First-tier Tribunal Care Standards

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

NCN: [2021] UKFTT 403 (HESC)
[2021] 4205.EY

Heard by way of a Hybrid hearing
At the Birmingham Civil Justice Centre:
On 28, 29, 30, 31 September and 1 October 2021
Panel deliberations conducted remotely via CVP on 14 October 2021

Before

Ms Siobhan Goodrich (Judge)
Mrs Jenny Cross (Specialist Member)
Mrs Denise Rabbetts (Specialist Member)

B E T W E E N

Ms KB

B Childcare LTD

(ANONYMITY DIRECTION MADE)

Appellant

and

OFSTED

Respondent

DECISION AND REASONS

Representation

The Appellant in person
The Respondent: Mr Toole, solicitor advocate, Ofsted Legal Services

The Appeal

1. This is an appeal by KB against the decisions made pursuant to section 68 of the Childcare Act 2006 on 13 January 2021 to cancel her registrations on the Early Years Register as a child minder and as a registered provider of childcare on domestic premises on the Early Years Register and on both the compulsory and voluntary parts of the Childcare Register. The right of appeal lies under section 74 of the Childcare Act 2006.

The Parties

2. The Appellant is registered with Ofsted in two capacities: as a provider of childminding services since 24 May 2005, and since 25 November 2010, as the registered provider of childcare on domestic premises.

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 registered, Ofsted's role is to consider whether the person or entity registered continues to meet the requirements for registration, and remains suitable for registration, under the Regulations made pursuant to the Childcare Act 2006.

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, her family members, and others on whose account the Appellant relies, will be anonymised in this decision. Further, we will limit reference to full dates of birth and geographical location in so far as possible.

Background/Chronology

6. This includes the following:

About 2015 The Appellant's brother MB moved out of annex of the Appellant's home where he had been living for about three years. The circumstances in which he left are in issue.

01.04.2017 Alleged attempted rape of Appellant by ex-partner in their home.

05.05.2017 Childminding inspection: Outstanding.

05.05.2017 Childcare on domestic premises inspection: Outstanding.

20.04.2018 Incident on Appellant's property where JA assaulted PL (the Appellant's partner). JA arrested the following day at the Appellant's home.

30. 04.2018 Visit by Early Years Regulatory Inspector (EYRI) Lucy Showell who determined that the Appellant had failed to notify Ofsted of the significant event re JA's assault on PL and his arrest. She reminded the Appellant of the notification requirements and warned that further non-compliance would be taken into consideration in any further incidents.

25.04.2018 Anonymous letter provided to Social Services alleging that the Appellant knew about the sexual abuse of her daughter E by her brother MB. A social worker in Children's Social Services discussed this with the Appellant. She said it was malicious. The Appellant notified Ofsted of this letter on 2 May 2018. She did not provide further details and said it was malicious.

14.06.2018 Restraining order issued against JA, prohibiting him from contacting the Appellant.

Feb 2020 Breach of restraining order by JA.

14 June 2020

Initial disclosure by E to her mother that she had been sexually abused by her grandmother's partner, IN, and her uncle MB. The Appellant reported the matter to the (local) police on 15 June 2020. Police in a different county dealt with the allegation against IN. The investigation was later filed as NFA (no further action) due to insufficient evidence.

18.09.2020 Notification received from the Appellant –regarding E's disclosure to her on 14 June 2020 (see above) of sexual abuse by MB.

22.09.2020 Johanna Holt visited the Appellant.

24.09.2020 Suspension notice issued to 5 November 2020

29.09.2020 Breach of restraining order by JA – witnessed by police at the Appellant's property.

30.09.2020 Joint investigation meeting – Ofsted, LADO and police. Further information then received in relation to Appellant's ex-partner.

07.10.2020 Appeal against suspension filed.

07.10.2020 Ofsted visit to monitor compliance with suspension notice.

08.10.2020 Ofsted informed that s.47 investigation into the Appellant's own children had been concluded; the Appellant did not pose a risk to her own children.

12.10.2020 The Appellant informs DC Ruth Statham of disclosure made on 11 11 October by her daughter B of sexual abuse to her by MB.

14.10.2020 Telephone notification by the Appellant to Mrs Holt of B's disclosure.

16.10.2020 Appeal against suspension withdrawn by the Appellant. (Thereafter the suspension has been continued to date on review).

16.10.2020 Joint Evaluation meeting: the LADO (Local Authority Designated Officer) concluded on balance of probabilities that the Appellant had had some knowledge of the abuse in 2014/2015. This was based on the different accounts provided by the Appellant in relation to her reasons for asking MB to leave her home.

20.10.2020 The Appellant attempted to attend LA safeguarding training whilst out for the day with her daughter.

28.10.2020 Case review, decision made to cancel both the Appellant's Registrations.

19.11.2020 Notices of Intention ("NOI") to cancel Appellant's registrations issued.

20.11.2020 Appellant indicated she wished to object to the NOIs.

11.12.2020 Written objection received

16.12.2020 Meeting between Ofsted and local authority colleagues at which concern was expressed by the LA about the level of support that the LA was having to provide to an "Outstanding" provider. (Ms Purslow's evidence refers).

30.12.2020 Letter to the Appellant – objection not upheld.

13.01.2021 Notices of Decision to cancel Appellant's registrations issued.

11.02.2021 Appeals against each cancellation decisions lodged.
By consent the appeals were consolidated as the decisions arise from the same facts and matters.

The Decision under Appeal

7. The notices of decision dated 13 January 2021 are a matter of record and we need not relate their contents in full. In summary, Ofsted decided that the Appellant no longer meets the requirements for registration in relation to suitability and lacks the ability to meet the requirements of the Early Years Foundation Stage (EYFS). Further, the Appellant had failed to meet the requirements imposed by the regulations.

8. It is Ofsted's position that the Appellant had some knowledge of sexual abuse of E by a family member in 2015 and failed to act appropriately. The Appellant has provided inconsistent accounts of the circumstances and her knowledge of events in 2015. The Appellant also failed to notify Ofsted of a series of significant events involving JA and failed to acknowledge the potential risk of harm to children in her care. The Appellant also failed to notify Ofsted of new assistants, thereby allowing their suitability to go unchecked. Ofsted cannot be assured that she will take appropriate action to safeguard children in her care. Concerns had been received from the local authority (LA) about her safeguarding knowledge and understanding.

The Appeal

9. In section H of the Notice of Appeal the Appellant set out her case. This reprised many elements contained in the response to the NOI and included the following: at all prior inspections the Appellant has consistently demonstrated that she is able to safeguard children; she has undertaken to refresh her knowledge at the earliest available opportunity; her 15-year history and the absence of any negative findings in that period carries significant weight in relation to on-going and future stability. There is a factual dispute as to the circumstances relating to the Appellant's family (the MB allegation). The Appellant accepts that she should have notified Ofsted of the other events referred to. She has provided an explanation for not doing so which is subject to very special circumstances. She has shown insight and provided reassurance that the same will not occur again. She has informed Ofsted of notifiable events since.

The Law

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

11. 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").

12. 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.

13. 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.

14. 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.

15. 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

16. 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

17. 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

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

19. The burden rests on the Respondent to satisfy us that cancellation is justified, necessary and proportionately required in the public interest.

The Hearing

20. We had received a large indexed and paginated electronic bundle prior to the hearing which included witness statements and other material, all of which we had read in advance. A large volume of police evidence recently disclosed following direction on 11 August 2011 was not within the electronic bundle sent to the panel. We rose in the afternoon of the first day so we could consider that evidence carefully. Pursuant to our later request of Ofsted full paper bundles were provided which were extremely helpful when seeking to navigate a complex history over a number of years.

21. We agree to receive the second witness statement of Ms Holt dated September. This was an updating statement which referred to further evidence recently obtained from the Police following the disclosure order. The Appellant agreed to its reception. We made our own decision: we decided that this further evidence was relevant and, in the context of the overriding objective, it was fair to receive it.

Oral Evidence

22. We heard oral evidence from:
    - Johanna Holt, Ofsted Early Years Regulatory Inspector (EYRI)
    - James Norman, Ofsted Senior Officer
    - DS Jonathan Statham, an officer from the police force where KB lives.
    - Ellie Jones, the Local Authority Designated Officer for safeguarding
    - Fiona Purslow, Development Officer – Safeguarding
    - Corinne Chidley, Learning and Development Co-ordinator for the local Safeguarding Community Partnership (SCP).
    - The Appellant.

23. The evidence of the Ofsted witnesses and the Appellant was in person and the remainder was via CVP. Each witness gave evidence on oath, adopted their (signed) statement(s) as their evidence in chief, and answered supplementary questions before being cross-examined. Both of the Appellant's statements had not been signed by her. The judge arranged a break for her to read each statement carefully, noting any inaccuracies or errors. The Appellant adopted and signed both statements before us. The judge then asked her general questions regarding her background and family members by way of evidence in chief, and before Mr Toole asked questions. Mr Toole's questions of the Appellant were a model in fairness, clarity and courtesy. Most witnesses were asked some questions by the panel with a view to clarification at the end of cross examination and the parties were able to ask further questions arising. We will not set out the oral evidence but will refer to parts of it when giving our reasons.

The Appellant's Application to submit further evidence

24. After the proceedings on the first day had ended, the Appellant, who had just gathered her papers, said to the judge that she might wish to rely on further witnesses but did not know how to do this. Although Mr Toole had left the room, the judge decided that it was appropriate to explain to the Appellant the process involved: she needed to decide as soon as possible who she wished to provide written statements and any statements needed to be supported by a statement of truth. She could then make an application to the panel which would require her to explain why the evidence was late, its relevance to the issues, and why it was fair to receive it.

25. The next morning the judge explained what had happened to Mr Toole and repeated what she had said to the Appellant. The Appellant said that she had not yet been able to decide what further evidence she might seek to rely on. The judge explained that she needed to make a decision and encouraged the Appellant to discuss/share the nature of the evidence she wanted to rely on with Mr Toole. For example, some evidence - such as character evidence - might be uncontroversial.

26. By the end of the second day the Appellant explained who she wished to call. Mr Toole informed us that the Appellant had said at the last directions hearing before Judge Khan on 17 September 2020 that she might want to call further evidence and that Judge Khan had said if she wanted to do so, she should make her application as soon as possible. There was obvious concern regarding the impact of calling new witnesses which would place completion of the hearing within the hearing days and the Appellant at risk, and also that the new evidence might involve matters that would need to be put to witnesses whose evidence had been /was about to be given.

27. By Wednesday 30 September 2020 the Appellant provided documents as follows:
    a) An unsigned document dated 19 August 2021 in the name of DS Ruth Statham who was part of the team in a different county who had investigated E's allegation against IN.
    b) A letter "to whom it may concern" dated 28 September 2021 from PL, the Appellant's new partner.
    c) A statement from LF, the mother of JA.
    d) A character reference from parents, NB and AS, whose children are looked after by the Appellant.
    e) The Appellant's account of a text conversation she had had with her mother LN the previous evening.

28. The Appellant said that she did not seek to call any of the above to give live evidence. The judge explained that this might affect the weight that might be given to the evidence because it would untested. In the interests of practicality and efficiency, Mr Toole did not object to the reception of a) and b), although he would submit, in particular, that no weight should be attached to account of PL which was not backed by a statement of truth. He did not object to the panel receiving c) and d). As to the account of the text conversation between the Appellant and Mrs LN (e), this was more contentious. It was not a statement signed by LN and backed by a statement of truth.

He agreed that the panel could consider that contents of this exchange for its own sake, but would submit in due course that no weight should be attached to it.

29. The panel retired to consider its decision in the context of the overriding objective. We decided that it was fair and just to admit the evidence, but with the obvious qualification that the weight that might be attached to any of the new material before us would fall to be evaluated.

Our Consideration

30. 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. In this appeal, amongst other matters, there is a large body of police material which was not available until relatively recently.

31. The Respondent's case is that the Appellant is no longer suitable to meet the relevant requirements of the Regulations and that she is not able to meet the requirements of registration in relation to safeguarding. She lacks insight and understanding in relation to safeguarding. She did not notify Ofsted of significant events when she should have done so. There are also concerns in relation to her honesty and integrity in that she has given different versions of events. The Appellant's witness statements in these proceedings describe various events in a completely different light to the information provided by the police. In short, the Respondent's case that the requirements for registration have ceased to be satisfied because the Appellant is unsuitable to provide child minding services. It is necessary and proportionate to cancel her registration(s).

32. The Appellant's case is that and/or what she has said at times has been misinterpreted and/or the true context has been misunderstood, and/or has not been properly taken into account by the professionals concerned in Ofsted and in the LA. She had not been aware about five years before that her daughter E had been abused by MB. She knew only that B had referred to seeing spiders (like Daddy's) on MB's bottom. She assumed that this referred to pubic hairs. She had asked MB about this and he said that B had come into the bathroom and had seen him naked. As to the incidents regarding JA, she had done all she could to protect her children in an extremely complex situation and they did not witness any violence. JA's behaviour did not impact upon the safety of children at the setting. She is suitable which is supported by the evidence from parents as to her character, integrity and skills. No concern about her ability to safeguard had ever been raised at any previous inspections. At the last Ofsted inspection in 2017 the rating was "outstanding." It was always her ambition to provide child-care and be the "best mother" from an early age. She will be devastated if her registration is cancelled. She will comply with any conditions that the panel might impose. She also hopes to become a foster parent when her children are older. Cancellation is unfair, unnecessary and disproportionate in all the circumstances.

33. It was apparent to us that the Appellant was potentially at a disadvantage in that, and not least in the context of the breakdown of her relationship with JA, she had experienced significant and challenging life events. We made conscious and

deliberate efforts to enable the Appellant to fully participate throughout the hearing. We made clear that our concern was always to hear and understand her perspective. Given the evidence before us we decided that she should be regarded as a vulnerable person. We took regular breaks. The judge explained the process to her in detail at relevant stages. She also assisted the Appellant in reformulating some of her questions, although the occasions when this was needed were very few. The Appellant showed that she was well able to follow the evidence and to ask searching questions. In the hearing, and in making our decision, we bore in mind the principles the Equal Treatment Bench Book regarding the caution to be applied when assessing her evidence, and with particular regard to alleged inconsistencies.

34. The redetermination in this appeal includes consideration of detailed evidence provided by both sides in this appeal as well as the oral evidence which has now been subjected to detailed cross examination by both parties. We have considered all the documents, evidence and submissions before us. This includes the many testimonials and the evidence regarding the Appellant's qualifications. If we do not refer to any particular aspect of the evidence or submissions it should not be assumed that we have not taken these into account.

Findings of Fact

35. 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. The following additional background relates to the Appellant and her family relationships.

    i. The Appellant is the child of LN and KB. She was born in October 1986. She has two brothers, one of which, MB is roughly 10 years younger than her (DOB 1996). In or about 2001, when the Appellant was about 15, her mother and father divorced. Her father moved to north Wales. LN formed a new relationship and also moved. MB, who was aged about 6 at the time, went to live with his mother and her new partner and at some distance. In 2011 they moved again to a different county even further away.

    ii. The Appellant remained in the locality in which she had grown up. She worked as a nursery assistant and child minder and undertook childcare studies. She was 19 when she became a registered childminder looking after children in the home she shared with JA. She had been in a relationship with JA since she was 15 years of age. JA was then 31 years old. The couple have three children together:

        J born in January 2004

        E born in March 2008

        B born in January 2013

        During the period with which we are concerned the family were living in a property which was owned by JA's mother. This had an annex next door.

iii. The Appellant's father, who was suffering from poor health, came to live in the annex. In about December 2012 MB, then aged about 16, joined him. The Appellant explained that, as a child, she had mothered MB and she wanted to help him. We will return in due course to the disputed issue as the circumstances in which MB left the annex.

iv. By about 2017 the relationship between JA and the Appellant had broken down. The Appellant moved with her children to a house in the same road. She formed a new relationship with PL and has a child by him. He does not live with her and maintains his own residence. There were a number of incidents regarding JA's behaviour towards the Appellant, including allegations of rape and an assault on PL which are part of the Respondent's concerns regarding failure to notify - to which we will return.

36. It is important to set out that our focus is on the Appellant's response to her obligations as a registered childminder. We need not concern ourselves with whether the disclosures of abuse made by E and B at different times were true or false. Our immediate focus is the Appellant's knowledge or suspicion of sexual assault by MB on her daughter E at the time he left in 2015. (We should say that although reference has been made to this event having occurred in 2014, the preponderance of the evidence including that of the Appellant is that it was in 2015.)

The Appellant's first appeal statement

37. In her first appeal witness statement (17 May 2021) the Appellant said that she believed that her brother had left the annex in December 2015. She said that he left for a number of reasons. She believed he had left the children unattended while babysitting on more than one occasion. He made her doubt herself by saying that he had just popped to get his phone charger in the annex next door. He was also observed smoking on her doorstep. She also wondered if he was taking drugs. He became lazy and would not help with taking the shared wheelie bins out on bin day. The final thing was that he stubbed a cigarette out on JA's chest. This caused her to get very angry and she told him to get away from her. He said nothing and left. She did not know if or where he was going. He never came back or got in touch to apologise so she never tried to contact him either.

38. It is notable that in this statement the Appellant did not refer to E at all in the context of the many reasons she gave for MB's departure. She did refer to an incident when B had referred to MB having "spiders on his bottom" about which she asked MB but it is clear that this was on a separate occasion to the events that led to MB's departure. Her oral evidence was that she did not tell MB to leave the annex but to get out of her house. Significantly, she made no reference in this first witness statement to any involvement with her mother and stepfather on the occasion that MB left. In paragraph 115 when describing her contact with a social worker regarding the anonymous letter sent to Children's Social Services she said that she told the social worker that the allegations were malicious. She said: *"There had not been any disclosure made and I was not concerned."* She also said in her first witness statement that she had had no knowledge of any allegation of sexual assault on E prior to the conversation with the social worker in 2020.

The 2015 incident involving MB

39. As set out above on 15 June 2020 the Appellant reported to the police that her daughter E had disclosed on 14 June 2020 that she been sexually abused by her grandfather LN and by her uncle MB. DS Jonathan Statham was the officer in charge (OIC) of the investigation of E's disclosure by the local force. He documented in his DS review the ongoing progress and ultimately drew on the evidence obtained so as to analyse whether the E allegation should be prosecuted. Ultimately the police decided to take no further action.

40. According to the review document E did not say when she was abused by MB or what age she was. The Appellant told the police that MB had babysat E when she was 5-6 years old; *"at the time"* she thought that M was behaving strangely and so challenged him "*Are you OK, is there something wrong with you? Have you done anything wrong?* The Appellant said that M said nothing but looked guilty. She thought that he may have hurt E or had taken drugs. She told MB to leave. He packed his bag, got on his motorbike and left. She had not seen him since. She had a *"massive feeling of guilt that something was wrong".* She also said that she did not visit MB whilst he was staying at LN and IN's home because she did not want to know if it was *"true or not."*

41. It is clear from the Appellant's oral evidence on the evening in question that: MB babysat the children whilst she went out; after returning home she became very angry with her brother; she telephoned her mother who drove with IN from their home, a journey of about an hour and a half, and met the Appellant in a nearby pub. After their meeting, LN and IN travelled back to their home. MB was there.

42. Why did the Appellant telephone and request LN and IN to come and meet at a late hour in the local pub that very evening? On the Appellant's evidence it was so she could talk to them about the behaviour of MB. She said that she was angry because when she had returned MB was not inside the home so the children had been unattended and he had not put the bins out. She has also said that JA told her that he and MB had a row about the bins and MB had stubbed a cigarette out on JA's chest.

43. On the face of it, it seems unlikely that the Appellant would have arranged to meet her mother and step-father late that evening unless the situation was important and urgent. On her own evidence she did not see her mother and stepfather often. She told us she had a poor relationship with her mother and she disliked her stepfather because she considered that he was controlling, and dominated her mother. The Appellant said that she used to see LN with the children a few times a year at mutually agreed half-way venues because her mother did not want to come to her house because her ex-husband lived there (in the annex). She also said that there were times when her children stayed with their grandmother and IN. She agreed they had not done so when MB was living with LN and IN. She confirmed that she had not spoken to her brother since he left in 2015. Her explanation was that they were not close. She said that it was up to him to contact her and apologise for stubbing a cigarette out on JA's chest.

44. LN and IN had made statements on 11 September 2020 in the investigation of the allegation of sexual abuse made by E against IN. This was dealt with by a different police force. DS Ruth Statham was the OIC.

45. When IN's statement was made on 11 September 2020 he was no longer a suspect because the police considered that there was insufficient evidence to charge him. We nonetheless recognise the possible risk that IN may have had an interest in deflecting attention from himself to MB. In these circumstances we decided that we must be very cautious before attaching weight to his statement. Further, he had not been called to give evidence so his account had not been tested.

46. We considered the statement LN made to the police on 11 September 2020. We bore in mind that LN was speaking to events that occurred about 5 years before. We also bore in mind that her account may have been influenced, consciously or sub-consciously, by her husband IN. In her police statement LN said that (in the past) she and KB saw each other infrequently, meeting at a neutral place because she did not want to see her ex-husband. She went on to say the grandchildren would come and stay in various combinations. After she and IN moved to a new address in 2014, E and B would come and stay occasionally. LN stated that when they were living at this address, possibly during 2015, the Appellant had telephoned her in a distressed state, saying that she could not have MB staying with them anymore and that *"she wanted me to come and take him and sort him out".* LN then stated *"I recall that E who was really small at the time had disclosed that whilst MB was babysitting for them, he had done naughty things. K…. confronted M about it and he admitted it. K…. just wanted him out, she didn't know the full extent of what had happened. M(B) had packed a bag and stormed out of her house riding away on his bike."*

47. LN stated she told the Appellant to call the police that evening, telling her *"you need to get the police involved"* but the Appellant decided not to call the police and said that E did not want anyone to know. LN went on to say that she and IN set off to collect M but he had left by the time they arrived and when they returned home he was at their home. She and IN accommodated MB for two years. She was reticent (i.e. reluctant) because she did not want MB living with them to affect their relationship with her daughter and the grandchildren. LN and IN did not have their grandchildren to stay whilst MB was living with them. When M eventually moved out they started to have E and B to stay again.

48. We noted that generally there is no significant conflict between LN's statement and the oral evidence of the Appellant – except as to E disclosing that MB had done "naughty things" . The Appellant's position is that her mother is lying about that and she referred to her being influenced and controlled by LN who was motivated to deflect attention from himself.

49. The Appellant has given a number of accounts about her knowledge or suspicion regarding MB's behaviour towards E in or about 2015. Taking these in chronological order:

    a) According to the record made on initial telephone referral to Ofsted on 1 September 2020 the Appellant *"advised that her brother did disclose exactly*

what had happened to her own mother's partner…., the caller then advised that when the brother moved out of the mother and stepfather's she then built a relationship with them and her own children stayed there on a couple of occasions…

….The caller said that the individual had not had any contact with any minded children at the time there were thoughts of him becoming an assistant but luckily this never happened…"

b) On 22 September 2020 Mrs Holt conducted a regulatory visit. Her evidence was that she used her laptop to type the questions she asked, and the answers given. The Appellant said that she had not spoken to her brother since the '*original disclosure five years (sic)'*; *"although her children had not made a disclosure of abuse she had become concerned about the time that the alleged abuse happened and wondered if there was a possibility abuse was being committed".* Asked by Mrs Holt what she knew at the time and when she first became aware the Appellant said she *"became aware it was a possibility around about when EA was 7 or 8 eight years old. Didn't know whether anything had happened, but I had gut feeling, my brother's behaviour was changing. EA was getting urine infections…"* The Appellant went on to say*, 'I phoned my mum and said you need to take him I don't trust him I have got a gut feeling and he won't speak to me about it and I am concerned and asked him to leave'.*

c) On 24 September 2020 Mrs Holt spoke to the Appellant on the telephone to inform her that a decision to suspend her registration has been made pending further investigation. Mrs Holt said that she made a written record of the conversation as it happened. Her account is that the Appellant was shocked and distressed. Her immediate response was *"my business will be ruined, this is over for me, that's it, my business is finished." She went on to say 'they are my children I did act appropriately, I had an inkling and suspicions so I made my brother leave. They are not minded children'.*

d) Ms Holt *explained to the Appellant that she had failed to safeguard other children and had not followed her training or safeguarding procedures. Mrs Holt recorded the Appellant as saying "'I put my children first and took the action I believe was right for them, not as a trained professional. This is exactly the reasons why I didn't want to share my concerns with….'.*

At this point the line went fuzzy. When they could hear each other again Mrs Holt asked the Appellant what she meant by about the reasons she did not want to share her concerns. The Appellant replied: 'I didn't think I needed to take any action. I didn't want to create an issue; I don't believe there was a risk to other children'.

50. DS J Statham investigated B's disclosure made on 11 October 2020 to her mother, of abuse by MB. B (DOB January 2013) was 7 years 9 months old at the time of the 2020 disclosure. If, as the Appellant believes, the date that MB left was in December 2015, B would have then been nearly three years old at that stage. For obvious reasons B was not able to provide any time frame.

51. In his oral evidence DS J Statham explained that the Appellant had made two police witness statements. He described the ordinary process of taking a witness statement, reading it back, and the witness being asked to sign the statement which contains the usual (MG11) warning. The Appellant signed her first statement on 15 June 2020. The Appellant had asked him to take a second statement because she was unhappy with the first. He took a second statement which was dated 11 March 2021, read the contents back to her which she agreed, and sent it to her for signature. The second draft statement includes a number of explicit amendments to the first statement. Amongst other matters, this draft seeks to: attribute her earlier reference to having a "gut" feeling to the time when B referred to seeing spiders on MB's bottom; attributes the "massive feeling of guilt" in part to her feeling that she had failed to give M a better life; states that the conversation she had with her mother related to B.

52. The Appellant was not happy with this statement either. The end result was that it was never signed. We accept that it represents that which the Appellant wanted to say at the time it was taken by DS J Statham.

53. In the safeguarding meeting DS J Statham expressed his opinion that there were credibility issues regarding the Appellant's statements because of the differences in her accounts. He had considered that the defence would suggest that the Appellant had changed her account to satisfy Ofsted that she had acted appropriately.

54. We consider that DS Statham was a straightforward and reliable witness. In so far as he has given his opinion regarding the Appellant's credibility it was clear to us that this was in the context of his role as OIC i.e. considering how a jury might view the Appellant's evidence, applying the criminal standard of proof, had the matter proceeded to trial. We noted also that the Mrs Jones, the LADO, concluded that the Appellant had had some knowledge that E had alleged sexual abuse by MB. It is, of course, our task to consider all the evidence now before us and form our own views in the light of all the different strands of evidence, and applying the civil standard of proof.

55. We have considered DC Ruth Statham's statement dated 19 August 2021. At its conclusion she states that she is submitting this report for some "*factual clarity"* over the events that she is aware of and "*which ultimately may have given rise to the authorities decision to suspend childcare."* The report/statement is not backed by a statement of truth although we have no reason to doubt that DS Ruth Statham was doing her best to give accurate and reliable evidence - at least to the best of her belief. What is clear is that she had little knowledge of the detail of the investigation of the local force and, it would appear, had not been informed of the information provided by the Appellant to Ofsted. We noted also she states that *"From what K….told me, it was BA (aged 2) who had given rise to the concern with something she had said about spiders on MB's bottom and not EA at the time who was 7".* She goes on to say that she was:

"shocked to hear that K…..'s childcare business had been closed down for not reporting this as it was my understanding that whatever had happened, happened in the family home, in 2014 with a throwaway comment by a 2 year old that had been picked up by K…..(LN) and ...IN were both in agreement that though IN was in

possession of the more information gleaned directly from MB himself (LN) nor K….had been told any of the detail by IN…"

56. In our view this shows the limits of DS Ruth Statham's understanding of the facts and matters that gave rise to Ofsted's decision. We consider it surprising that a serving officer working in child protection would judge it appropriate to express an opinion about the decision of the regulator, without satisfying herself that the information provided to her by the Appellant about the reasons Ofsted had suspended registration was accurate or complete. There is nothing to suggest that she had seen, or had asked to see, the decision letters which were detailed and fully reasoned. We attach no weight to DS Ruth Statham's statement in this regard. Further we do not consider that the balance of her statement materially assists us in the issues we have to decide. The overall impression we formed was that overall DS Statham's statement lacked objectivity and rigor.

57. Making every allowance we can for the pressures the Appellant was under then and now, we find that her first accounts to Mrs Holt about the events in 2015 was more truthful than her appeal witness statements. We also attach weight to the statement of LN, although it was untested in evidence. Firstly, her account was similar to that the Appellant gave about the 2015 MB incident to Mrs Holt (save in one important respect). Secondly, what motive would LN have to confirm that the concern in 2015 was sexual abuse perpetrated by her own son - unless she was aware that the concern held by the Appellant was that MB had sexually assaulted her granddaughter? In our view her statement read as one might expect from a concerned grandmother who saw this as a situation where the Appellant should call the police.

58. Having considered all the evidence we find that it is clear from what she said to Ofsted, both in the initial telephone contact and also to Ms Holt on 22 September 2020 that she was aware that something untoward had occurred between MB and E and that is why she asked her mother and stepfather to come. She wanted MB to leave and not to return. She did not speak with or visit him because she did not want to know if it was *"true or not."* In our view her first accounts to Ofsted in 2020 are more likely to be true and accurate than the account she gave in her first appeal witness statement in which she flatly denied knowing that there was ever an issue regarding MB's behaviour to E until she spoke with the social worker about the anonymous letter in 2020. We noted also her account regarding MB stubbing a cigarette out on JA's chest had not been mentioned before 7 October 2020 when she raised this in a telephone call with Mrs Holt. We find that in her appeal statements and evidence she has sought to obscure the facts and the real reason that she asked her brother to leave.

59. We found Ms Holt to be an impressive, reliable and conscientious witness. It is clear to us that, as an experienced Inspector, she had been at pains to carefully explore as fully as possible the circumstances surrounding MB. We accept that her records were made contemporaneously and, albeit with some words missing, were accurate.

60. We find that the Appellant's response to the events in 2015 was to protect her own children by making sure they never came into contact with MB again. This she did by calling her mother so that she and IN would take him in. The Appellant's response that her children are not "minded children" reveals a very narrow perspective regarding the

need to protect all children i.e. those that MB might meet in the future. In our view, the bare facts regarding MB's departure that evening suggest that the Appellant had more than an inkling or suspicion about MB's behaviour. We accept, of course, that she had no detailed knowledge. There had not been any detailed disclosure by E because the Appellant did not consider it appropriate to probe. We consider it likely that there was some conversation between E and her mother at the time because we accept that the Appellant told her mother that E did not want anyone to know. We noted that the reason the Appellant gave then for not calling the police was the wishes of her daughter then aged nearly 8. Of course, E's wishes would need to be considered when considering her best interests but there are ample ways by which the police and other agencies would seek to respect the child whilst ensuring that the best possible information was obtained as soon as possible so as to assess the risk posed by MB to other children. The Appellant's decision not to inform the police effectively prevented any contemporaneous investigation or risk assessment regarding MB.

61. What is also striking is that in her initial account to Ofsted the Appellant said she was later informed by her stepfather that MB had disclosed to him that he had abused E. Despite knowing of the fact of this confession to IN, (albeit, we accept, not the detail of the manner of assault) the Appellant failed to notify Ofsted so that they could consider referral to the police or other agencies so as to safeguard children in the locality in which MB then lived. This is at odds with the view expressed by the Appellant when speaking to DS Ruth Statham on 11 October 2020 (re the disclosure of B) that she wanted MB to be held accountable.

Notifiable incidents

62. The Appellant has accepted that she should have notified Ofsted of all the incidents and matters on which Ofsted rely. We agree with her that context is important so we have carefully considered the evidence regarding the events that should have been notified and her explanations as to why she did not do so. Annex A to the Respondent's skeleton set out the updated chronology. We will not deal with every failure to notify but will focus on the non-notification with regard to referral to Children's Services and JA's behaviour at the Appellant's home.

63. The matters on which the Respondent relies were fully explored in cross-examination. The obligation under the EYFS (see para 3.77 and 3.78) is to notify Ofsted of any changes in the persons aged 16 or over living or working on any domestic premises from which childminding is provided as soon as is reasonably practicable, but always within 14 days. The obligation to notify 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."

64. It is worth emphasis that JA was a registered childminder at the setting. He was also someone associated with the premises whilst he lived there. Ofsted should also have been notified when JA ceased to be a registered child minder. Ofsted should also have been notified when he left the home. MB had been recorded as an associated

person because he was over 16 and lived at the property. We understand that his name was later removed.

65. On 22 September 2020 Mrs Holt discovered that there had been changes in staff which had not been notified therefore preventing Ofsted from checking on the suitability of new staff. The Appellant's explanation is that she had previously informed the Ofsted inspector of such changes when an inspection occurred and had been assured that these changes would be made by the inspector. We do not consider this probable given that inspectors do not have access to the relevant systems. The Appellant also blamed the new notification system. We do not consider it probable that this was the reason why the Appellant did not notify Ofsted. She could have simply written an email with the relevant information and requesting help to complete the form if necessary.

66. The Appellant had already been warned by Ms Showell on 30 April 2018 about her failure to notify Ofsted regarding the assault by, and arrest of, JA. Despite this, in 2020 the Appellant waited four months before notifying Ofsted of the June 2020 disclosure by E. *In her first witness statement the Appellant said that after E's disclosure in June 2020 of sexual abuse by MB she tried to telephone Ofsted but without success. The telephone was not answered. She had received a letter from Ofsted on a different matter saying they would be in touch with her so knew that she would receive a call and she would have the opportunity to make the disclosure then. Up to that point it had never occurred to her to email the notification. She was worried in case the email got into the wrong hands due to officers working at home during the pandemic and insecure connections.* In our view it is remarkable that someone as intelligent as the Appellant, did not email Ofsted asking for someone to telephone her because she had a safeguarding notification to make but did not want to do this by email because of the sensitive information involved. We do not accept the Appellant's explanation for the 4-month delay.

Non-Notification re referral to Children's Services

67. The Appellant's police statement referred to undated incidents where JA smacked his children. She said then that she viewed this as a matter of parenting style. In her evidence she said that there had been one occasion and that this had involved a playful smack by JA to his daughter's bottom in the context of telling her to put on her pyjamas at bath time. In her appeal witness statement she had said that she had asked JA to attend parenting classes in relation to this incident. This seems disproportionate if it related to one incident of a "playful" smack. In our view she was seeking to minimise matters in her oral evidence. This issue of JA smacking his children assumes more significance when considering the evidence regarding the referral on 04/04/2017 by E's Primary School to Children's Services regarding Appellant's daughter E.

68. This referral stated that E (aged 9) had been suffering from urinary tract infections and had wet herself at school. In addition, there had been previous disclosures from EA two years prior when she had had a red mark on her nose. She had stated 'daddy had punched her'. She also said *'mummy doesn't like daddy looking after us as he hurts us'* and she mimicked being slapped on her legs. The school also reported a significant

change in EA's behaviour, some of which was inappropriate. She had become increasingly clingy with people no matter who they were, she was inappropriate with them and kissed people a lot.

69. The school said it had approached the Appellant and shared their concerns about E. The Appellant has said that it was she who approached the school.

70. At the visit carried out by Mrs Holt on 7th October 2020 the Appellant said she did not believe that there were any concerns about JA's suitability. She said *" he is not a risk to children, there was no reason why he shouldn't or couldn't be around other people's children. He did drink alcohol in the evenings then, as he does now."* She also said that he had smacked his children and had stopped after she asked him not to.

71. The Respondent was not notified by the Appellant of the fact of this referral to Children's Services even though JA was a still a registered child minder at the setting.

72. It is common ground that E's school asked for permission to share the Appellant's details with Early Help so that support could be offered but that the Appellant refused because she said that her Ofsted inspection was imminent. She was recorded to have said "*if people start interfering I'll deny it*". The Appellant's case is that what she simply said that she did not need support. We consider it unlikely that the school's account was materially inaccurate.

Non-Notification re incidents in the home and JA

73. We set out below in short form the many incidents on which the Respondent relies.

May – November 2017: Stalking/harassment of Appellant by ex-partner JA

a) Incident on 12 November 2017 where JA grabbed the Appellant and held her in the home against her will (children present)
b) Incident (undated) where JA kicked down and broke her bathroom door whilst the Appellant and her daughter were in the bathroom. The other children were present in the house.
c) Incident on 28 October 2017 where JA grabbed Appellant's eldest son
d) Two (undated) incidents of attempted rape of the Appellant by JA
e) Two or more (undated) incidents of rape of Appellant by JA

18/11/2017 Breach of police bail by JA

21/11/2017 Breach of police bail by JA

22/11/2017 Breach of police bail by JA

23/11/2017 Breach of police bail by JA

26/11/2017 Breach of police bail by JA

20/04/2018	Assault on PL (KB's partner) by JA in the presence of KB and her children. During this JA took hold of a kitchen knife but subsequently put this down. He put PL in a head lock and punched him in the side of the face. This offence committed in breach of court bail which forbad him from entering the Appellant's home. This assault on PL led to the conviction of JA for Assault.
May 2018	JA removed as an assistant from the registration by the Appellant. (This followed the visit of Ms Showell).
14/06/2018	Restraining Order made in respect of JA.
19/05/2019	Breach of Restraining Order by JA
28/05/2019	Children's Services involvement following breach of Restraining Order.
17/02/2020	Breach of Restraining Order by JA and further s.4 Public Order Offence..
28/09/2020	Breach of Restraining Order by JA. Ofsted notified by the Appellant On 5 October 2020.

74. The Appellant did not notify Ofsted of any the above incidents above that on 28 September 2020. We recognise that these matters involved the Appellant's family life. A child minder who wishes to use her own home to provide services to children should be able to understand the importance of being frank and transparent so that the Regulator can objectively assess the issue of risk and suitability in the context of the setting. Whatever his actual role was, JA was a registered as a child-minding assistant at the setting when the majority of the incidents summarised above took place.

75. We agree with the Respondent that the failure to notify these events not only constitute a breach of the EYFS requirements but also demonstrates poor safeguarding practice.

76. In our view notification to Ofsted of the incidents, even if these were outside of the setting hours, was almost certain to have prompted investigation and careful consideration of the impact of these events on the suitability of the setting, and the extent to which the Appellant had considered/assessed the issue of JA's suitability to still be registered as a child minder. If, for example, as the Appellant says, JA had not been working as a childminder (prior to his removal at Appellant's request in May 2018) this might have enabled consideration of measures short of suspension or cancellation. One obvious difficulty would, however, have been the issue of JA's volatility and alcohol consumption. Another matter that would have required consideration is the Appellant's understanding of the risk involved and her ability to set and/or maintain clear boundaries with JA. As to the incidents of failure to notify Ofsted of incidents regarding JA, the Appellant submits that the mistakes she made regarding notification regarding JA arose out of extremely difficult domestic circumstances when she was doing her best to preserve her children's relationship

with their father. We do not doubt that the position in which she was placed was very difficult indeed. However, in our view, her professional obligation as a registered person to notify these incidents to her regulator was clear and obvious. The Respondent has satisfied us that the Appellant repeatedly failed to do so.

77. In our view the Appellant sought in her evidence to minimise and downplay JA's behaviour. She was very reluctant to accept even now that his behaviour had been "volatile". The Appellant gave a version of some incidents to Mrs Holt that seriously underplayed what had occurred when later compared to her police statements. Her police statement taken on 13 November 2017 provides a graphic account of a number of incidents which must have been very distressing to her and to her children. We set out some details only.

    - In the 12 November 2017 incident, when she was collecting the children after a visit with JA, he locked the door to his house to prevent her and the children leaving. He had taken her car keys and mobile phone. She had to ask her son to climb through a window and then she passed the younger children out. When she tried to leave by kicking the door JA grabbed hold of her causing them both to fall over the sofa. She managed to get out of the house and asked a neighbour for help.

    - The circumstances of the bathroom incident (undated) were that JA demanded to be let into the bathroom where the Appellant and her daughter were getting dressed. When the Appellant said that they were not fully dressed and would be out as soon as they could, he kicked the door in.

78. The Appellant was reluctant to acknowledge that B and E had been present in the kitchen when JA had assaulted PL on 20 April 2018. She was referred to the police statement made by her partner PL in which he referred to the children being present. We noted that the incident was such that PL said he did not want JA anywhere near the Appellant, B and E or himself. He did not feel he could take his son to the Appellant's home because of what JA could do. We consider that this contemporaneous statement made to the police to be more reliable than his recent letter. Whilst we can see that it may be very painful or difficult for the Appellant to recognise the likely impact of some of these incidents on her children, we consider that there is a transferable risk that she would be unable or unwilling to see and recognise distress in minded children if she perceived that notification would involve scrutiny by Ofsted and/or other agencies. We noted that when the police sought to locate JA the very next day in response to PL's complaint they found him at the Appellant's premises. He said he had been mending a fence all day. This was the very day after he had assaulted her partner. His presence was in breach of the conditions of police bail. The Appellant's said that she did not ask him to do the fencing work. She did not say, however, that she had required him to leave.

79. We find that the Appellant repeatedly did not notify the Respondent of notifiable incidents involving JA when she should have done so. We have considered the various reasons she has given for this. In summary she has said that she did not perceive his behaviour to pose any risk to his children or to any minded children. With

some hesitation she accepted in cross examination that harm is not limited to physical injury but includes psychological harm that can be caused by witnessing and even being present in the home when frightening events are occurring. Having considered all of the evidence, and bearing in mind that she had been given advice by Ms Showell on about the seriousness of non-notification on 30 April 2018, we consider that the reasonable inference is that the Appellant did not inform Ofsted of notifiable events because it did not suit her interests: she was worried about the situation being investigated by Ofsted and the potential impact upon her registration.

Training and Support Issues

80. In the grounds of appeal it was asserted that the Appellant *"has undertaken to refresh her knowledge at the earliest available opportunity."* In its formal Response Ofsted had set out concerns regarding the Appellant's ability to meet the requirements of registration in relation to safeguarding, despite the provision of support by the LA.

81. We considered evidence regarding the extent to which the Appellant had engaged with the local authority regarding training.

    a) Mrs Chidley is currently the Learning and Development Co-ordinator for the local Safeguarding Community Partnership (SCP). Prior to this appointment she had worked since 2002 for the county Education Improvement Service as a Learning and Development Co-ordinator and then as a Childcare Development Officer. We noted that Mrs Chidley had first met the Appellant when she supported her in the early days of her registration.

    b) It is common ground that the Appellant was booked on, and attended, a 3 day "Train the Trainer" course in June 2016. Part of the assessment for accreditation was that the Appellant was observed delivering safeguarding training to her staff. The Appellant was supported by being provided guidance as to printing off, and organising, trainer's notes and hand-outs. On the day of the assessment the Appellant was not sufficiently prepared to deliver the training. Mrs Chidley accepted that lack of confidence/nerves may have been an issue but said from her perspective the training was not deliverable because the Appellant had not prepared or printed off the materials. The assessment was rearranged for 30 July 2016 but the Appellant cancelled. The Appellant was therefore never signed off as a trainer.

    c) Mrs Chidley did not hear from the Appellant again but received emails from Fiona Purslow of the LA in 2020 because the Appellant was asking if she could deliver Safeguarding Training to her staff. She was informed this was not possible: much had changed since 2016. The Appellant was advised to, and did, book to attend the SCP-multi agency Safeguarding Training to be delivered remotely on 20 October 2020. The course instructions were that access should be via a laptop or iPad as a phone is not adequate.

    d) Mrs Chidley said that:

        i. The Appellant tried to log on using her phone whilst she was driving in her car. The Appellant informed everyone, including her own staff who were

being trained that day, that she was out for the day with her children, and that she was going to log on for a couple of hours because she had *"done this training loads before and just needs to complete it".*

ii. She considered this unprofessional: it sent a message to all delegates that the Appellant did not take safeguarding seriously. She emailed the Appellant requesting that when she re-booked she was able to give dedicated time and work from a dedicated space.

iii. There were 4 courses available from November through to February 2021. On 16 March 2021 the Appellant spoke to her and explained about being deregistered by Ofsted. Mrs Chidley assisted her arranging a booking for the next day and told the Appellant that she would need to interact with her own device. So far as Mrs Chidley could see the Appellant was not "in the lobby" when she checked on a number of occasions so her training could not be certified.

iv. The Appellant later forwarded her 24 pages of handwritten notes she had made as proof of attendance. In order to test competency she sent a number of short videos and asked her to type thoughts and answers.

v. At the time of Mrs Chidley's statement in June 2021 no response had been received from the Appellant. Mrs Chidley agreed that she had since received the response and had issued the certificate.

82. There was no significant dispute about Mrs Chidley's account. The Appellant apologised and explained that she had not been aware that what she said to Mrs ChIdley was capable of being seen and heard by the delegates. She had not intended to be dismissive of the training opportunity but a clash had arisen because PL had presented her just the night before with 2 tickets to a Theme Park as a birthday surprise. She took E with her because she had been having a bad time. She did not believe that she could have rebooked the Theme Park but she did not make any enquiries. Her car was stationary when she logged in. She had intended to get to the venue earlier and find a quiet space such as a café where she could participate using her laptop whilst her daughter amused herself, but had been delayed in traffic.

83. We consider that the Appellant's decision to prioritise the trip to the Theme Park is startling given the fact of her suspension. She said she did not make any enquiries to see if the Theme Park would allow her to rebook the dates because she did not think they would. If she wished to prioritise the trip out rather than the training the most straightforward and professional approach would have been to send apologies regarding the course. We consider it likely that the Appellant's attitude was that she needed to "tick the box" regarding her own training so that she could teach her own staff in due course. Assuming for one moment in her favour that she had intended to devote her energies over three hours to the course whilst her daughter went on rides by herself, the venue was not an environment conducive to learning. The fact, as we find, that she said that she *"done this training loads before and just needed to get it done"* strongly suggests that the Appellant's attitude to training was dismissive and unprofessional, and strongly suggests that she believes that she has nothing to learn.

LA Support

84. Ms Purslow is a LA development officer with many years' experience in managing Early Years settings which also encompassed the role of Designated Safeguarding Lead. Her role as Safeguarding Officer since 2017 has been to focus on supporting EY and childcare settings with the safeguarding and statutory frameworks for the EYFS. Her statement sets out the assistance she provided to the Appellant between 1 November and 15 December 2020 which are recorded in her Notes of Visits, action plan and revised Safeguarding and Child Protection Policy, copies of which were emailed to the Appellant. The impact of her evidence is that:

    a) the Appellant demonstrated a distinct disregard to her role as a DSL within the setting. Amongst other matters she delegated the audit task to S, an inexperienced assistant not long in post who was employed to look after the Appellant's child and that of another parent.

    b) The Appellant required extensive help with the action plan template that Ms Purslow provided. However, she advised the Appellant that she would need to add further details to reflect the actions she had taken or was planning to take.

    c) The Appellant had not updated her Safeguarding and Child Protection Policy (SCPP) She needed help accessing the template Policy which she was given. Ms Purslow advised her about terminology and procedures that needed updating. The Appellant asked Ms Purslow to make the necessary changes to the policy because of computer issues and to email it to her. She did so but stressed that the Appellant needed to ensure that the updates reflected her practice. The following day the Appellant told her that she had received the updates and had already submitted this to Ofsted. This caused Mrs Chidley to be concerned that the Appellant had not taken ownership of the policy.

85. There was little challenge to Ms Purlsow's evidence. The Appellant said that she delegated the audit to S because she intended that S would be the DSL so as to separate the DSL role from her own interests. In our experience the role of DSL is invariably undertaken by the RP because of the complexities involved. In our view to arrange for a setting audit to be undertaken by an inexperienced assistant relatively new in post was, to say the least, very unwise. In our view the Appellant's poor engagement with both the support and training offered shows a lack of commitment to safeguarding.

86. Mr Norman gave evidence regarding the decisions he made as the Senior Officer. He summarised for us and to the Appellant in clear and cogent terms why the decisions to cancel registration was made. The disclosed police evidence had strengthened his views. A significant challenge to his evidence was made by the Appellant on the basis that he was really saying that there was nothing that she could do to persuade Ofsted of her suitability. Mr Norman did not shrink from answering that question robustly. He explained in detail the factors that cause him to consider that cancellation is justified, necessary and proportionate.

87. We do recognise that in answer to Mr Toole's questions the Appellant made a number of concessions. In our view many of these were inevitable, and necessary to enable her to advance her case that she had learnt from her mistakes and that these would not be repeated. However, her accounts in witness statements to both the police and in these proceedings are full of inconsistencies that are not, in our view, accounted for by mistakes made under stress or misunderstandings. She also sought to evade her responsibilities blaming "systems".

88. We have considerable sympathy for the acutely difficult circumstances faced by the Appellant regarding her family life. We have also borne fully in mind her early background and her wish, from a very young age, to look after children and to be the best mother possible. This is a very sad case. The Appellant overcame the past difficulties in her life and established a successful and popular setting at the early age of 19. The evidence overall shows that she is a provider with a good track record of delivery to children and families in terms of care over the years. There is, however, far more to childminding than the provision of basic care. The positive ratings on inspection in May 2017 must be viewed in the context that Ofsted did not know of the many serious matters that should have already been reported to Ofsted by the Appellant. Had they been reported there may well have been other inspections and the Lines of Enquiry would have been planned to focus on safeguarding as an area of concern. The ability to safeguard children and to inform the regulator of notifiable incidents is a fundamental requirement that underpins safeguarding under the EYFS and is necessary in order to protect the best interests and welfare of children. The notification requirements are central to Ofsted's ability to fulfil the regulatory function that is expected by parents and by the general public.

89. The Appellant's failure to notify Ofsted of incidents has been repeated and sustained. We do not consider that this pattern of behaviour arose because of any lack of understanding or knowledge of her obligations. In our view there is a very clear and obvious risk that the Appellant's approach to any future safeguarding concern would be influenced by the potential impact upon her registration. Failure to use the known system to protect children from risk of abuse has the clear potential to cause significant emotional harm and life-long psychological damage.

90. We recognise that the Appellant did, after a delay of four months, report B's disclosure. However, that delay prevented Ofsted from investigating and making an earlier decision on the need for enforcement action. We recognise that the Appellant did notify incidents to Ofsted appropriately on occasions after September 2020. In our view this does not carry much weight given that she was under suspension whilst the need for enforcement action was being considered under the statutory framework. We do not consider that the concerns regarding the Appellant's suitability and the risk of future non-disclosure are adequately mitigated/addressed by the fact that she now lives in a new setting and/or that the issues with JA appear to have settled down. In our view her repeated failure to notify Ofsted of notifiable incidents, including (but not limited to): the fact that E had made a disclosure about MB in 2015; her later knowledge that MB had admitted sexually assaulting E in 2015 and had provided details of his sexual abuse of E to IN; the fact that there had been a school referral to Childrens' Services which included allegations by E of smacking by JA and worrying

features regarding E's welfare, and the failure to notify Ofsted of the multiple incidents of violence by JA which included allegations of rape, incidents of violence when her children were present, a conviction for assault on PL, as well as breaches of bail, breaches of restraining orders, and a further public order offence.

91. In our view the Appellant's responses to these matters (or rather her lack of response) show that she did not safeguard "other" children in 2015. We consider the Appellant's many failures to notify Ofsted and to comply with the safeguarding requirements of the EYFS are very serious. We consider that her lack of frankness and candour goes to the core of her suitability. The Respondent has satisfied us that its concern that the Appellant can no longer be trusted to inform the regulator of notifiable matters is well-founded.

92. For the reasons stated above the Respondent has satisfied us on the balance of probabilities that the Appellant is no longer suitable to be a registered childminder or a childcare provider on registered premises.

Our Overall Evaluation and Proportionality

93. We address the issues by reference to ordinary principles for the avoidance of any doubt. We accept that the Appellant's private life interests are such as to engage the protection of Article 8 of the ECHR and/or Article 1 of Protocol 1.

94. 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/families 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 being able to trust the registration system and that is seriously undermined when a registered person does not report notifiable incidents.

95. In reaching our decision on the issue of proportionality we recognise that the impact of the cancellation upon this Appellant could not be more serious. Cancellation will bring to an end her ability to earn her living by providing registered childcare services and her career and interest in this field in which she has studied hard. This is a very serious matter, and not least because the Appellant has earned her living being a child-minder for many years. She has a family to support. Cancellation on the grounds of suitability will continue to have a significant impact upon her reputation, and has the potential to adversely impact upon her ability to work in other related fields.

96. We recognise that alternatives to the most serious response must always be considered so to ensure or cross-check proportionality. The Appellant invites us to impose conditions on her registration.

97. We have considered the issue of proportionality by reference to other measures available to the Respondent in the exercise of its regulatory powers. We do not consider that any conditions that we could devise would be adequate or suitable to address the public interest. A condition that the Appellant complies with the requirements of the EYFS with regard to safeguarding would be meaningless because every EY provider is required to do so under the Regulations. It is not realistic to

impose conditions given the Appellant's lack of candour. We also consider a condition regarding training does not address the core issue. In our view the Appellant was able to describe the signs, symptoms and behaviours that would provoke safeguarding concerns within a setting, and to describe appropriate practice, but this does not address the heart of the risk. This is not a case where the Appellant failed to notify Ofsted because of lack of knowledge, or in ignorance of her obligations, but one where she repeatedly sought to avoid independent consideration by her regulator. It is also a case where the Appellant has not used the period of suspension to engage proactively to improve her understanding of how the role and responsibilities of an RP is pivotal to the safeguarding of children.

98. For conditions to a feasible option, 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, and as at today, we do not consider that the Appellant is able to do so. In our view to a very large extent the Appellant remains focussed on what she perceives as the harshness of the Regulator, rather than by coming to terms with, and taking responsibility for, how her own choices and decisions led to the circumstances in which her registration was cancelled.

99. We have balanced the impact of the decision upon the Appellant's interests against the public interest. Looking at matters as at today, we consider that the facets of the public interest engaged clearly outweigh the interests of the Appellant because she is no longer suitable to be registered as a childminder.

100. We find the decisions to cancel registration were (and remain today) reasonable, necessary and proportionate.

Decision

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

Tribunal Judge Goodrich
First-tier Tribunal (Health, Education and Social Care)
10 November 2021