

First-tier Tribunal Care Standards

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

[2021] 4484.EY
NCN [2022] UKFTT 262 (HESC)

Heard on 4-7 & 14-15 July 2022 at Bradford IAC.

BEFORE
Mr H Khan (Judge)
Ms D Rabbetts (Specialist Member)
Ms J Heggie (Specialist Member)

BETWEEN:-

Sarah Cartwright

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. Mrs Sarah Cartwright (“the Appellant”) appeals to the Tribunal against the decision of Ofsted (“the Respondent”) dated 7 December 2021 to cancel her registration as a childminder on the Early Years Register and both the compulsory parts of the Childcare Register under section 68 of the Childcare Act 2006.

Attendance

2. The Appellant was represented by Mr Peter Gilmour (Counsel). The Appellant attended along with her husband Mr Martyn Stewart.
3. Ms Sukhveer Kandola (Counsel) represented the Respondent.
4. The Respondent’s witnesses were Ms Melanie Arnold (Early Years Regulatory Inspector), Mr Duncan Gill (Early Years Senior Officer) and Ms Caroline Tanner (Doncaster Children’s Services Trust - Local Authority Designated Officer- LADO).

The Hearing

5. The hearing was conducted as a hybrid hearing. All the parties and witnesses attended and gave evidence in person save for Ms Tanner who gave her evidence by video.
6. Father Edward Morrison had been scheduled to provide evidence by video link but the parties reached agreement which meant that he did not need to give any evidence.
7. The matter was listed on 4-7 July 2022. However, it had to be adjourned on 7 July 2022 due to a medical reason. It reconvened on 14-15 July 2022. Following the hearing, the Tribunal directed written submissions. Both parties have provided written submissions following the hearing.

Restricted reporting order

8. 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 matter likely to lead members of the public to identify the children so as to protect their private lives.
9. We should add that both the Appellant and the Respondent made it clear at the hearing, through their legal representatives, that they did not object to the making of such order nor was there any application made for the reporting restriction to go beyond that which we have made.

Late Evidence

10. The Tribunal had dealt with late evidence as a preliminary issue prior to the final hearing. However, at the final hearing, the Tribunal was asked to admit emails dated 21 April 2021 from Rachel Smethurst to Melanie Arnold dated 21st April 2021 and from Ms Melanie Arnold to Rachel Smethurst dated 21 April 2021 as late evidence by the Respondent. This was in response to evidence that had been given by Ms Arnold.
11. The Tribunal was also asked to admit late evidence in the form of a bank statement regarding an entry on 9 October 2020 by the Appellant. This shows the withdrawal of 13,500 from a bank. This application was made in response to evidence given by Mr Stewart.
12. There was no dispute about the admission of such evidence from either party. In considering any late evidence, the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008. We concluded that we would admit

the late evidence as it was relevant to the issues that the Tribunal had to determine.

The Appellant

13. The Appellant is registered as a provider of childcare on domestic premises. The Appellant has been registered since 20 January 2015 on the Early Years Register and both parts of the General Childcare Register

The Respondent

14. The Respondent is the regulatory authority for childcare providers.

Significant Events leading up to the issue of the notice of cancellation

15. The Appellant was registered as a childminder on 20 January 2015. An inspection was undertaken on 6 October 2016 which assessed the Appellant as "Good".
16. On 11 November 2020, a referral was received by Children's Services regarding allegations made by the Appellant's stepchildren against her and her partner.
17. On 16 November 2020, the Appellant notified the Respondent regarding allegations made by the stepchildren against her and her partner. A suspension Notice was issued on the same day. The Appellant's own children and stepchildren were removed from her care.
18. On 23 November 2020, a Local Authority Designated Officer (LADO) allegations management meeting took place.
19. On 7-9 December 2020, the Appellant confirmed that her stepchildren and her own children would be returning to the home address.
20. On 17 December 2020, a LADO allegations management meeting took place. Allegation in relation to the Appellant substantiated under Conduct and Neglect. Allegation in relation to the Appellant's partner substantiated under Physical Harm.
21. On 21 May 2021, the Police confirm no further action would be taken against the Appellant or her partner in relation to the allegations made.
22. On 27 September 2021, following a case review, a decision was made to cancel the Appellant's registration.
23. On 11 October 2021, a Notice of Intention to cancel the Appellant's registrations was issued.

24. On 12 November 2021, an objection to the Notice of Intention was submitted.
25. On 7 December 2021, Notices of Decision to cancel the Appellant's registrations was issued.

Legal Framework

26. There was no dispute as to the applicable law as set out in the Respondent's skeleton argument. We have therefore adopted the legal framework as set out in the Respondent's skeleton argument.
27. The legal framework for the registration and regulation of childcare providers including childminders is to be found in Part 3 of the Childcare Act 2006 ("the Act").
28. Section 32 of the Act provides for the maintenance of two childcare registers.
29. The first register ("the Early Years Register") contains those providers registered to provide early years childcare for children (from birth to the 31 August following the child's fifth birthday) for which registration is compulsory.
30. The second register ("the General Childcare Register") is divided into two parts:
 31. A register which contains those providers registered to provide later years childcare for children aged between 5 and 8 years for which registration is compulsory ("the compulsory part").
 32. A register which contains those providers registered to provide later years childcare for children aged over 8 years for which registration is voluntary ("the voluntary part").
33. Section 68 of the Act provides for the cancellation of a person's registration in certain circumstances. Section 68(2) states that Ofsted may cancel the 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.
34. The prescribed requirements for Early Years registration are provided

for in The Childcare (Early Years Register) Regulations 2008, Schedule 2. This includes the requirement that the person to be registered is suitable, and that the person will secure that the statutory framework for the Early Years Foundation Stage (EYFS) learning and development requirements are met and that they will comply with the EYFS welfare requirements.

35. The EYFS requirements are contained within the EYFS Statutory Framework and apply by virtue of section 39 of the Childcare Act 2006. Section 40 of the Act imposes a duty upon those registered as an early years provider, to comply with the requirements of the EYFS, the current version of which is the version effective from 03 September 2021. The EYFS is divided into the Learning and Development Requirements and the Safeguarding and Welfare Requirements.
36. The Childcare (General Childcare Register) Regulations 2008, Schedule 2 and Schedule 5, set out the prescribed requirements for the compulsory and voluntary part of the childcare register. These include the requirement that the person to be registered is suitable. Schedule 3 and Schedule 6 sets out the requirements governing activities in relation to both parts of the General Childcare Register for the purposes of section 59 of the Childcare Act 2006, and therefore those registered on the compulsory and voluntary part of the childcare register, must also meet these requirements.
37. Section 73 of the Act provides that, if it is proposed to cancel the registration, the Respondent is required to give notice of this intention and set out the reasons for the decision, and the rights of the registered person to object either orally or in writing. The registered person must be given the opportunity to object and, if they do so, this objection will be considered. If the decision is made not to uphold the objections and to proceed to cancel registration then the registered person must be given notice of this decision.
38. 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 appeal proceedings.
39. The powers of the Tribunal can be found in section 74(4) of the 2006 Act. Essentially the Tribunal may either confirm Ofsted's decision to cancel or direct that it shall not have effect. If the Tribunal decides that cancellation should not have effect, it may consider imposing conditions on the Appellant's registration.
40. The legal burden of proof at appeal lies with the Respondent, who must establish the facts upon which it relies to support cancellation. The standard of proof to be applied is the "balance of probabilities". It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary. In consideration of this, it is submitted

that the Tribunal is not limited to consideration of matters known to the Respondent when the cancellation decision was taken, and therefore can, and should, consider the impact of information that may have come to light since.

Evidence

41. We took into account all the evidence that was presented in the hearing bundle and at the hearing. This includes all the statements from the Appellant's witnesses who were not required to attend the hearing to give oral evidence.
42. We have summarised the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that what is set out below is not, nor is it intended to be, a transcript of everything that was said or presented at the hearing.
43. We heard evidence from Ms Melanie Arnold. Ms Arnold set out the history to the matter.
44. Ms Arnold set out that her concerns related the substantiated allegations against the Appellant and Mr Stewart. Ms Arnold's evidence was that the Appellant had notified the Respondent on 16 November 2020 that her stepchildren had made allegations of physical abuse against both her and Stewart. Social Services had become involved and four stepchildren and her own three children were removed from the household to stay with members of the family as a result of the allegations. On 16 November 2020 a decision was made by the Respondent to suspend the Appellant registration as it was believed that the threshold had been met and that suspension has continued since. Ms Arnold had been informed by the social worker, Mr Robb that the children had alleged that the abuse started around August 2020.
45. Ms Arnold explained that the Respondent's case was that the Appellant no longer met the registration for several reasons. Firstly, due to her failure to safeguard children. This was evidenced by the substantiated finding of "Conduct and Neglect" against the appellant and of "Physical Abuse" against her partner. There had been social services involvement with the stepchildren (which was still ongoing in respect of some of them) and her own children (who had been returned to her care). There had been LADO involvement albeit that at present the file was open pending the determination of these proceedings.
46. Ms Arnold also had ongoing concerns with regard to the family. One of the children child T, had been rehoused two streets away and it was believed that was dealing in drugs and involved in potential gangs. The other child, child M, was using cannabis and running away from home. There had been police involvement. Ms Arnold raised concerns about "potential" gang involvement and reprisals.

47. Ms Arnold was of the view that the Appellant had repeatedly failed to notify the Respondent and/or other agencies of changes including significant events and had demonstrated a lack of knowledge and understanding of safeguarding procedures. Ms Arnold believed that the Appellant had minimised significant events unfolding in a household such as her children's involvement with drugs and gangs. She was concerned that the Appellant was unable to identify and notify any potential abuse to the Respondent and to other agencies.
48. Ms Arnold did not consider that the Appellant had provided a suitable environment for minded children due to domestic issues involving her partner and stepchildren. Accordingly, Ms Arnold did not consider that the Appellant was suitable to provide childcare from her home address as she was unable to adequately safeguard children.
49. Ms Arnold's current concerns centred around Child T's escalating behaviours (including potential drug use) and conduct which was highly suggestive of gang involvement.
50. Ms Arnold accepted that the Appellant had given a consistent account of what had happened throughout the proceedings. Ms Arnold also accepted that the Appellant had now been open and transparent as far as she was aware. The Appellant could now identify and notify regarding any significant incidents. Furthermore, Ms Arnold accepted that the Appellant was remorseful, had accessed training and now understood the notification procedures.
51. Ms Arnold did not consider that the Appellant could have done anything more than she had done up to the final hearing. For example, she had undertaken courses. However, Ms Arnold explained that due to the family make-up, the Appellant's registration would have to be cancelled. Ms Arnold did not consider that the imposition of any conditions could deal with any potential issues and considered that cancellation was both appropriate, proportionate and necessary in the circumstances. Ms Arnold had discussed the matter with the Appellant who had made reference to having to "*give up childminding*". Ms Arnold stated that even if the Appellant moved her childcare provision to a non-domestic provision, concerns would remain.
52. Ms Tanner confirmed that she was responsible for the management and oversight of allegations of harm against people working or volunteering with children within the Local Authority area of Doncaster.
53. She was employed by Doncaster Children's Services Trust (DCST) as a Local Authority Designated Officer (LADO).
54. Ms Tanner's evidence was that the LADO referral was received into the service on the 16 November 2020; this was a self-referral made by the

Appellant. The reason for the referral was stated as '*an allegation made against me and my partner.*'

55. An Initial LADO Allegation Meeting was held on the 23rd November 2020. The purpose of the meeting was to share multiagency information and updates in relation to the allegations made against the Appellant and her partner, Mr Martyn Stewart, who had been identified as a football coach, registered with the Football Association (F.A.). At this point, South Yorkshire Police and Social Care (DCST) were still completing investigations under the auspices of section 47 of the Children Act, 1989, therefore professionals were not in a position to agree a formal LADO outcome.
56. A Review LADO Allegations Meeting was scheduled for the 17th December 2020. In the interim, it was agreed that the Appellant was to remain suspended from Childminding; the F.A. would suspend her from Football Coaching and Safeguarding Education, DMBC, would be contacted in relation to her reported role as a School Governor
57. A Review LADO Allegations Meeting was held on the 17th December 2020. The purpose of the meeting was to share multiagency information and updates in relation to the allegations made against the Appellant and her partner as well as to review the recommendations agreed in the previous meeting held on the 23rd November 2020. The Police investigation was ongoing at the time of review meeting but police advised that the Appellant had been formally interviewed. During this interview she is reported to have denied the allegations made against her.
58. At this time LADO was advised that Social Care had returned the children back to the care of the Appellant and Martyn Stewart and were planning on taking the children's cases to an Initial Child Protection Case Conference for Mr Stewarts children only; Sarah Cartwright's children were being supported on a Child in Need basis, subject to a Child In Need Plan (section 17 of the Children Act, 1989).
59. The outcome of the Review LADO Allegations Meeting on the 17th December, in relation to the Appellant, was unanimously agreed by all professionals in the meeting as 'Substantiated', under the categories of Conduct and Neglect. There was insufficient evidence, on the balance of probability, to record the outcome as 'Physical Harm', but all professionals agreed that the Appellant had been negligent in failing to appropriately report concerns in respect of the physical and emotional harm posed by Martyn Stewart towards his own children
60. Ms Tanner confirmed that on the 20th April, 2021, an email was received from PC 2280 Rachel Smethurst, South Yorkshire Police, to state that the Police have decided that no further action will be taken against Sarah Cartwright or Martyn Stewart in relation to any of the

allegations made by the children. All investigations will be filed as no further action.

61. Ms Tanner confirmed that the current position was that although the LADO file was open no action was being taken. It was simply to await the outcome of these proceedings.
62. Ms Tanner accepted that she may have assumed that the Appellant had resigned from her school governor role as a consequence of these proceedings. She was not aware that she had resigned earlier. Ms Tanner had looked at the Social Care notes and had seen reference to Child M stating that he had been shouted at.
63. Mr Gill stated that in his opinion, he considered the Appellant to be unsuitable. Her husband, Mr Stewart had an allegation of physical harm substantiated against him. He had admitted to shoving, pushing and dragging children. The Appellant had an allegation of conduct and neglect substantiated against her due to her failing to protect children living in her house.
64. Mr Gill considered that the Appellant had shown a severe lack of understanding of safeguarding children as she did not consider her partner's management as inappropriate or referred this to the appropriate safeguarding agencies, leaving children at risk of harm. He did not consider that she would be able to identify signs of abuse.
65. Mr Gill did not consider that the Appellant had been open and honest with the Respondent. She had minimised behaviour by the children and had not been open and honest when discussing children's drug use.
66. He considered that the behaviour of Mr Stewart's children does not make the environment conducive to providing childcare. His children had been previously excluded from school due to their behaviour which meant that they may spend more time at home when minded children would be present.
67. Mr Gill was concerned that one of Mr Stewart's children (Child T) was dealing drugs. The Appellant had found inappropriate videos and photos on Child T's phone and images of child T and a friend using cannabis with a white powder.
68. Mr Gill acknowledged improvements in behaviour management but he still had concerns regarding the children's behaviour. These include the children going missing and Police having to be called. He expected behaviour should be managed without the need for police intervention.
69. Mr Gill had concerns about the children's possible involvement with gangs, drug dealing and violent and aggressive behaviour. He did not consider that this was a suitable environment for minded children.

70. He acknowledged the Appellant's lengthy experience in childcare, her registration since 2015 with a good inspection history. However, he considered that with so much experience, the Appellant should know and understand how to safeguard children and notify agencies of concerns the children safety.
71. Mr Gill acknowledged that the Respondent could have investigated matters better by obtaining more detail such as how much the Appellant witnessed any incident.
72. Mr Gill's current concerns included the Appellant's failure to report matters in 2020, concerns about her partner's behaviour in the future, the environment and impact on any minded children.
73. In summary, the Respondent's position was that Appellant has failed to comply with the requirements for the Early Years Register set out in the Statutory Framework for the Early Years Foundation Stage and with the requirements of the Childcare Register. The Respondent asserts under s.68(2)(a) and (c), that the Appellant has failed to comply with the prescribed requirements in the Childcare (Early Years Register) Regulations 2008 and the Childcare (General Childcare Regulations) 2008 and therefore these prescribed requirements have ceased to be satisfied.
74. The Appellant acknowledged that there were substantiated allegations against her and her partner. She acknowledged that the LADO had substantiated the allegation against her under "Conduct and Neglect".
75. The Appellant explained the family dynamics. She had three children of her own. They were aged 11, 13 and 16. In June 2019, she and her partner Mr Stewart moved in together and became a blended family. Her partner had sole responsibility for his four children who were aged 14, twins aged 15 and a child aged 16. The Appellant set out the difficulties that her partner's children had during their upbringing.
76. The Appellant explained that initially the blending of the families was going smoothly with some issues, but the pandemic had a big impact on the family as a whole with both her and her partner losing parents in 2020. Mr Stewart's children who liked to be outdoors found the national lockdown extremely difficult. The Appellant had a small house and this did not help the situation.
77. The Appellant explained that due to the various pressures in the family at the time, this contributed to the deterioration in her step children's behaviour. There would be occasions when the children would argue and physically fight with each other.
78. The family had requested assistance from Early Help about her step children's escalating behaviour in 2020 but they had been informed that they did not qualify. She had also rung Early Help in September

2020 after being called into school to discuss behaviour issues and had been informed that the threshold had not been met.

79. The Appellant acknowledged the Respondent's concerns. She did not question the motives of the Respondent's inspectors or anyone else for doing their work and understood their concerns.
80. The Appellant had reflected significantly on the concerns raised and has taken steps to rectify this, for example by ensuring that she keeps the Respondent fully informed of significant events involving the family. She acknowledged that she should have stepped in when it came to her partner's discipline of his children and should have reported this. She stated that not a day goes by when she does not think back to what both she and Mr Stewart could have done differently. She accepted that she didn't safeguard children fully. She accepts that she did not comply with the EYFS and in particular section 3.
81. She did not appreciate the link between family life and her safeguarding duties as a childminder. On reflection, she now understood she should have recognised this as inappropriate and should have notified the relevant professionals who would have investigated and taken appropriate action. The Appellant accepted that she should have been more proactive in reporting family issues to the Respondent. She denied being dishonest with the Respondent and state that this was a "genuine error" on her part as she had reported the issues other parties involved, for example, social care, the police etc and worked well with the other agencies.
82. She had undertaken training to improve her knowledge. These included courses on safeguarding. She now realised the importance of not only implementing the policies and procedures within a professional capacity but ensuring that she applies her knowledge at all times in her personal life.
83. The Appellant also states the Respondent has failed to consider other information such as her 20 years of experience, inspection history and further safeguarding training undertaken.
84. The Appellant stated that she was incredibly passionate about being a childminder. It was a career that she loved. She believed that she had the tools, knowledge, experience and understanding to make her a stronger practitioner for the children that she cared for.
85. Mr Stewart accepted that there had been a substantiated finding against him under "Physical Abuse". He did not understand the relationship between the Appellant and the Respondent. He did not realise the Respondent was the Appellant's "boss". He accepted the substantiated finding and had learned lessons.

86. He did not question the motives of the Respondent's inspectors nor did he question any other professional involved. They were protecting children.
87. He denied being dishonest. He accepted that in the past he had been a "lazy parent". He had been a single dad and it had its challenges. He had a prehistoric approach to parenting before he met the Appellant. He had engaged with multiple agencies and had changed his parenting techniques. He had learned lessons.
88. He had only seen the picture regarding the money during these proceedings. He had not seen it before. That money had been withdrawn by him to pay the builders. He could produce a bank statement evidencing this.
89. Child T was subject to a section 20 agreement with Social Services. They had decided to relocate him in Mexborough. That had been their decision and he did not have any input.
90. It had been a "*catastrophic 18 months*" for the family. He supported the Appellant. He would leave the house whilst she was looking after the children if that meant she could keep registration. The family had learned lessons throughout this episode. His children were more settled now.
91. In summary, the Appellant's position was that the decision to cancel registration was disproportionate and the Respondent has given insufficient consideration to factors such as, the behaviour of the Appellant's partner's children and the management of that behaviour, the fact that the police took no further action, social services involvement has concluded and some of the Appellant's partner's children no longer live in the home.

The Tribunal's conclusions with reasons

92. We took into account all the evidence that was included in the hearing bundle, presented at the hearing and took into account the written closing submissions.
93. We wish to place on record our thanks to Mr Gilmour, Ms Kandola, the Appellant and all the witnesses who attended the hearing and gave evidence.
94. We reminded ourselves that the legal burden of proof on appeal lies with the Respondent. In reaching our decision, we also reminded ourselves that the Tribunal is not limited to consideration of matters known to Respondent when the cancellation decision was taken and consider any matters which have arisen up to and including the date of our decision.

95. We acknowledge the difficulties that the Respondent has in making decisions about such matters. We acknowledge the evidence of Ms Arnold, Mr Gill and Ms Tanner on behalf of the Respondent. They are all performing difficult roles in challenging circumstances and have to take such decisions on a regular basis. We found that their evidence set out the chain of events and the Appellant broadly agreed with their evidence insofar as past events is concerned although there was some disagreement in relation to fact and degree.
96. Mr Gill, very fairly, accepted that the Respondent could have dealt with matters differently by obtaining more details about what had happened. For example, Ms Arnold accepted that she could have clarified with the Appellant about the incident in August 2020 and how long the Appellant had witnessed it for rather than assume that she had observed it all. Furthermore, Ms Tanner also acknowledged in her oral evidence that she had *assumed* that the Appellant had resigned from her position as governor after notifying the Respondent and the LADO of the allegations made by the stepchildren in November 2020. Ms Tanner had suggested that the Appellant had failed to disclose her position as a school governor when making the referral and that this failure was dishonest. However, the Appellant had made it clear that she had resigned from her position as a school governor on 22 October 2020, because the meetings had moved to a different day at a different venue and she could no longer attend. It was made clear that the resignation had nothing to do with the allegations.
97. We found the Appellant to be honest and sincere in her evidence. Her evidence has been consistent throughout these proceedings. In fairness, Ms Arnold also accepted that she could not provide an example of an inconsistent account provided to the Respondent by the Appellant. In responding to questions from the Tribunal, Ms Arnold also accepted that the Appellant had given consistent accounts.
98. We also found Mr Stewart to be a reliable witness. He admitted to a degree of physical chastisement and did not seek to minimise or not take responsibility for his role in these proceedings. The Appellant and Mr Stewart agreed to the Respondent's request for Mr Stewart to remain outside of the hearing room whilst the Appellant gave evidence. This was done voluntarily by agreement between the parties. We made it clear once we were informed of the arrangement that there was no expectation on Mr Stewart to remain outside of the hearing room whilst the Appellant gave evidence. We should place on record that both the Respondent's witnesses Mr Gill and Ms Arnold remained in the hearing room whilst the other gave evidence without objection from the Appellant.
99. In our view, despite Mr Stewart agreeing to remain outside whilst the Appellant gave evidence, their evidence was consistent with each other. Both were extensively cross examined and provided a consistent account of what had occurred.

100. Both the Appellant and Mr Stewart made it clear that none of the professionals who have worked with them had any motivation to lie. Mr Stewart made it clear that the professionals were doing their job and “protecting children”.
101. We concluded that although the grounds for cancellation were established by the Respondent, we did not consider that it was proportionate and necessary to cancel the Appellant’s registration. Our reasons for doing so are set out below
102. We concluded that the grounds for cancellation have been made out. We agreed that the allegations made against the Appellant and members of the household were serious. The Appellant by her own admission has accepted from the outset that certain significant events were not reported. The current case was triggered by serious allegations that Mr Stewart had physically assaulted his children, causing injuries of which there were said to be photographs. Mr Stewart accept some physical chastisement and the Appellant accepts that she failed to report this to the Respondent.
103. Furthermore, the Appellant accepts that she did not comply with the Statutory Framework for the Early Years Foundation Stage, in particular section 3. For example, she acknowledges that Providers must take all necessary steps to keep children safe and well but that she had not applied this to her family environment. Furthermore, the Appellant by her own admission made it clear that she must inform the Respondent of any allegations of serious harm and abuse by any person living, working, or looking after the children at the premises, regardless of whether or not the allegations relate to harm or abuse committed in the premises or elsewhere. In short, the parties agreed that she should have reported Mr Stewart’s behaviour but that she did not do so.
104. In giving her evidence to the Tribunal, the Appellant did not seek to hide away from the fact that she should have reported those events. Furthermore, she accepted that there is a substantiated finding against the Appellant under “Conduct and Neglect” and a substantiated finding against Mr Stewart (then her partner, now her husband) of “Physical Harm”.
105. Whilst we acknowledge that there was a factual dispute as to the extent of the Appellant’s knowledge, nevertheless, the Appellant’s position was clear that she did not seek to excuse her husband’s behaviour and accepted responsibility for own failure to report it.
106. The Appellant made it clear that she was “*remorseful*” that she did not take action where she witnessed particular incidents taking place. In

giving her evidence before this Tribunal, we did not consider that the Appellant sought to minimise any incident. She accepted consistently that any form of physical chastisement, whether it's forceful or not, is not acceptable and that she should have taken steps to deal with it. She repeatedly made it clear that she was deeply ashamed of her failure to report and wish to assure the Respondent that she "*absolutely would not make this mistake again*".

107. In considering whether it was proportionate or necessary to cancel the Appellant's registration, we took into account the Appellant's 20 years' experience of working with children and her registration as a childminder since 2015. Furthermore, although the allegations were of a serious nature, the Appellant made it clear that although she did not excuse the behaviour of her partner, the family were concerned about the needs of the children and had requested expert input from Early Help about her stepchildren's escalating behaviour in 2020. They were informed that they did not meet the criteria. The Appellant herself had contacted Early Help for advice in around September 2020 after being called into school to discuss behavioural issues and was advised again that the threshold was not met.
108. We took into account that the Appellant and her husband engaged fully with all services involved including the Police and Social Services. The police have now conducted their enquiries and are taking no further action. Ms Tanner confirmed that apart from keeping a watching brief in order to ascertain the outcome of these proceedings, there was no ongoing investigation by the LADO. Furthermore, the Football Association have also considered the allegations against the Appellant and Mr Stewart and have not taken any action (although the FA's decision in relation to the Appellant is awaiting the outcome of this case). Social Care returned all of the children to Mr Stewart and the Appellant quickly.
109. We also took into account that although the Respondent was not notified (a fact not disputed) that this was not a case whereby information was being withheld from any agencies. We wish to make it clear that the responsibility to notify the Respondent lies clearly with the Appellant. There is no dispute between the parties on that position nor was any dispute between the parties that there was a clear failure to notify the Respondent. However, we did take into account during this period, the Appellant had notified the Police and Social Care of such events.
110. We had no reason to doubt the Appellant's assurances that she acknowledges her failings in this regard and now shares all significant events with the Respondent. This assertion was supported by the evidence of Ms Arnold who accepted that the Appellant was notifying the Respondent of significant events although we acknowledge that the Respondent's other witness Mr Gill suggested that this may not be the case as the Respondent could not confirm what it did not know.

111. However, on a closer analysis of the evidence, it was clear from the chronology that the Appellant had notified the Respondent about various events (including on 6 January 2022 advising of the breakdown in Child T's living arrangements, 13, 15 and 19 January 2022 and 19 February 2022, providing various information about Child T). Furthermore, we noted that the evidence referred to in the hearing bundle around text messages (Child T's phone) and photograph (of the £13,500) had originated from the Appellant who had provided them to the Respondent.
112. We acknowledge that this was a uniquely stressful time for the Appellant and her family. We considered this in the context of her record between 2015 to 2019. During that period, she appropriately reported significant events.
113. We considered the risk to minded children. We took into account the Appellant's submissions that most of the incidents regarding Mr Stewart's children had occurred outside childminding hours, although it is accepted by the Appellant that there was a possibility that minded children would overhear any "commotion". Mr Stewart, on his own evidence, has engaged with the available support to change his parenting techniques so that physical chastisement and shouting are no longer used.
114. We considered the allegations in relation to Child T. The height of the evidence relied upon by the Respondent was that Child T was supplying cannabis in October 2021. It was accepted by that Child T had received threatening text messages on his phone which referred to a gang in Mexborough. However, as the Appellant submits, there is no evidence as to who is in the 'gangs', the size of those gangs or whether they still exist. Furthermore, there was no evidence from the police about the details of such gangs and of the animosity they may pose to child T. We acknowledge Mr Gill's evidence that there had been no incidents involving child T and the gangs in the months after the text message and that he was concerned about any potential reprisals in the future. However, there was no evidence of any reprisal or attempted reprisal in the months which have elapsed since the period that the text messages were written.
115. Furthermore, we accepted the evidence from Mr Stewart confirming a withdrawal from an account held by Mr Stewart and the Appellant of the exact amount referred to in the photograph dated 9 October 2020 of a large amount of cash labelled £13,500. Mr Stewart made it clear that this was cash which had been withdrawn from the bank in order to pay for some building work at the family home. We had no reason to doubt Mr Stewart's evidence that he had not seen this photograph before these proceedings and noticed the kitchen worktop in the background which was why he had not mentioned it before.
116. Furthermore, we noted that the family arrangement had changed since those allegations were made. Child T is now in a foster home albeit still

in the same area. However, as Mr Stewart made it clear, that is a decision that has been taken by the Local Authority. Child C has left the family home. We acknowledge that there were some allegations regarding child M and whether or not child M was being shouted and wanted to go into care. Ms Tanner had provided this information during her oral evidence but did not provide the date or context to this conversation. However, the Appellant confirmed in oral evidence that child M was now settled.

117. We also took into account that there is a substantiated finding against Mr Stewart for physical abuse and that this was a concern. Mr Stewart has himself admitted a degree of physical chastisement. We took into account that the allegations were made in November 2020 and since then Mr Stewart has engaged with the available support to change his parenting techniques so that physical chastisement and shouting are no longer said to be used.
118. Furthermore, Mr Stewart has never had any involvement in the childminding and there has never been any allegation against Mr Stewart relating to any of the minded children. Mr Stewart himself made it clear that he would stay away from the childminding service during business hours if required.
119. The Appellant within the documentation and throughout her evidence presented as an individual who has learned from these failings and has made it clear this will not be repeated.
120. There was evidence in the documentation that the Appellant had engaged with professionals and had undertaken further training including Refresher in Child Protection and Safeguarding Children for childminders (14 April 2021 & 19 January 2022) Safeguarding Children- Designated Safeguarding Lead (11 January 2022), Basic Awareness in Child Protection and Safeguarding Children (8 February 2022), Introduction to Early Help Experienced (23 February 2022) and was aware of her safeguarding obligations.
121. The Respondent's witnesses acknowledged that the Appellant could not do any more than she had. For example, Miss Arnold made it clear that the Appellant was currently notifying the Respondent of significant events and that there was no reason to doubt that she would continue to do so. Furthermore, Mr Gill in response to a question from the Tribunal stated he did not know what else the Appellant could do to restore trust between the parties.
122. In its closing submissions, the Respondent states that had the Appellant reflected and accepted her failures, it would have been possible for the Respondent to consider her suitability for registration considering those admissions. In our judgement, the Appellant has reflected and accepted failures from the outset. The Respondent's own witness, Mr Gill

acknowledged that the Appellant could not have done any more to re-establish trust.

123. Whilst we took into account the Appellant's genuine and sincere assurances, we wish to make it clear to the Appellant that this was a finely balanced decision taking into account all the circumstances of this case. The Respondent raised concerns that whilst the Appellant has been reporting all relevant matters since the allegations have come out, they were concerned that this was because she was under the full scrutiny of all agencies due to these proceedings. The Appellant needs to be aware that this is a final opportunity to ensure that she meets legal responsibilities and complies with them. Her responsibilities to the Respondent are separate from any other responsibilities or reporting notifications in relation to other agencies. Whilst the evidence of Ms Arnold supported the Appellant's position that she was notifying the Respondent of any significant events, the Appellant needs to ensure that she complies with her legal obligations and in the event that she is not sure to consult with the Respondent.
124. We considered whether or not we would impose any conditions on the Appellant's registration and concluded that we did not consider it would be appropriate to do so at this stage. The Respondent made it clear that any conditions would not work. In our judgement, we concluded that in the event that any issues arise in the future, there are powers available to the Respondent such as those which it has exercised including the imposition of an urgent suspension/conditions. Furthermore, as the Appellant submits, the Respondent has the power to inspect the Appellant's childminding provision without notice and can liaise with other agencies involved with the family. The Appellant also acknowledges that there is nothing stopping the Respondent from closely scrutinising the Appellant if the provision is allowed to reopen. We remind ourselves that any further decisions made by the Respondent would in any event carry with it a separate right of appeal. Accordingly, we did not consider
125. For the avoidance of any doubt, we have considered all the material and evidence presented to us even if we haven't specifically referred to it in our decision.
126. Having considered *all* the circumstances of the case and *all* the evidence, we concluded that whilst the grounds for cancellation were made out, it was not proportionate and necessary to cancel the Appellant's registration.
127. Accordingly, the appeal succeeds and the decision of the Respondent dated 7 December 2021 to cancel her registration as a childminder on the Early Years Register and both the compulsory parts of the Childcare Register under section 68 of the Childcare Act 2006 shall cease to have effect.

IT IS ORDERED THAT:

1. The appeal is allowed
2. The decision of the Respondent dated 7 December 2021 to cancel the Appellant's registration as a childminder on the Early Years Register and both the compulsory parts of the Childcare Register under section 68 of the Childcare Act 2006 shall not have effect.

**Judge H Khan
Ms D Rabbetts
Ms J Heggie**

First-tier Tribunal (Health Education and Social Care)

Date Issued:15 August 2022