the reasonable adjustments it proposed to adopt which both parties agreed. Mr Owusu asked additionally that the Appellant be allowed to refer to notes when she gave evidence. It was agreed that she could do so.

16. The judge explained the proposed reasonable adjustments directly to Mrs W and checked her understanding. In particular, the judge emphasised that if any stage of the proceedings Mrs W needed a break or needed clarification she need only ask. She confirmed that she understood. The panel thereafter rose after the evidence in chief of Mr Wells and Mrs Marchmont to allow the appellant to give instructions. The panel also allowed frequent and regular further breaks whilst evidence was being given in order to facilitate concentration and the giving of instructions.

17. The hearing of evidence began in the afternoon of 4 June and the Respondent's evidence was concluded soon after midday on 5 June. Mr

Owusu made three further requests regarding the reception of Mrs W's evidence, and to which the Respondent did not object. These included that Mrs W be able to address the panel at the start of her evidence. There was agreed. There then followed discussions given that Mrs W's evidence would inevitably not be concluded that day. The apparently agreed position was that her evidence in chief would be received that day, it being recognised that giving evidence on two separate parts might be beneficial for Mrs W. The panel indicated that the usual warning about not talking to others about her evidence would be dispensed with, as it was simply not realistic to expect the Appellant not to talk to her family during a long adjournment.

18. After the midday adjournment the judge clarified whilst Mrs W would be able to speak to her family about the case, she would not be able to talk to Mr Owusu. Mr Owusu said he had intended in any event to now ask that the Appellant's evidence in its entirety be deferred until the next date. He was confident that the A's evidence in totality and submissions would be concluded within one day based on the representatives' time estimates. He informed us that Mrs W had been very distressed the previous day and he wanted to be in a position to take instructions from his client regarding his submissions.

19. Mr Saigal strongly opposed the application, submitting that the reason given was spurious and was a waste of public resources. We need not set out Mr Owusu's submissions, save to record his strong disagreement.

20. We considered the submissions made in the context of the overriding objective. This was not an application to adjourn, but a change in position as to whether or not the Appellant's evidence in chief should begin that afternoon when adjournment was, in any event, inevitable. There were practical reasons in favour of this course which had appeared to be settled before lunch, but Mr Owusu requested that the Appellant's evidence should not be begun that afternoon so as to avoid her being unable to communicate with him during the inevitable adjournment. Whilst the loss of 2 hours hearing time was unfortunate it was clear to us that the preferable and fairest course was that the hearing should proceed in accord with usual practice, namely that if there is to be a lengthy adjournment, the evidence of a witness is not usually begun if it will not be completed that day.

Oral Evidence

21. We heard evidence from David Wells, Mrs Kelly Marchmont, Mrs W, and her sister, Mrs SS. Lisa Troop, the decision maker, had attended to give live evidence, but in the event Mr Owusu did not seek to cross examine her. We will refer to aspects of the oral evidence and submissions when giving our reasons.

The Law

22. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006 ("the Act").

23. Section 32 of the Act provides for the maintenance of two childcare registers. The first register ("the Early Years Register") contains those providers registered to provide early years childminding/childcare for children from birth to the age of five years for which registration is compulsory. The second register ("the General Childcare Register") is divided into two parts: A register which contains those providers registered to provide later years childminding/childcare for children aged between 5 and 8 years for which registration is compulsory ("the compulsory part"). A register which contains those providers registered to provide later years childminding/childcare for children aged over 8 years for which registration is voluntary ("the voluntary part").

24. Section 68 of the Act provides for the cancellation of a person's registration in certain circumstances. Section 68(2) provides that Ofsted may cancel registration of a person registered on the Early Years Register or on either part of the General Childcare Register, if it appears:

    (a) that the prescribed requirements for registration which apply in relation to the person's registration under that Chapter have ceased, or will cease, to be satisfied,

    (c) that he has failed to comply with a requirement imposed on him by regulations under that Chapter.

25. Section 40 of the Childcare Act 2006 imposes a duty upon those registered as an early years provider, to comply with the welfare requirements of the Early Years Foundation Stage. The statutory framework for the delivery of the EYFS sets the standards that providers of service must meet to ensure that children are kept health and safe. Those relevant in this case were referred to in the Response to the appeal We do not reproduce them here but have taken them into account when making our decision.

26. Section 74(1) of the Act provides a right of appeal to the Tribunal and the decision does not take effect until either the time limit for lodging an appeal expires, or if an appeal is so lodged, until the conclusion of the proceedings.

27. Our task is to confirm the decision or to state that it shall have no effect. It is, however, open to us to exercise discretion so as to impose conditions on the registration of the person concerned - see section 74 (5).

The Early Years Register

28. The prescribed requirements for Early Years registration are provided for the Childcare (Early Years Register) Regulations 2008. Those which are relevant in this case are as follows:

    - The applicant is an individual who is suitable to provide early years childminding (paragraph 1)

The General Childcare Register

29. The prescribed requirements for Later Years registration (which includes registration on both parts of the General Childcare Register) are provided for the Childcare (General Childcare Register) Regulations 2008. Those which are relevant in this case are as follows:
    - The applicant is an individual who is suitable to provide later years childminding (paragraph 1).

The Burden and Standard of Proof

30. In so far as any facts are in issue the Respondent bears the burden of proof and the standard is the balance of probabilities.

31. The burden rests on the Respondent to satisfy us that cancellation is justified and necessary and proportionately required in the public interest. The issue of proportionality involves a judgement, as viewed today, which balances the public interest against the interests of the Appellant.

Our Consideration and Findings of Fact

32. It is common ground that we are required to determine the matter de novo and make our own decision on the evidence as at today's date. This can include new information or material that was not available at the date of decision.

33. The true core of the Respondent's case is that Mrs W is not suitable to meet the relevant requirements of the Regulations. She lacks insight and understanding in relation to safeguarding. She did not notify Ofsted of events, or in full. She was unable to recognise the distress in her own younger children. In short, the Respondent's case that the requirements for registration have ceased to be satisfied because she is unsuitable to provide child minding services. It is necessary and proportionate to cancel registration.

34. The Appellant's case is that facts or matters which underpinned the decision under appeal are disputed and involved her private life. She has been unfairly treated and/or misunderstood by the professionals concerned. She was a victim of her husband's efforts to destroy her, so as to keep the home and her children, and to destroy her career. She had done all she could to protect her children but was powerless. She is suitable. She will undertake safeguarding training. Cancellation would be disproportionate in all the circumstances.

35. The redetermination in this appeal includes consideration of the more detailed evidence provided by both sides in this appeal as well as the oral evidence which has now been subjected to cross examination. We have considered all the ~~of~~ evidence and submissions before us. If we do not refer to any particular aspect of the evidence/submissions it should not be assumed that we have not taken this into account. We will not set out all the oral evidence but will refer to parts of it, and submissions made, when giving our reasons.

36. We have considered all of the evidence in the round. We find that the basic facts in terms of the general background prior to the decision made are as set out in paragraph 6 above. We will make additional findings, in so far as it is necessary to do so, below.

37. We recognise that the Appellant was, and is still, considerably distressed by what she perceives as the injustice perpetrated upon her by her husband. The parties had decided to separate some 2 or more years before but could not agree about the sale of the house or the arrangements for the children. In effect, Mrs W believes that Mr W decided to destroy her life and her career, and set about doing so by making sure that the youngest children made false allegations against her. We have no doubt that the breakdown of the marriage and the family situation in 2018 (in particular) was extremely difficult and painful for Mrs W, and for all concerned. We take all these matters fully into account.

38. We have borne in mind throughout that the Appellant's case that she suffers from (undiagnosed) Dyslexia. We made reasonable adjustments and directed ourselves in line with the Equal Treatment Bench Book (ETBB) regarding the caution to be applied when assessing her evidence, and with particular regard to issues of inconsistency and/or evasiveness. We also bore fully in mind the evidence of Mrs SS regarding how the Appellant may come across given her childhood experiences, and her lack of trust in authority.

39. It is important to set out that our overall focus is on the response of the Appellant to her obligations as a registered childminder. We need not concern ourselves with making findings as to what did or did not happen within the Appellant's marriage, or whether the assault allegations made her, or by her two youngest children, were true of false. Our focus is on Mrs W's response to the issues of concern in the specific context of her suitability as a registered childminder.

40. Mr Owusu placed much emphasis on the fact that the issues of concern that had arisen related to the Appellant's private life. Whilst this is so, the Appellant is a registered childminder who operated (and wishes to operate) within her home (i.e. a private life setting). In our view the regulator cannot ignore concerns that arise simply on the basis that they involve private life issues. A child minder who wishes to use her own home to provide services to children should be able to understand that. The home into which minded children are invited is the setting within which child-minding services are provided. If a provider is not content with this, he or she can choose to provide services in other premises. Further, suitability is a concept that inevitably requires the consideration of attributes which are personal to the provider. That is part and parcel of regulation.

41. The main issue in this appeal is whether the concerns regarding the Appellant's suitability are justified. Safeguarding is a concept that goes to the very heart of childcare. This involves consideration of the ability of the registered person to recognise, understand and respond to safeguarding concerns. It also requires consideration of the ability to the registered person to communicate with relevant agencies and/or the regulator, and to respond appropriately in the event that any allegation is made, and irrespective of his/her personal view as to its truth or falsity.

42. There were some issues regarding notification and a NTI was directed to this in early 2018. The obligation under the EYFS (see para 3.77 and 3.78) is to notify Ofsted of any changes as soon as is reasonably practicable, but always within 14 days. This includes *"any significant event which is likely to affect the suitability of the early years provider or any person who cares for, or is in regular contact with, children on the premises to look after children."*

43. We find that:

    a) In March 2017 her son L was believed (along with others) to be involved with cannabis use at school. Mrs W said that she and her husband had risk -assessed this. She did not show to us any understanding that the fact that her son was suspected of drug use (irrespective of the truth of the allegation) was a matter she should have notified to Ofsted, so that they could assess any risks to minded children.

    b) Mrs W did not notify Ofsted of the events of 1 July 2018 as soon as reasonably practicable. When she did notify Ofsted she did not mention that she had been accused of assaulting a male friend who had attended the property at Mr W's request to look after the children. It is said in the police chronology that this led to a verbal argument and an allegation that she had slapped the male.

    c) Mrs W did not inform Ofsted that her children were made the subject of an ICPP on 23 July 2018 due to emotional abuse. In our view the issue of blame regarding the alleged emotional abuse matters not in context. It is a profoundly serious matter that an ICPP plan had been put in place. On any objective basis, the simple fact of an ICPP inevitably raises serious issues regarding suitability. Ofsted learnt of the fact of the ICPP because of information provided to them by the CSD. In her evidence Mrs W said, in effect, she thought that Ofsted would learn of the ICPP. With respect, that is not the point. She had her own obligations to inform Ofsted as a registered childminder.

44. We are prepared to assume in the Appellant's favour that she did not make a conscious and deliberate decision not to tell Ofsted of the above. The fact is that, although that she was subject to a relevant NTI, she did not notify Ofsted that an allegation of assault was made by the friend of Mr W and this reflects on her insight and understanding of her obligations. We are satisfied that the pattern of her behaviour shows that she did not fully comply with her obligations as a registered childminder and inform her regulator of all material changes (whether she agreed

with the allegations made or not.) The overall picture us that the Appellant tends to respond to issues within the confines of the importance that *she* attaches to the matters arising.

45. In her statement Mrs Marchmont set out in detail the discussions with Mrs W on 13 July 2018. Amongst other matters her evidence was that:

    a) Mrs W confirmed that she has not informed any of the four parents using her childminding services of the current situation regarding the CSD. She said she was awaiting the outcome from CSD. She said that once she had this, she would inform just one parent. She did not think it necessary to tell the other parents despite Mrs Marchmont asking her if she thought parents should know their children were attending where there were difficulties to which they could be exposed. (It is relevant to note in this context that Mr W often worked from home).

    b) Mrs W admitted that on 1 July 2018 she had given her son R a small amount of Baileys and that Mr W gave him half a pint of cider. Asked if it was usual for her to give children alcohol she said she saw no issue with then having a sip. She went on to detail how Mr W had given her son *more* alcohol. Ms Marchmont considered that this was at attempt to deflect from her own actions. Mrs W's description of the events of 1 July overall caused Mrs Marchmont to be concerned about her lack of accountability for her role in the acrimony and arguments in the household.

    c) She (Mrs Marchmont) explored the issues of domestic abuse with the Appellant to gauge her understanding regarding the impact it may have on her children's development and welfare. Mrs W said it was very damaging and not good for the children. When she attempted to explore with Mrs W what she could so to reduce or eliminate the impact on her own children Mrs W continued to blame Mr W. She continued to focus on what should have happened when they separated, rather than focussing on what was actually happening. She described the current weekly rota (i.e. alternating parental responsibility) but was unable to identify or accept how difficult her children must find this arrangement. When asked how she could safeguard them from negative adult behaviour, she referred to behaviour management strategies such as giving the children money.

    d) Her evidence was that she had to highlight for Mrs W that children do not have the same reasoning abilities as an adult. Mrs W made comments that concerned her such as *"children need a reality check from time to time"* and that *"they need to learn that they don't just go round making allegations."* Mrs W confirmed that she had removed privileges, due to them making allegations against her.

    e) Mrs W confirmed to her that she had operated from the home address on 5 July. She said she had made the wrong decision and should not have operated that day.

46. On 18 December 2018 Mrs Marchmont visited Mrs W at her new address into which she had moved with her new partner. In her evidence and with the inspection toolkit includes the following:

    a) Mrs W's understanding of the cancellation was that this was because she had operated her service after a domestic incident took place. Mrs Marchmont explained the broader suitability concerns in detail, and the view that these were transferable to a new address. She explained that her major concern was that Mrs W had been unable to safeguard her own children so Ofsted could not be confident that she would be able to safeguard minded children.

    b) She took the opportunity to further explore Mrs W's safeguarding knowledge to see whether Mrs W might think differently when other (minded) children might be involved. She considered that despite many prompts and different scenarios, overall Mrs W's understanding of the indicators and signs and symptoms of abuse was weak, although Mrs W could explain what actions she would take if she had concerns. Mrs Marchmont's concern was that she would not be able to identify a child at risk in the first instance. It was noted that in early 2018 Mrs W had undertaken an online safeguarding course following the NTI requirement. Ms Marchmont's evidence was that she suggested to Mrs W that she might benefit from additional training but Mrs W did not agree and said that her safeguarding knowledge was fine. Mrs W denies that she said this.

47. In our view the evidence overall shows that the Appellant has a marked tendency to minimise issues that may be of legitimate concern and to see things solely on the basis of her own paradigm or narrative. It is notable that the email she wrote on 7 August 2018 when she sent the CAFCASS report to Ofsted, shows that she saw its contents in very narrow terms indeed. It is clear to us that she saw the CAFCASS report as a vindication of her view that her husband had manipulated her children to tell lies. She said also that the home environment had gone back to normal. In our view the overall impact of the CAFCASS report was, however, that her children were suffering harm.

48. Considerable focus was placed on criticisms of the approach of David Wells. We found him to be a very impressive witness who did his very best to describe the issues as he saw them. In our view criticisms of his methodology and approach are a distraction from the real issues before us. His overall concern was that throughout his involvement with the family Mrs W had repeatedly shown that she was unable to prioritise the needs of her children above her own personal needs and had little insight or empathy. We accept that the views that the opinions he reached were honestly formed and were not motivated by bias.

49. We considered the primary school records regarding R. The bald facts are that, having been a child who had been achieving well, and who had not previously presented any issues of concern, some 66 incidents between September 2017 and 19 July 2018 were recorded regarding R. At the start of his school year R was then aged 8, rising 9. The record included incidents where he has threatened to harm

himself, was banging his head with his fists; self-harming by scratching; expressing feelings of despair, expressing concern that his mother did not love him anymore; and that he "hated" his life.

50. in her oral evidence in chief Mrs W said that R had been "upset". Her evidence was that R had a few friends leaving school. She said that R had learnt that if he wanted to get out of a lesson, he could get a lot of attention at school by being loud and disruptive. She added that R had needed a lot of support from school, but her view was that *"it was not all to do with her."*

51. We consider that her evidence in chief struck a chord with her general approach as noted by Mr Wells and Mrs Marchmont, but also by others, such as Liz Roles. We noted that in cross examination Mrs W said that R and K showed that they were *"not mature because they were doing things at school that were not appropriate."* Her overall position was that whatever R was doing at school was not displayed at home.

52. In our view the school records show a very clear picture as to the very high level of R's distress. In our view the evidence shows that Mrs W was unable to recognise or acknowledge, then or now, the level or significance of R's experience but has sought to minimise it.

53. Mrs W's evidence in chief was that the home was not a warzone. Mr W was usually working from home on various days in an adjacent room. Her overall view was that she and her husband were able to act professionally during the day and kept the house calm so that her child minding service was not affected and, further that her own children were not affected when they were at home because she and her husband, by and large, kept the atmosphere calm. There is, however, a body of evidence that shows that the home was volatile, and the atmosphere tense. We consider it highly likely that R's behaviour at school was a genuine demonstration of the real distress he was feeling, and that it also is very improbable that he did not manifest distress at home. In our view, apportionment of blame for the situation in the home is nothing to the point. We consider that it is likely that it is a very serious understatement for Mrs W to say, as she before us, that her younger children were "upset". Our overall impression is that the Appellant is reluctant even today to recognise that her younger children were emotionally distressed. Whilst we can see that it may be very painful or difficult for Mrs W to recognise the impact of the situation on her children, the evidence supports that there is a clear risk that she would be unable to see and recognise distress in minded children.

54. We found the evidence of Mrs Marchmont to be cogent and compelling. It is notable that she had been a childminder herself and had worked as a social worker. We accept her evidence that on 18 December 2018 she made concerted efforts to seek to give Mrs W every opportunity to demonstrate her safeguarding knowledge but, despite this, Mrs W was unable to demonstrate that she understood the issues regarding emotional abuse. We consider it unlikely that Mrs Marchmont did not make allowances for Mrs W's difficulties in expression and understanding. Her records were comprehensive and show her repeated efforts to elicit Mrs W's understanding. Mrs Marchmont came across as a level-headed, sensitive and fair-

minded individual who did all she could to try and understand the difficulties faced by Mrs W and her perspective.

55. We took into account the evidence of the parents of minded children. Whilst we accept that they were entirely happy with the Appellant's services we have to consider the body of evidence regarding the Appellant's ability to safeguard vulnerable children and to communicate with Ofsted and other agencies as required.

56. In so far as there is any conflict we consider that the evidence of Mr Wells and Mrs Marchmont is more reliable than that of the Appellant.

57. We do not consider that the Appellant has truly, even now, absorbed the serious and legitimate concerns held by Ofsted, or that she understands the implications regarding her role as a registered child minder. In our view her main focus in this appeal has been to show that an injustice has been perpetrated upon her by her husband. We noted that the overwhelming impact of the 70 or so pages of material on which she relied were very largely focussed on the responsibility of her husband. Whilst we can understand the sense of injustice she feels, we find that she is unable to understand that the bare facts are such as to merit serious objective concern about her ability to safeguard children. We can understand that her perspective may well be due to her own childhood experiences and that she does not trust agencies or those she sees as in authority. The fact is that the regulator has to be able to be confident in the registered person's continuing ability to recognise and understand the needs of children, and to be able to communicate issues and concerns in a transparent way.

58. In our view it is significant that Mrs W has not undertaken any further safeguarding training since the decision to cancel. She said that if she retained her registration she would do so. Having made every reasonable allowance for all the difficulties in giving evidence in response to the issues of concern, we have no real confidence that she would be able to benefit from further training or that it would result in any meaningful change. The evidence shows that she has a very narrow understanding of safeguarding. Whilst she can recite the basic features of policy/practice, her approach is formulaic. We find that she is also unable to understand the perspective of the regulator or other agencies. In our view there is a clear risk that her approach to any situation which may arise would be coloured by her views regarding her own experiences. Having seen and heard her give evidence it is clear that she does not trust, respect, or understand the perspective of agencies involved in the protection of children, including Ofsted. We do not consider that concerns regarding the Appellant's suitability are mitigated by the fact that she now lives in a new setting: her lack of insight and inability to safeguard adequately go to the core of her suitability.

59. For the reasons stated above the Respondent has satisfied us on the balance of probabilities that the Appellant is unsuitable to be a registered childminder.

Our Overall Evaluation and Proportionality

60. We address the issues by reference to ordinary principles for the avoidance of any doubt. We accept that Mrs W's personal interests are such as to merit the protection of Article 8 of the ECHR and/or Article 1 of Protocol 1.

61. The Respondent has satisfied us that that the decision taken was in accordance with the law. We are also satisfied that the decision was objectively justified and necessary in order to protect the public interest in the protection of the interests of children accessing childminding services, as well as the maintenance and promotion of public confidence in the system of regulation. There is a clear public interest in the public trusting that persons remain registered, only if they continue to be suitable.

62. In reaching our decision on the issue of proportionality we recognise that the impact of the cancellation is very serious indeed. Cancellation will bring to an end Mrs s W's ability to earn her living by providing registered childcare services. This is plainly a serious matter and not least because Mrs W has earned her living being a child-minder for many years. In addition, cancellation on the grounds of suitability will continue to have a significant impact upon her reputation, and will adversely impact upon her ability to work in related fields in the long term.

63. We recognise that when assessing proportionality alternatives to the most serious response must always be considered. The Appellant contends that she will comply with the requirements going forward and will undertake safeguarding training.

64. We have considered the issue of proportionality by reference to other measures available to the Respondent in the exercise of its regulatory powers. The NTI issued in January 2018 was not effective. We do not, in any event, consider that any conditions that we could devise would be adequate to address the issues because the Appellant lacks insight and understanding. We find that is little or no prospect that any or any meaningful or sustained change would be affected by training or any other measures.

65. In order for any other measures to be considered adequate to address the issues, any decision maker would have to be satisfied that the Appellant will be able to engage with the Respondent in an open and transparent way. In the light of our findings, we have little or no confidence at all that the Appellant is, or would be, able to do so.

66. We have balanced the impact of the decision upon the Appellant's interests against the public interest. We consider that the facets of the public interest engaged undoubtedly outweigh the interests of the Appellant because she is unsuitable to be registered as a childminder. In our view the decision to cancel registration was (and remains) reasonable, necessary and proportionate.

Decision

The decision to cancel registration is confirmed and the appeal is dismissed.

Tribunal Judge Siobhan Goodrich
Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 24 July 2019