

Care Standards

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

[2019] 3672.EY

Heard on 2nd to 4th December at Stafford Crown Court with a deliberation
hearing on 13th December

BEFORE
JUDGE CHRISTOPHER LIMB
SPECIALIST MEMBER – BRIDGET GRAHAM
SPECIALIST MEMBER – MAXINE HARRIS

**IN THE MATTER OF AN APPEAL
BETWEEN:**

K M T

Appellant

-v-

OFSTED

Respondent

DECISION

Representation - Mrs J Smith for the Appellant and Mrs T in person

**Hearing – written evidence in bundle and oral evidence from
Mrs Lorraine Lawton (“LL”) and Mrs Johanna Holt (“JH”) (Ofsted EYRIs),
PCSOs Paskin and Miller
Mrs K T, Mr P T, Mr CT, Mrs C L, and Mrs S N**

The hearing was in public

Reporting Order

- 1 Pursuant to our powers under rule 14(1) we prohibit the publication (including by electronic means) of any document or matter to any non-party which includes the name of any person who at the time of the events in question was under 18 or may lead to identification of any child or its family mentioned in this appeal. We anonymise the names of both the Appellant and her witnesses in this decision as otherwise children might be identified. We consider such direction is proportionate to prevent harm to a minor.

Introduction and Background

- 2 KT has been a registered childcare provider since 2006. Inspections in May 2007, December 2008, November 2012 and October 2016 graded her as “good”. Although there was limited reference by Ofsted to events before 2017, the focus of the hearing and of this decision relates to events in and since 2017.
- 3 There is a schedule of issues completed by both parties (part F of the bundle). In relation both to that schedule and more generally we bear in mind that KT has at all times been unrepresented and we consider her insertions in the schedule in the context of her oral evidence.
- 4 We were assisted by the written skeleton argument of Mrs Smith, which sets out an overview of the legal and regulatory position as well as summarising the evidence and allegations relied upon.
- 5 On the first morning of the hearing the parties agreed and the tribunal approved the introduction of further evidence as follows : the evidence attached to the Appellant’s application dated 28 November 2018 (paginated as I19-41), the statement of CT intended to be attached but not in fact attached to that application (paginated as I 42), oral evidence from PCSOs Paskin and Miller with the statements at H109-11 standing as their witness statements, and a third statement from JH (paginated as H339 onwards).
- 6 As more fully set out in the skeleton argument and in the schedule, the essence of the case put forward by Ofsted is that KT is no longer a “suitable” person to be registered because of the presence in the household of persons involved with illegal drugs, because she has not notified Ofsted of significant events and/or not provided full or accurate information, and because she has demonstrated a lack of honesty in her dealings with Ofsted and a lack of ability to act objectively in relation to matters which may have potential impact upon the safety of children being minded. It is also alleged that failings in notification and ensuring the suitability of members of the household amount to breaches of regulations. It is alleged that there was also a breach of regulations in failing to make childminding records available to Ofsted when requested, although it was accepted that this was a single occasion and related to only a single week and (in effect) accepted that the record may well have been misplaced innocently in the course of administration by the Appellant. Although not within the original allegations at the time of notice of cancellation, Ofsted also allege that the medical records now disclosed give grounds for alleging that the Appellant is not a suitable person.

- 7 The Appellant did in the course of her evidence accept some of the factual allegations which appeared to be in dispute in the schedule. She gave explanations for why she acted as she did. She also relied upon her circumstances having changed notably, the acceptance that she has always cared well for minded children, and that there have been not been any untoward events of relevance to minded children for about 18 months (she has continued to mind children since the notice of cancellation). She also relies upon the fact that CT (her son) is no longer taking drugs and is far more settled and is in employment.

Legal framework

- 8 The legal framework for registration and regulation of childminders is in or pursuant to Part 3 of the Childcare Act 2006 (“the Act”). References in this decision are in summary and should be read in conjunction with the Act and regulations referred to.
- 9 Section 32 provides for 2 registers, Early Years for those up to 31st August following their fifth birthday and General Childcare for older children. Registration is compulsory for children up to 8 years of age.
- 10 Section 66 gives the power to impose conditions on registration including for the purpose of giving effect to regulations.
- 11 Section 68 provides that registration may be cancelled if the prescribed requirements for registration have ceased or will cease to be satisfied, or if there has been failure to comply with requirements in the Regulations made under the Act.
- 12 Section 73 sets out the procedure to be followed if cancellation is being considered.
- 13 Section 74 provides a right of appeal to this tribunal. A decision to cancel does not take effect until either the time for lodging an appeal has expired or, if an appeal is lodged, until the conclusion of the appeal proceedings. The powers of this tribunal are in essence to confirm the cancellation decision, or direct that it shall not have effect. If it directs that the cancellation decision shall not have effect, the tribunal has powers to impose conditions on the registration.
- 14 Sections 39 to 46 set out the procedure for setting out the requirements to be met by providers. The relevant regulations are The Childcare (Early Years Register) Regulations 2008 and The Childcare (General Childcare Register) Regulations 2008. The Early Years Foundation Stage (“EYFS”) requirements are set out in the EYFS Statutory Framework.

- 15 The minded children referred to in this case are “early years” children albeit that the Appellant also minded older children after school.
- 16 Requirements under the regulations include the requirement that the childminder must be suitable to provide childminding and that any other person who is 16 or older and lives at the premises is suitable to be in regular contact with young children and that an enhanced criminal record is provided for those persons. 3.9 to 3.13 of the EYFS Statutory Framework sets out requirements as to suitable people.
- 17 Another requirement of relevance to this case is the duty to notify Ofsted of certain matters including (as set out in 3.77 of the EYFS Statutory Framework) “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”.
- 18 The legal burden of proof is upon the Respondent to establish facts relied on upon the balance of probabilities. The Respondent must also show that the decision to cancel is proportionate and necessary. The tribunal exercises a discretion in such context.
- 19 The tribunal hears the appeal afresh and is not restricted to matters available to or relied upon by the Respondent. The tribunal can take account of all information and evidence available which it considers relevant.

Evidence – general observations

- 20 KT has been registered as a childminder since 2006. No criticism was made by the Respondent of her care for minded children in the sense of her day-to-day care, whether in the past or currently.
- 21 The evidence of KT was that there was an element of lack of trust between herself and LL. She made a formal complaint and that was the context in which JH became involved. There was no similar suggestion in respect of JH.
- 22 We found both Ofsted EYRIs to be straightforward and clear in their evidence and noted their use of notes made contemporaneously (and available to us as exhibits to their statements).
- 23 KT was plainly very nervous and anxious at various parts of the hearing before us but was able to present her case clearly. On various occasions we allowed her short breaks during the hearing.
- 24 Ofsted contend that on some occasions KT was not honest with them and deliberately withheld information or minimised description of events. As will be apparent from later parts of this decision, we

accept that on some occasions she has not been fully open with Ofsted, but we were not satisfied that she ever acted in a way she considered was harmful to the minded children.

Evidence

- 25 The evidence was lengthy and detailed and we do not set it out in full but in summary. In particular the evidence of LL and JH must be read in conjunction with not only their written statements but the numerous exhibits to those statements.
- 26 PCSOs Paskin and Miller confirmed their statements at pages H109-111. Their evidence concerns the events on 2 July 2017. They confirmed that both CT and JB were smoking and that there was a smell of cannabis and that KT was with them. They agreed that they asked KT to search both boys because they had no powers of search and there were no police officers available. In particular PCSO Miller said that KT was asked if she was aware that the boys were smoking cannabis and she said yes. He said that they had no previous knowledge of the boys and that their questions concerned that day only. They did not support any suggestion that KT may have indicated a general knowledge that the boys smoked cannabis rather than knowing they were smoking cannabis on 2 July when in her presence. They contacted other agencies (see page H112) because they became aware from KT that KT was a childminder.
- 27 LL confirmed her written evidence. She told us that before she first visited or spoke to KT she had read available records but there was no reference in records to JB, who was a foster child living with KT. She became aware (from the local authority designated officer, LADO, not from KT) of JB and of the 2 July incident before her first visit. She was also aware that CT had turned 16 although records indicated that KT had informed Ofsted that he was no longer living with KT but with his father elsewhere. She was aware from talking to JB's social worker that JB smoked cannabis and also aware that KT had been concerned as to the impact on CT. The social worker indicated that KT was a strong protector and worked well with professionals and was "full of praise" for KT.
- 28 Before first meeting KT on 11 and 14 August she had visited the house unannounced and had spoken to CT who had said he had never left home although he had sometimes stayed with his father when he moved out. LL confirmed her statement as to that visit and KT responses as to CT and his father leaving and returning home, as to lack of a criminal record check (DBS) for CT, and as to steps in place in relation to checks as to drugs and her intolerance of any drugs in the house. KT did not accept that CT and JB had been smoking cannabis in her presence but accepted that she knew they did smoke cannabis. KT's explanation as to failure to inform Ofsted of changes in the household and of the 2 July incident was in effect

that other agencies were aware and she had many family problems at the time. At the end of such meetings LL was satisfied as to the practical steps being taken in relation to preventing drugs in the house and safeguarding of minded children. She was not satisfied in relation to reporting of changes to the members of the household and of significant events and a warning letter (H69) was sent.

- 29 On 5 September 2017 KT contacted LL and informed her that CT had been arrested by the police and found in possession of a small amount of cannabis, that CT had been warned but not charged, that she had excluded JB from the home as he had made plain that he would not stop drug use, but that she believed CT acknowledged his error and would not offend again. Further details are given in the written evidence but LL told us that she came into possession of information that the arrest had not been only for a small amount of cannabis but also scales and that the arrest had been for possession with intent to supply cannabis. KT then contacted her as to an incident on 27 October when Xanax tablets had been found on CT. LL began to have further concerns both as to the effectiveness of any steps to prevent CT using drugs and as to whether KT was minimising the gravity of events. We interpose that at a later date KT informed Ofsted that CT received a formal caution for possession with intent to supply cannabis in September. On 14 November KT informed Ofsted that CT had left the home and would not be returning, but on 20 November informed them that he had returned after suffering a seizure (there being dispute as to whether there was or was not thought to be a connection with Xanax use).
- 30 On 16 January 2018 KT notified Ofsted that on the previous evening her daughter had found a bag containing cannabis in the garage, KT had called the police (without telling CT), police had attended and on searching CT's bedroom had found bags and cash, and CT admitted supplying cannabis when interviewed. LL later received information from the LADO that drugs had also been found in the bedroom and when she later discussed this with KT she told us that KT was vague in her explanation and did not explain why she had mentioned drugs being found in the bedroom to the LADO but not to Ofsted. LL suspected (based upon information from the LADO) that this was deliberate because of fear in relation to its impact upon her registration. A decision as to charging by the CPS is apparently still awaited.
- 31 LL's involvement ended shortly afterwards when an incorrect criminal history was suggested to KT (based upon information which it turned out belonged to an entirely different person with the same date of birth) and KT complained.
- 32 KT's questions to LL were largely directed towards issues of concern relating to the circumstances of visits and conversations and not towards challenges to the accuracy of what LL reported from their various conversations and meetings. We indicated that

further questions might be put later if it appeared from KT's own evidence that there should have been further challenges.

- 33 JH confirmed her written statements and their exhibits. She confirmed KT had told her earlier in 2018 that she believed CT had turned over a new leaf. On 16 July 2018 KT sent an email reporting that on Friday 13 July police had attended and searched the house following information that CT had both drugs and a firearm at the house. Minded children were at the house. KT reported that the police behaved very considerately with the children. Parents were informed. A police search found both cannabis on CT and a white powder. Ofsted suspended registration but cancelled the suspension when satisfied that no firearm had been found. Forensic examination found the drugs to be cannabis, ketamine and MDMA. In a conversation with KT on 20 July JH asked KT how risks from CT (and therefore possibility of drugs) would be managed and KT replied that CT would not be at the house if KT was not.
- 34 Ofsted received anonymous information that there had been a further police raid on 13 December, and on enquiry this was confirmed by the police who indicated a firearm/BB gun had been found but no drugs. JH asked about this event in a telephone conversation on 20 December. KT stated that the BB gun removed was a child's toy given by a relative to one of her younger children – we indicated in the hearing that there was no evidence that this was untrue and no forensic evidence had been notified even by the time of our hearing – but when asked why the raid had not been notified said “Do I have to tell Ofsted even if nothing was found?”. There was a further police attendance on 25 December which KT did not report. There was a conviction and guilty plea by CT on 30 January 2019 for possession of cannabis on 13 July.
- 35 A decision to cancel registration was taken because of regular calls by the police relating to CT and/or drugs, minded children being exposed to such or risk of such inappropriate environment, and KT not keeping Ofsted fully informed (letter at H291).
- 36 There was a monitoring visit by JH on 21 November 2019 when minded children were present. CT's bedroom door was not locked albeit the children were downstairs. KT had recently received the tribunal bundle and was visibly upset. JH also expressed the concern of Ofsted arising from the medical records sent to the tribunal by KT and which included reference to anxiety/depression and medication for such and also to self-medication with alcohol. The concern was as to KT's ability to keep the children safe in such condition. At a further visit in the week before the hearing KT told JH that she had had panic attacks but never when with minded children and was able to predict onset and avoid. She made reference to treatment and advice (expanded upon by KT in her evidence to us).

- 37 JH confirmed that if asked for her recommendation at the time of hearing she would recommend cancellation. In response to a question as to her position if CT were no longer at home she said “If CT was not considered a risk, I would have concerns but would not recommend cancellation” and that although concerned as to notifications JH did not have concerns as to the quality of KT’s care for the minded children which JH had observed on several occasions. The concern as to notifications was highlighted in the context of the nature of Ofsted’s regulatory/inspection role which relies heavily upon receiving relevant information.
- 38 There was no substantive challenge to the facts of JH observations and reports of conversations during questions by KT.
- 39 In answer to questions from the panel, JH indicated that Ofsted expect childminders keep themselves updated as to requirements. The LA have outsourced training. There is a childminding network which can provide support. By reference to the length of time during which KT has continued to childmind since the decision to cancel, the panel asked how much time would have to pass without breaches or concerns before the history was considered “spent”. JH said that if there was an application to register now it would be rejected but possibly not after 5 years had passed. JH said that she considered that she and KT had a good professional relationship, open and honest. (In re-examination she clarified that open and honest did not mean that there had been proper notifications of significant events under the EYFS Statutory Framework). When being asked as to the number of children being minded, JH indicated that although there should normally not be more than 1 child under one year old there can be exceptions, such as for twins, and that KT had been allowed to care for twins.
- 40 KT confirmed her statement. At the beginning of her oral evidence she told us that her understanding of her duty to inform Ofsted of significant events had been that she must notify within 14 days of the event. It was never clearly stated when she understood (if ever before the hearing) that she should do so as soon as reasonably practicable. In relation to Christmas 2018 she told us that she did not report the attendance of the police because there was “no caution, no arrest” but “maybe I should have reported”. She told us that for 2 years now she has had counselling (and help from her GP and medication) and had not previously realised she was suffering depression, but was now coping much better and more settled. She told us that CT was now much better. He has a full-time job and wage. He is now once again a “lovely” son. He has a puppy which he treats like his baby.
- 41 When questioned by Mrs Smith, KT maintained her position that CT and JB had not smoked in her presence on 2 July 2017 but that she was aware or believed that they were smoking cannabis albeit not on that day and time. She could think of no reason why the PCSOs

should fabricate any part of their account. She accepted she did not notify Ofsted – “do I need to tell every time police stop one of the children?” and commented to the effect of noting that there was little help to indicate what was or was not a “significant event”. She said she did not report JB’s presence to Ofsted because there was notable contact with social workers and drug workers. She was aware that the different agencies communicated with each other.

- 42 KT maintained that her husband PT did move out of the home but accepted that she told the social worker they were still together because she did not want JB to have to return to his father (ie if the foster arrangement was ended) and in any event she and not PT “was doing everything anyway”. She maintained that CT did move out with his father but accepted she did not inform Ofsted when he returned and she “just forgot” and the need for a DBS check “did not enter my mind”. She said she had many pressures at the time including her relationship with PT, JB, and her father’s death. She accepted that she failed in relation to CT’s DBS until January 2018.
- 43 In relation to September 2017, she notified Ofsted and she accepted that she said that CT had “seen the light” but now accepted that she was wrong. She said she increased her checks including steps such as urine testing but that in the autumn of 2017 she was not as vigorous as she might have been. She accepted that she did not inform Ofsted that the police raid related to a suspected weapon as well as drugs but insisted that at the time she was unaware of that.
- 44 In relation to October 2017 and the finding of Zanax, she accepted a delay in reporting but in effect said that she was proactive with both police and Ofsted. She accepted that at the time she thought it was a “wake-up call” for CT but “I wanted to believe it and it wasn’t. I was naïve”. She said more generally that she was aware that the different agencies contacted each other and she had no reason to hide from one what another agency knew.
- 45 In relation to January 2018 she accepted that her risk assessment measures had failed but not that she only paid lip service to them. She confirmed her position that she was unaware of drugs found within the house because she was not present during the search of the bedroom. She in effect said that there was contact with the social worker, police and Ofsted over this period and any failure to specifically report that drugs had been found in the bedroom was not deliberate. She accepted that once again she thought CT had turned a new leaf but was wrong.
- 46 In relation to July 2018, she accepted that her risk assessment measures had not worked although she felt she was doing all she could. She said that her open door policy had been for parents of minded children. She accepted that she had previously said that CT would have to leave the house if there was a conviction and that in

January 2019 there was a conviction but she did not ask him to leave.

- 47 In relation to 13 December 2018 she accepted she had not informed Ofsted of the police raid before they contacted her but she made reference to having 14 days and to knowing that they would be informed by others and had no reason to try and hide it. She said that on this occasion (and others) she kept parents of the minded children fully informed. The only item found was the BB gun which she said was a toy and has not been the subject of any further police action. She accepted that she said do I have to tell Ofsted if nothing is found but that it was said in frustration.
- 48 She accepted that she did not inform Ofsted of the police attendance on Christmas day 2018 which arose from a neighbour complaint about noise/disturbance when CT and friends were at the house but KT and other family were not (and no minded children were there) and no drugs were found nor charges made. She did not accept that cannabis could be smelt.
- 49 In relation to subsequent events she said that CT was now drug-free but she or PT still tested him every so often and at random unplanned times. She said that she was also now much happier and settled upon the prescribed medication, although she is very anxious when travelling.
- 50 She accepted that she had changed her mind as to requiring CT to leave the home but that if CT returned to drugs he would have to leave. When asked about the risk of a return to drug use if there were new stresses such as losing his job, she responded by saying that he did lose his job for 4 weeks (ie without lapsing). She said that she now understood that she must report straight away and not wait up to 14 days.
- 51 PT confirmed his statement. In answer to Mrs Smith's questions he said he believed his marriage was stable albeit that he left for a period when they were not getting on and he thought a break would help. On many occasions in answer to questions he said that his memory was and always had been very poor. He couldn't give precise dates when he lived in his own rented home but thought it was from about January 2017 to September or October 2017. CT lived with him "most of the time". He explained the background to JB. KT had been a friend of his mother who died. JB was not getting on with his grandparents where he lived and his father had a new girlfriend and children. KT thought it was the right thing if he lived with them – she is "always the one to try and help". JB had complex issues. He said he was not aware that social services were not aware he was not living at home but "left it all to KT". He vaguely remembered that he may have spoken to the social worker but remembered no details.

- 52 In relation to July 2017, he did not believe that JB and CT were smoking cannabis at that time but he was not immediately with them and had gone ahead to a shop.
- 53 He accepted that CT spent some time with KT but mostly lived with him when he was living elsewhere during 2017. He himself popped round to see KT sometimes. On occasions he carried out drug tests if asked to do so by KT. They were negative. In December 2017 he said he told KT why CT was arrested but not in detail and said the police found cannabis. He said he had little involvement in the Xanax incident in October 2017 but he did witness CT have a seizure and had never seen a seizure before. He said that even after medical investigation there was no reason found or given and that he had no conversation linking it to Xanax. In January 2018 he said (similarly to December 2017) that after he attended the police station with CT he told KT why CT was arrested but not in detail and said they found drugs. He was not present at the July 2018 police raid but accepted CT's explanation that the tin belonged to a friend – "not 100% but I could only go off what he said". He in effect said the same as KT about Christmas Day 2018.
- 54 PT spoke at length about CT both in answer to Mrs Smith's questions and our own. He said CT was getting on well and has a job he enjoys. He is a "different person..brighter..happy..I know he is older, but he is back to normal". He watches the TV with his family, rarely goes out and is a home bird. His friends are working lads with jobs. He had a rough patch but "has grown up". CT knows what he did was wrong and what effect it had on his mother.
- 55 CT confirmed his statement. He said he was hit hard by the death of his grandfather to whom he was close but that he had no excuse for his behaviour. He stopped use of drugs because he could see the effect on his family and in particular upon his mother and her business. He knew he'd have to leave if he returned to drugs. He has a job and "is doing all I can to be a good person".
- 56 In answer to Mrs Smith's questions, CT accepted that in July 2017 he was using cannabis but not on that day. He said that in 2017 he lived with his father although occasionally staying with his mother or with his grandparents. He seemed to accept that he told the social worker that he lived with his mother – "I didn't know what I was allowed to say". He confirmed that drug testing was carried out, mostly by his mother and randomly so that he never knew when it would take place. He said he was using cannabis from about July 2017 to July 2018. He said that on Christmas Day 2018 he and friends had all been drinking and there was an argument, the friends left but neighbours had called the police. He said his fine after his conviction was outstanding because of the period when he lost his job and there was confusion between himself and his mother as to who would pay in that period.

- 57 In answer to questions from the panel, he explained that his employers originally had far more employees but then he and others were released before he and 2 or 3 others were re-employed. He leaves the house for work about 7.30am and returns about 5.10pm. He spends his time with his dog and watching the TV and at weekends sometimes goes to the pub with friends. He now gets on with his parents. It was during the period when his father had left the home that he left school and then after a break went to the academy. He said he often visited his mother, normally just to see her and also to see friends who lived nearby. He has some friends from work and some friends (not the same ones as when in trouble) from school, who are more sensible. He is “lucky they are still friends with me”.
- 58 SN confirmed her statement. She met KT because KT childminded her children but had become a friend. She attended in both July and December 2018 when police were at the premises in order to collect her children having been called by KT. On the first occasion the children were playing happily and the police were not in the same room, and on the second occasion police officers were playing Baby Shark with the children and very mindful not to upset the children. SN is a qualified nursery nurse and has had safeguarding training. She said she would report KT to Ofsted if she had concerns as to KT and her care of children. She in effect said that KT had had a lot to deal with and that her depression had never had a harmful impact upon her care of children. She felt that she was always kept fully informed. She considered KT a good childminder. SN has twins cared for by KT as well as an older child cared for by KT in the past. KT has been very helpful, eg taking the children early or late to fit SN’s working hours.
- 59 CL confirmed her statement. Like SN she met KT because KT childminded her children but had become a friend. Like SN she felt that KT was a good childminder and that she had always been kept fully informed. She is currently a specialist nurse at a walk-in centre and the safeguarding lead at work. From January 2020 she will start a job as a ward manager at hospital. She has a background in and knowledge of alcohol and drugs and an Royal College of General Practitioners qualification in that field. She said she would report KT to Ofsted if she had concerns and would be at risk of losing her registration with the Nursing and Midwifery Council if she did not do so. She knew CT and considered that he was now “like a different person”. She felt that KT had not received appropriate support in a very difficult period.

Findings of fact

- 60 We make our factual findings both as to some general aspects and as to specific events.

- 61 In relation to reporting, we make the observation that the EYFS Statutory Framework paragraph 3.77 is clear in requiring reporting of “any significant event” affecting suitability but neither it nor any other document available to us indicates what criteria are to be used in deciding what is or is not significant.
- 62 We found that there was nothing either in the demeanour or behaviour of the PCSOs or of LL or JH which caused us concern as to their honesty. No reason for deliberate inaccuracy was suggested. There was nothing logically or inherently unlikely in what they said. They all made notes or statements at the time. Such observations relate to the facts they describe and not necessarily to the judgments as to suitability or relevance made in consequence, which are matters for our judgment.
- 63 KT was understandably nervous and stressed during parts of the hearing and we consider it likely that she was similarly stressed and worried during many of the incidents in question and more generally in relation to her son CT whilst he was involved in use of drugs and was not in her experience always truthful (in distinction to his behaviour before and more recently). She did not challenge the nature and extent of what she reported, although she did in some instances both at the time and even during the hearing question why some alleged aspects of inadequate or late reporting were necessary. The only straightforward dispute of fact with the evidence of fact of the witnesses called by Ofsted related to July 2017. Other disputes related to issues such as whether she knew more than she states she knew and/or deliberately withheld information because she thought the full details might be harmful to her being allowed to continue childminding. It may be noted that in some instances she readily accepted that with hindsight she could have acted better (see for example para 40 referring to her acknowledging in relation to Christmas Day 2018 that maybe she should have reported and para 47 relating to 13 December 2018 that it was frustration rather than objective judgment that led to her not reporting the police attendance).
- 64 There is no dispute that KT did not report the incident of 2 July 2017. There is dispute as to whether CT and JB were smoking cannabis that day in her presence. We note that the PCSOs had no prior knowledge of either CT or JB and that the log at H112 onwards on which their statements would have been based was made at the time. We consider that there is no reason why they would confuse any reference to smoking cannabis being on that day or more generally when their sole involvement and therefore the centre of their conversation related to that day. They gave their evidence in a straightforward manner. Whilst we did not find the evidence of KT or PT or CT more generally unreliable, we conclude that with regard to this incident they were not accurate and that on balance of probabilities the PCSOs are accurate and that CT was smoking cannabis on that occasion and KT was present at the time.

- 65 The Ofsted case as to when CT did or not cease to live with KT depends upon a conversation with CT, and upon JB's social worker not being aware of him having left (or indeed aware of PT leaving the home). Such dispute is related to the allegation that Ofsted were not informed of PT leaving the home (not disputed) and not informed of CT's return (not disputed). The allegation of failure to inform of CT's return self-evidently assumes that he had previously left. The evidence as to the dates when PT and/or CT lived elsewhere was not fully consistent in the evidence of KT of PT and of CT. KT was very stressed for much of the relevant period and we consider that she may not have an objective basis for remembering precise dates. PT has self-avowedly got a poor memory. CT spoke to LL when he was not in a stable mood or lifestyle and he told us that he was not sure what he was "allowed" to say. We do not find that we have any reliable evidence as to dates. We find no reason to disbelieve KT PT or CT that PT and CT did move home, albeit that the extent of CT visiting KT may well have been more substantial than implied. KT accepted that she did not report PT's leaving because of concern as to its effect upon the foster arrangement. Her evidence that she "forgot" to report CT's return did not impress us in the context of a failure for many months. She was plainly aware that the make-up of the household was important and was the reason she informed Ofsted of CT leaving the home. She either deliberately failed to report or alternatively failed to objectively consider and accept the legitimate interest of Ofsted in such information.
- 66 It is not disputed that KT did not report the arrival of JB as a foster child. She may well have known that Ofsted would be told by social services, but she knew that the make-up of the household was important to Ofsted.
- 67 There is no dispute as to what was or was not reported about the events in September 2017, November 2017, January 2018, July 2018, and December 2018. There is no substantial, if any, dispute as to what happened on those occasions. The disputes are as to whether further detail should have been given when reports were made or as to why reports were not made. We do not consider it necessary to make individual findings on each individual dispute because we do not consider that it would affect our judgment on the essential elements of suitability or breaches of regulations.
- 68 We do not find that 3.77 of the EYFS Statutory Framework) - "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" – is very helpful in defining what is or is not significant. There is objectively room for honest dispute – for example, as to whether the fact of drugs being found or suspected is relevant or whether the detail of those drugs is also required or can be left for further detail if requested, or as to whether any police presence or involvement is relevant even if at a

time when no minded children are present and no drugs were found or charge made or arrest made. However, we do accept that there came a time, which is difficult to define precisely, when it was plain to KT that Ofsted always wanted more rather than less detail and that KT should err on the side of giving more detail. That time was probably at the beginning of 2018 if not before. By that time it was objectively plain to KT that Ofsted wanted full details of events rather than just headlines or outlines.

69 There was no dispute as to failure to make records available on 20 July 2017. However, that failure related to a single week's record and JH accepted that the generality of records were available. We note that there was no later follow-up request to allow time for mislaid or misplaced papers to be found.

70 The issue as to whether CT was addicted to Xanax arose from Ofsted communications with either the police (H322) or the drugs worker (H94) which are not fully consistent and from sources from which we have not heard directly. We found the explanation of KT and PT that the cause for seizures has never been identified as objectively reasonable and, in so far as it is relevant, we do not find that there is any evidence from a source qualified to reach such a conclusion that there was addiction.

Suitability/Breaches of regulations

71 It follows from our findings of fact that we find that there were breaches of regulations in failing to report relevant changes or significant events.

72 There is a clear requirement to make Ofsted aware of changes in the people aged over 16 who live at the premises used for childminding. There were clear failures to make timely reports of the changes relating to CT PT and JB.

73 Although there is room for honest difference as to what constitutes a "significant" event, we accept that such question is properly influenced by what Ofsted makes plain it requires. Ofsted is a regulator with whom childminders have a duty to co-operate to make the system work, unless Ofsted requirements are objectively unreasonable. We do not consider that it was unreasonable for Ofsted to seek as full details of drugs found as possible or to require any attendance of police at the premises to be reported, and there came a time, probably by about the beginning of 2018, when it was objectively plain to KT that they did want such detail.

74 There was an isolated failure to make records available, although we accept that such failure did not indicate a general failure as opposed to an honest mislaying of an individual record.

75 The issue of suitability is an issue to be decided on an overall assessment of the evidence available. Moreover, it is to be noted

that the relevant issues are not dependent solely on an historical analysis but include assessment of the current position of suitability. It is in our judgment an holistic assessment.

- 76 It is undoubtedly not desirable that there is illegal drug use either in the premises or by any member of the household whether at the home or not. Nothing we say endorses the contrary view.
- 77 However, we have noted various aspects of the evidence which indicate that, whatever her failings, KT has always cared well for the children in her care. This was not in dispute. There are various matters we take into account which go beyond such simple observation.
- 78 JH indicated her professional assessment that she would not recommend cancellation if CT was not considered a risk (para 37). There is no doubt that CT has taken drugs in the past and that he has a criminal record as a result. There has been a significant gap in time since July 2018, which is the last occasion on which we find there is evidence of drug use by him. That period of time is the more relevant in the context of CT's age. We accept that it is more realistic to accept a true change in behaviour from such a period than might be the case for an older person with a long history of drug use.
- 79 We heard evidence from both his parents and also from CT as to the changes in his life and lifestyle. There was no evidence to contradict that description and no cross-examination of such evidence. The description is epitomised by the evidence of PT which we have summarised in para 54. Both parents in effect say that they have their real son back and that a nightmare period has now passed. We were favourably impressed by CT's evidence and found him a contrite young man who is truly sorry for his past actions and now has a settled life. We do not ignore the fact that in the past KT has been naïve and too ready to think that CT had reformed, but we accept that on balance of probabilities CT has now truly turned his back on use of drugs. We do not ignore the argument that history indicates that KT has found it very difficult to assess her own son entirely objectively and that she might find similar difficulty in the future if contrary to our conclusion CT were to return to drugs.
- 80 We heard from the parents of minded children (paras 58 and 59). Both have professional backgrounds which involve knowledge of and training in safeguarding. It is against such backgrounds as well as their perspective as parents that we note their evidence. Both endorsed the quality of childminding provided. Both indicated that they had been kept fully informed and that CT had been able to continue to provide quality care despite her problems. They did not consider that their children had been harmed or upset in any way by police presence. Their evidence was not challenged.

- 81 We note that KT had been approved to childmind twins (an exception to the usual rule of only child under one year old). It is the experience of the specialist members of this panel that such is an endorsement of the quality of her care for minded children.
- 82 CL also told us that CT was now “like a different person” and endorsed the family’s evidence of a true change for the better.
- 83 We find that the evidence in relation to KT’s depression is encouraging. Although references to depression and alcohol use might cause concern, we conclude that it is positive that KT has sought professional help. We have no reason to reject her evidence that she now feels and copes much better.

Cancellation/Proportionality

- 84 We now consider whether our findings do or do not justify cancellation of the registration.
- 85 We consider that the fundamental consideration underlying the 2006 Act is the wellbeing of children and in the context of this case the wellbeing of minded children. It is in the public interest to have childminders who provide good quality care.
- 86 It is also a fundamental consideration that there should be public accountability and the regulatory and inspection role of Ofsted is an important part of such accountability. Such a system cannot in practical terms operate efficiently without mutual co-operation between childminders and Ofsted.
- 87 We are satisfied that KT has provided and continues to provide a high quality of childcare to minded children in her care. We are satisfied that CT has turned a corner in his life. Although we do not find that his drug use and its consequences for the household have caused harm to the minded children in the past, it is nevertheless an important and legitimate concern for Ofsted and the wider public.
- 88 There have been occasions in the past when KT has breached regulations and when she has not given relevant information to Ofsted. We consider that it may be the case that, although intellectually now accepting the need for reporting as soon as practicable and giving some detail to Ofsted, KT continues to feel that Ofsted wants too much information.
- 89 We have come to the conclusion that having balanced these factors it is not proportionate or necessary to cancel the registration but that it is appropriate to impose conditions (breach of which would be an offence) in order to reinforce compliance with the regulations and the role of Ofsted under the 2006 Act and the 2008 regulations.

Those conditions do not affect or negate the wider requirements of the Regulations.

Conclusion

- 90 In all the circumstances we do not consider that it is proportionate or appropriate to confirm the cancellation of registration in this case, but that conditions should be imposed.
- 91 Those conditions are that the Appellant shall (preferably by email and in any event confirmed by email or in writing) inform Ofsted within 48 hours of (a) Any police attendance at the premises on which childcare is provided, (b) Any arrest by the police of any person over the age of 16 who lives at the premises on which childcare is provided, or (c) Any change in the persons over the age of 16 who live at the premises on which childcare is provided.

Decision

- 92 We allow the appeal and do not uphold the cancellation of registration. We impose conditions upon the registration as set out in paragraph 91.

**Tribunal Judge Christopher Limb
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 18 December 2019