

Care Standards Tribunal

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

Heard on 10 and 12 November and 1 and 2 December 2014 at Pocock Street, London

Before: Tribunal Judge Ms Melanie Lewis
Ms Janice Funnell, Specialist Member
Ms Linda Redford, Specialist Member

BETWEEN:

Mrs SM

Appellant

-v-

OFSTED

Respondent

DECISION

Representation

The Appellant represented herself. She was supported by her brother BF. The Respondent was represented by Mr Saigal, Solicitor

Reporting Order

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

The Appeal

2. This is the appeal of Mrs SM, a registered childminder. She has been a childminder for 22 years and, in her last two inspections on 25 February 2008 and 4 June 2013, was graded as 'outstanding'. She appeals against a decision of Ofsted dated 13 May 2014, to cancel her registration as a childminder. On 31 December 2013 Ofsted notified Mrs SM of their intention to cancel her registration. An objection panel was heard on 2 April 2014. The conclusion was to proceed with the cancellation. The reason for cancellation of registration was because Ofsted no longer believed that Mrs SM was suitable to remain registered as a childminder, because of a history of concerns in relation to each of her own five children and a lack of co-operation both recently and currently with the relevant statutory authorities.

The Legal Framework

3. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006. It is uncontroversial that these new provisions sought to elevate and regularise the standard of childminding and the demands now made on childminders and potential childminders are wide ranging and significant.

4. The requirements are prescribed by the Childcare (Early Years Register) Regulations 2008 and include, that the person registered is suitable. Section 68 (2) of the 2006 Act enables Ofsted to cancel a person's registration if it appears that this requirement cannot be satisfied. Section 74 (1) of the 2006 Act provides a right to appeal to this Tribunal, the legal right remains vested in Ofsted, which must establish the facts upon which it relies to support cancellation. It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary; the standard of proof to be applied is the balance of probabilities. We must make our decision on the basis of all the evidence available to us at the date of the hearing, and we are not restricted to the matters available to Ofsted when the cancellation decision was taken.

5. The powers of the Tribunal can be found in Section 74 (4) of the 2008 Act. Essentially, the Tribunal may either confirm Ofsted's decision to cancel or direct that it should not have effect. If the Tribunal decides that cancellation should not have effect, it may impose conditions on the Appellant's registration or vary or remove any of the current conditions.

The Issues

6. The Respondent's case is that the Appellant is not suitable to provide childminding services for the following reasons:-

- (i) The Appellant has five children and there is a significant history of child protection concerns regarding all of them.
- (ii) Her son AM aged 11 is the subject of a Child Protection Plan under the category of 'emotional abuse'. This is the second time he has been made such a subject in two years.

- (iii) The Appellant does not agree with the Child Protection Plan in respect of AM and she refuses to co-operate with Children's Services.

7. Stripped down, Mrs SM's case is that there have been issues in her own family but that they have not been well supported by professionals. Current concerns about her youngest son AM rely unduly on allegations by her daughter FM who is currently sectioned in a mental hospital and has a history of telling lies. She did co-operate with Social Care but had lost all confidence in them and did not think their involvement was helpful to AM, causing him stress especially if they came to see him at school.

Background

8. Mrs SM has been a childminder for 22 years and has a good record. She supplied a number of testimonials from parents who had used her services, some for many years and some who returned to her after periods of suspension were lifted.

9. Ofsted became involved on 9 December 2010 when they were informed that Mrs SM's daughter FM, then aged 14, had made disclosures of sexual abuse against her brother JM, over a significant period of time from 2007. These matters emerged when she told a school friend, who told a teacher. On an earlier occasion she had told another friend but told them not to say anything.

10. A suspension notice was issued to Mrs SM on 7 April 2011 to allow time for concerns to be investigated by the police and Children's Services. On 27 May 2011, a decision was made to lift the suspension because, following feedback from Children's Services, Mrs SM appeared to be co-operating with them and was open to support and taking steps to support her family. Ofsted would maintain a monitoring role until the outcome of the court case was known. She was issued with a warning letter in respect of her failure to notify Ofsted of the police investigation which found child pornography downloaded onto three computers in the house. They also imposed conditions on registration to ensure that childminding did not taken place if Mrs SM's son, JM, was in the house.

11. A second suspension was imposed on 25 November 2011. Mrs SM had notified Ofsted of a number of instances whereby their daughter FM had been caught smoking cigarettes at school and was potentially under the influence of mood altering substances. She further notified them that FM had told a third party that she had used mood altering substances. Of particular concern was that FM had said that she had been physically abused by her parents but didn't wish to press charges.

12. Mrs SM was notified of the right of appeal against the second suspension but she didn't pursue that course. On 15 December 2011 a Child Protection Conference was held. Her youngest son AM was placed under a child protection plan under the category of being at risk of 'emotional abuse'.

This was lifted on 25 April 2012 following confirmation from Children's services that Aaron had been removed from the Child Protection Plan and placed on a child in Need Plan instead.

13. JM was charged with three counts of rape of a female child under 13 years old, two counts of rape of a female child under 16 years old, one threat to kill and two counts of possession of indecent photographs of children.

14. On 9 December 2011, JM was imprisoned for 36 months for convictions on a guilty plea. He did not deny the charges when DNA evidence supported that he had made his sister pregnant. He was legally represented.

15. Mrs SM has denied any knowledge of the abuse. Ofsted's case is that Mrs SM failed to protect her daughter. By the time the pregnancy was terminated, FM was 20 weeks pregnant.

16. On 4 October 2013, the Local Authority made the unanimous decision that AM was at risk of emotional abuse and would again be placed on a Child Protection Plan. A section 47 Children Act Investigation was to be carried out into the welfare of AM as FM had disclosed that AM may have witnessed some of the sexual abuse of her by her brother JM. She also said that just prior to her running away from home AM (then just approaching nine) had approached her for sex. This fitted with concerns raised by the school about AM exhibiting sexualised behaviour. FM's parents believe that the concerns around their youngest child emerge only because of what FM has said and she cannot be relied on.

17. Mrs SM and her husband, Mr AnM thereafter refused to co-operate with Social Care or to meet with them without their legal representative present. They felt they were misrepresented, that undue weight was placed on allegations by FM, that their family was not being supported and the frequent changes in social workers was not helpful to them or AM.

18. On 28 August 2013 the third suspension was put in place.

Preliminary Matters

19. On 10 November 2014, Mrs SM repeated her application for an adjournment. Her case is, and has always been, that Children's Services have not made a proper case for putting her son AM on a Child Protection Plan. They relied on the evidence of FM who was by now sectioned in a mental hospital and had on many occasions shown herself to be unreliable. Mrs SM and her child care solicitor had continually pressed them for the evidence to support their concerns. Just before the hearing, she was sent a Public Law Outline (PLO) letter, which she took as a positive sign and one she had repeatedly asked for, as it meant the Local Authority would finally explain to her what their case was.

20. Mrs SM provided evidence that the Child Protection Plan was to be reviewed on 11 November 2014 and it was her hope that it would be lifted and

reduced to a Child In Need Plan. As a result, at the end of 10 November we agreed to a brief one day adjournment so that Mrs SM could attend the child protection review meeting. The hearing was to resume on 12 November.

21. At the commencement of the hearing, we heard Mrs SM's application for an adjournment of the hearing overall, having initially refused it. This gave the Respondent a full opportunity to respond.

22. We heard evidence from Ms De Lastie and Ms Roberts of Ofsted that they had spoken with Ms Hogshaw from the Local Authority who confirmed that concerns had not abated, only that it might be more appropriate to monitor AM's progress through a Child in Need plan through the school. We therefore refused to adjourn the case, although we did not sit on 11 November to allow Mrs SM to attend the Child Protection review

23. We refused to adjourn the hearing overall. Ofsted argued that their case was not just dependent on the history of AM. If the Child Protection Plan was made into a Child In Need Plan, the only difference would be that the past tense would apply. They held a monitoring role and put forward correspondence from the Local Authority that this course was being taken for pragmatic reasons rather than any lessening of the risk. As a childminder the risk of harm had to be at a higher standard as she was caring for other people's children. If she applied today to be registered she would be refused. Nothing had essentially changed and there were further concerns that AM, a child with acknowledged learning difficulties, was being inappropriately involved.

24. In the event, Mrs SM did not attend the hearing on 12 December 2014. The Tribunal received a phone call at 10.06 am that she had been to the doctor's surgery that morning with back pain. She had mentioned that her back was uncomfortable on 10 December when we sat late, but we had indicated to her that we would be happy to make any adjustments to accommodate her. Whilst clear that Mrs SM could not seek to manipulate an adjournment we granted a short adjournment as Mrs SM was not represented and recognising that the issues in the case, including her livelihood, were of great importance to her.

25. The case resumed on 1 December 2014. Mrs SM applied to submit a bundle of late evidence. Mr Saigal was neutral but we admitted them to give Mrs SM a full chance to put her case, save for an additional statement from her witness FB, seeking to explain evidence that she had already given. The admitted evidence included a statement from Mr AnM, the Appellant's husband on the understanding that he would attend and be questioned. We additionally received a statement from AM, the Appellant's youngest son, taken by a solicitor on 17 November 2014, although we had been told this was to have been taken place on 10 November 2014. Additionally, we had a number of other documents relating to the Appellant's daughter FM.

26. The Tribunal were concerned about the circumstances in which AM had given his statement to a solicitor given there are no public law proceedings.

This raised a concern in Ofsted's mind that AM had been coerced and undue parental pressure was being put on him. Given his age and recorded learning difficulties, including a diagnosis of autism, he would not have been able to make the statement himself and we confirmed that Mrs SM had driven him to the appointment. He said that he was fine and did not want further contact with Social Workers. This conflicted with what he had told Ms McNamara, Social Worker, in August 2013.

The Evidence

27. In advance of the hearing we considered 893 pages of written evidence and an additional 38 pages of late evidence. All witnesses gave their evidence on oath or affirmed. We summarise the evidence, all of which we have very carefully considered.

28. We first heard from Mrs FB who had made a statement. She spoke warmly of the care provided by the Appellant despite Mrs SM's own difficult family circumstances. She had gone back to Mrs SM, after the two suspensions were lifted and would continue to use her services if she were reinstated. She knew the family well and had used the services of Mrs SM's older daughter for babysitting. When questioned she said that Mrs SM had told her about the rape and the pornography. She had never seen anything that caused her concern. She became very distressed when it was suggested to her that other parents may have made a different decision.

29. We next heard from Miss CL who is now an adult, but who was minded by Mrs SM from the ages of three to eleven. As an only child she had welcomed being in a family and spoke very warmly of trips and activities organised by Mrs SM. She was very clear that Mrs SM, although she has admitted to physically chastising her own children had never chastised her. Mr Saigal confirmed that it was not part of Ofsted's case that Mrs SM had hit or abused minded children.

30. Miss CL, who attended with her father said that she had been asked to make a statement a few weeks before. Her statement set out concerns about the reliability of the daughter, FM. We clarified that, although she and FM had gone to the same primary school, they had not attended the same secondary school and she had therefore not had any recent close contact with her to give her first-hand knowledge.

31. We next heard from Mrs Bryson, a qualified social worker who works in the psychiatric unit where FM is currently sectioned under the Mental Health Act 1983. It was through giving the Local Authority shared access to information FM had given to her, that the Child Protection conference had been triggered on 4 October 2013. During a therapy session, FM had told a social worker that AM had been present during some of the sexual abusive incidents perpetrated by her brother, JM. AM had made sexual approaches to her which she had stopped. She described Mrs SM 'losing it' and physically chastising her children. FM also raised a concern that JM, who by this stage had been released from custody, was coming into the family home and

therefore having contact with AM. When he had been released from custody in February 2013, the social worker was to have supervised contact between JM and AM.

32. Mrs Bryson was concerned at what the mental health team regarded as a very cold severing of contact. In July 2013 by FM was sent a typed letter by her mother by Royal Mail Recorded Delivery. The letter informed her that her parents were severing all contact because they were affecting her behaviours negatively. This news had badly affected FM. Mrs Bryson set out the history of FM which included self-harm, seeing her parents blaming her for what had happened and suggesting in some sense that the sexual acts had been consensual or that she had behaved in a provocative way to her brother. She now sees her life as not including her family.

33. Mrs SM disputed the severing of contact was motivated by anything other than a concern for FM. She said that she had tried to discuss this with the team but that they had not responded to her many telephone calls. It was agreed that she had made a complaint against Mrs Bryson and the Responsible Clinician. This added to Ofsted's concerns that Mrs SM "took on" professionals, blamed them for not supporting her and her family and that even if some concerns were justified, this did not go alongside a self-reflection on her own failures. In her report Mrs Bryson included a direct quote from FM that she didn't think her mother should be a child minder. In essence FM said that each child in the family had problems because of their parents.

34. We next heard from Dr Delmage who has been the Responsible Clinician for FM since May 2013. FM is currently detained under Section 3 Mental Health Act. FM met the criteria for mixed disorder of conduct and emotion. When examined in August 2014, her history prior to her admission involved repeated traumatisation. The disorder from which she suffers occurs typically in the context of childhood trauma. We clarified that it did not include any delusional ideas, such that she said things that were clearly not correct. In the light of the trauma she had experienced, her current mental health difficulties and ongoing challenges she was experiencing with contact with her parents, the team were not recommending a move back to the family home.

35. Mrs SM referred to references in the bundle as to efforts she had made to contact Dr Delmage. The team acknowledged those efforts, they acknowledged that FM incidents of self harming had lessened after contact ceased with her family but took the view that Mrs SM had not acted sensitively or in FM's interests. FM has wanted to see her brother AM and this could have been set up in a way, which would have met Mrs SM's concerns that AM should not go to the unit as it might distress him. In response to a question from the specialist member, Dr Delmage agreed that FM might see her mother as the abuser as she had failed to protect her.

36. Ms McNamara, Social Worker, now working in another authority highlighted Ofsted's concern that whilst the Local Authority might have reduced from a Child Protection Plan to a Child in Need plan, they had no evidence that the Local Authority had done work to ensure the well being of

AM. There may have been a change of approach but their concerns had not lessened. AM at the age of 11 and with acknowledged learning difficulties appeared to be echoing his parent's views when he now said he did not like social workers which contrasted with what he had earlier told Ms McNamara.

37. A key joint visit took place on 28 August 2013 when Ms McNamara visited Mrs SM's home to discuss the Local Authority's concerns and to interview and assess AM. Ms Roberts of Ofsted went to serve the further suspension notice. Both commented on Mrs SM's demeanour that day and when she had had to return to the house, she was driving fast. Mrs SM took exception to this and challenged why, if this were the case, they had not notified the police. Although we were not given the papers, we were told she had made a complaint about Ms Roberts with respect to this incident and this had escalated to a Level 3 complaint with Ofsted. This was a very tense visit and Mr AnM was very critical of the role of the Social Care team with this family. Minded children were present.

38. Ms McNamara accepted that she had no direct evidence that JM had been in the family home, but AM had said he had been there but not recently. He also said that his sisters SM and AbM were not happy about that. FM had said she thought it likely. Ms McNamara acknowledged that there was an email to confirm that JM's parents had suggested an exclusion zone around the house. Mrs SM said that the three periods of contact between JM and AM had taken place in a fast food restaurant when she and a social worker were present.

39. Mrs SM in her questioning went so far as to suggest that Ms McNamara had come to the house to manufacture evidence for the Local Authority. Ms McNamara responded that she was not there to conduct an 'ABE', or Achieving Best Evidence interview, she was there to just talk to AM and had been concerned by what he said. His mother agreed that he had dreams of a 'bubble monster' at night but did not accept that he had been prevented from seeing JM or would want to talk with a Social Worker. Ms McNamara recorded a list of concerns: that AM could have witnessed or even at worst been involved in sexual abuse; and, whilst after allegations came out, he had spoken to professionals the concern was that he was being put under pressure by his parents. There was a significant and clear history on the part of Mrs SM and Mr AnM of defensive and obstructive conduct with a particular theme around 'smoke screening' the actual issues being raised, by prolific complaining about many of the professionals involved. The 'strength, resilience and protective' factors (listed in Ofsted documentation) were that Mrs SM had arranged for a CAMHS assessment of AM, that he was fed and clothed well and involved in extra curricular activities which increased his network of support.

40. The witnesses for Ofsted were Ms. Roberts, Regulatory Inspector, and Ms De Lastie, Senior Officer Ofsted with responsibility for compliance, investigation, and enforcement of Early Years. We read a statement from Ms Mulvaney a senior officer who had made the ultimate decision but had not been directly involved.

41. Ms Roberts has been consistently involved since 9 December 2010 following the allegation of sexual abuse emerging. In her statement she set out the history of the case and the information that Ofsted had been given by other statutory agencies. She set out in detail the steps taken and how they had responded. She agreed with Ms McNamara's account of what had happened when they jointly visited on 28 August 2013. She too had been concerned by the level of aggression and, whilst she agreed it was more directed to Ms McNamara, did not accept, in response to Mrs SM's questions that she had shown a more conciliatory approach. Ms Roberts described Mrs SM's behaviour as changing but at points she recorded Mrs SM stating that she would tell the media how shambolic they were and would name them. Ms Roberts was concerned about the very negative way they spoke about their daughter FM, referring to her as a 'liar' and 'that girl'.

42. Ms De Lastie stated that had Ofsted more fully taken all the history into account, it would have acted earlier to cancel the registration. At a review on 25 April 2012 a number of professionals concluded that there was insufficient evidence to move to cancellation. Other agencies had spoken positively about recent steps taken by Mrs SM and this had been sufficient for her son AM to be moved from a Child Protection Plan to a Child in Need Plan. On reflection, she felt that this did not give sufficient weight to the history of concerns in relation to all Mrs SM's children. At that time she was co-operating with Social Care.

43. When Ofsted came back into the case in August 2013 working with the Local Authority, they were asked not to take enforcement measures because it might jeopardise the position of AM within the home.

44. Ms Roberts attended a strategy meeting on 28 August 2013 which had confirmed that a Section 47 Children Act Investigation was to be carried out into the welfare of AM as FM had disclosed that AM may have witnessed some of the sexual abuse of her by her brother JM. She also said that just prior to her running away from home AM (then just approaching nine) had approached her for sex. On 28 August 2013 the second suspension was put in place. Ms De Lastie took her information from Ms Roberts who reported on 4 October that the Local Authority made the unanimous decision that AM was at risk of emotional abuse and would be placed on a Child Protection Plan up to this category.

45. A fuller case review was held on 18 November 2013 which was the decision which triggered these proceedings. Another factor was that if Mrs SM were to make an application to register as a childminder now it would be refused as she would not be able to demonstrate her suitability to provide child care due to the current and previous involvement of the Social Services regarding the welfare of her children, and her failure to engage fully with the statutory agencies for the wellbeing of all her children.

46. In oral evidence, Ms De Lastie acknowledged that Mrs SM was in dispute with social services agencies, part of which was about a change over

of staff and long gaps of contact. However it was not for Ofsted to make a judgement on this. She stated that she had given serious consideration as to whether the removal of a Child Protection Plan for AM would impact on the decision to cancel Mrs SM's registration. It was evident from Local Authority records that since 2004 there had been considerable involvement of Social Services. Ofsted had suspended Mrs SM's registration as a childminder now on three separate occasions. AM, her youngest child, had been placed on a Child Protection Plan under the category of emotional abuse on two occasions. JM had been prosecuted convicted and sent to custody for serious sexual offences against his younger sister FM as well as offences relating to online pornography. FM was placed under section 3 Mental Health Act 1993, remained distressed and was a vulnerable young person. Mrs SM appeared meanwhile not to accept any responsibility for the troubled history of her family and their traumatic experiences.

47. Against this has to be balanced that Mrs SM had been a registered childminder for over 20 years. She had been inspected on three occasions with outcomes of 'Good' and the last two had been 'Outstanding'. To have achieved an 'Outstanding' she would have had to have verbalised an understanding of safeguarding. The issue for Ms De Lastie was that she didn't appear to be able to put this into practice in relation to her own children. To remain an 'Outstanding' provider there would be an expectation that the understanding and commitment to work with statutory agencies was beyond reproach. If she would not engage with the statutory agencies in respect of her own children then they could not be assured she would do this with children she minded.

48. On 14 April 2014, Ms Goussard, the Local Authority Designated Officer had written to Ms Roberts setting out the Local Authority's concerns, most of which came from what FM had said to her mental health team set out in the evidence of Ms Bryson.

49. The more recent concern was that raised during the hearing that AM had run away from school, something he had not done before. Mrs SM produced a document from the school that he had gone off but hidden behind the music block. Mrs SM did agree that this was uncharacteristic behaviour.

50. We next heard from Mrs SM's oldest daughter Miss SaM who had signed a statement, albeit it with a different signature to a statement she had given in 2011. She said it was her own work and denied her mother had written it for her. The font was the same as other statements written by her mother but she said she had written it on her computer, but her signature had changed.

51. Miss SaM lives within the family home. She said she had no knowledge of the sexual activity between her siblings. She did not dispute the central planks of Ofsted's case, namely that in 2004 she had disclosed to social services that her mother lost her temper and sometimes used a wooden spoon to physically chastise her. She said that happened once when she was very disobedient. In 2005 she said she wanted to be moved to a children's home. With the support of a social worker she had written to her mother, put

down her feelings of feeling unloved. On 25 May 2005 she had asked to be put into care. She sought to explain this away by the fact that at the time she had had very severe medical problems which impacted on her life and depressed her. She agreed with her mother's view that this was another example of where the family had been let down by professionals and not had the support they needed. She now wants nothing to do with FM, although in a 2011 statement she said that she did and was supportive of her.

52. When questioned by Mr Saigal she didn't accept that asking to be taken into care was an extreme step. She sought to explain this away by saying that she was angry that her social worker, with whom she had appeared to have got on, was leaving.

53. Neither Mrs SM nor Mr AnM were able to give any real explanation as to why their daughter AbM, now an adult and living away from the family home, would not be attending the hearing as a witness in support of her mother, as had been previously notified. She too had made a statement supporting her mother, but again not challenging that in 2005 and 2006 her mother had asked for her to be taken into care and that in 2011 she contacted the Housing team stating that she had been "kicked out" of the family home by her mother.

54. At her request and concerned to give her a full opportunity to put her case, we next heard from Mrs SM's husband. Mr AnM said that he wanted to become involved when his wife had returned home and told him what had happened at the Tribunal on 10 November. He said that he had written the witness statement and it had been typed by his wife but that they were his words. His concern was that the case for Ofsted placed reliance on the words of their daughter FM. His words were that she was a 17 year old who 'had the hump and was sectioned in a mental hospital'. He confirmed that he had supported his wife in not signing a document agreeing to work with the Local Authority, not least because it might affect their elder daughter's employment in childcare. He felt it was no coincidence that the Local Authority had only proceeded to a Public Law proceeding just as the Ofsted Tribunal was starting. He felt the service manager admitted that there was no reason for AM to be on a safeguarding plan. He felt the whole situation since August 2013 had been driven by their daughter FM, whose words were relied on with no corroboration.

55. He wrote that on 28 October 2014 he attended FM's hearing for her transfer of care to adult services, a cost that would fall on the Local Authority. He suggested that, having recognised their mistakes, they were going on to support their position in order to protect their own pensions and salaries. He referred to a number of well known child protection enquiries and past failings of Local Authorities.

56. In oral evidence he did not dissent from the position that he had little confidence in social workers. When questioned by Mr Saigal he accepted that his wife could 'fly off the handle' and could become distant from her children by excluding them, which is recorded as his view in other reports. He denied

putting pressure on FM to withdraw allegations that she had been physically chastised.

57. He agreed that he did not like social workers, particularly Ms McNamara. He agreed that he had stormed out of the meeting on 28 August 2013 as they had made accusations for which they had no evidence and none today. He then suggested that the activity between FM and her brother JM had been consensual. Despite being asked on a number of occasions he refused to state whether his wife agreed with that.

58. Mrs SM confirmed that her witness statement had been written with the assistance of her then barrister. Mrs SM's statement does not deal with the history of her older children, albeit that was relied upon by Ofsted in their position statement and response.

59. She was very clear on dates, remembering that FM had disclosed to her in December 2010 about the pornography. She set out the issues raised and complaints she has made, both to social care and the mental health teams, against whom she has made formal complaints. In her oral evidence, it emerged that she had also been concerned about the support JM had received when he was released from custody. Her overall view was that professionals should have done more to support her and her family who had found themselves in a very challenging situation which they had not expected to be in.

60. In her written and oral evidence, Mrs SM stressed that she had been a registered childminder for 22 years. She disputed any suggestion that her 'outstanding' grading was merely a snapshot on the day. She believed it meant that she was one of the very best providers of childminding services. She emphasised that despite the difficulties of her own family she had never let her quality of care for the minded children drop. She had never misled parents about matters within her own family.

61. When the allegations came out, JM had been made to leave the family home. He went to stay with a family member but he had to leave when the DNA test results came out. In relation to the pornography she said that she had discussed this in detail with the police. The dates when the pornographic sites were accessed did not accord with times minded children were in the house.

62. Mr Saigal put it to her that if JM had left the family home on 7 October 2010 pornographic sites, many with teenage sexual content, some up to level 5 had been accessed up until April 2011. She somewhat defensively retaliated that it was not her. She didn't demur that this could mean that another abuser was within the home. She was unable to explain why she had not made more checks once the abuse had come out. Her original explanation was that she had accepted her husband's explanation that the filter they had put on stopped the children accessing their homework. She was very clear both in what she said and how she conveyed this that she saw pornography as dangerous and corrosive.

63. In her written evidence, she set out in more detail her behaviour and attitude towards and support of her daughter FM. She stated that following the revelations, she had strongly supported FM to give a police interview. She felt she had done everything in her power to support FM. She had taken up complaints about her care. FM had failed to receive the support she needed from professionals. Mrs SM asserted that it was not through any complacency on her part.

64. She had ceased visiting in June 2013 as she was made aware that FM was self harming after contact. She asserted that she had sought guidance from social services but none had been provided.

65. She refuted any allegations that she or her husband were aware of any sexual misconduct which she asserted was supported by the Judge's sentencing remarks at the trial in 2011, a section of which was attached to her written evidence.

66. The oral evidence confirmed and clarified that it was also her view that there had been an element of collusion between JM and FM. She was asked in a number of ways and at a number of points by Mr Saigal and the Panel, to explain how this could have happened in her household possibly from 2007 when the first pornographic sites were accessed and FM would have been as young as nine, as to how she had not noticed anything. She interpreted that to mean that she had not been in a position to hear anything. It appeared that some of her doubts as to the level of activity were because she had been studying and going to bed at about 2 am and her husband got up for work at about 4.30 am.

67. Mrs SM set out in some detail a number of occasions where FM had been shown not to be entirely truthful. She was questioned as to how she had not been better able to support FM such that on 29 November 2011 FM moved to foster carers. Her repeated answers were that the family had found itself in a very painful, difficult and extraordinary situation and had they been better supported this would not have been necessary. She did not dispute that in November 2012 FM wrote to her fully retracting the allegations she had made in November 2011. She highlighted FM's history of aggression whilst sectioned.

68. Mrs SM strongly denied that she had been physically abusive to her children. She had never denied she had physically chastised them. She didn't dispute that she had used a spoon and a ruler but explained in detail why she had found the suggestion that the ruler had left imprints fanciful namely because numbers were not imprinted on, but lasered on.

69. In relation to her youngest son AM she did not believe that he had been physically abused by an older sibling or that he had been exposed to sexual activity. She pointed to the fact that he had been police interviewed twice in 2011, and seen regularly by social workers and therapists between November 2011 and August 2013. Her case was that she had supported the family

including AM to have interactions with the police and social workers until she had withdrawn co-operation in December 2013.

70. Mrs SM also emphasised that she had acted on legal advice. She had chosen to 'waive privilege' which we explained to her was her voluntarily putting forward confidential correspondence between herself and her solicitors. Mr Saigal did not object to that but emphasised that Ofsted hadn't sought to remove the whole cloak of privilege. Ofsted were concerned as to why her position as a childminder did not appear to have been considered in the advice that she was given. She produced emails from her solicitor to the Local Authority pressing them for a PLO process, essentially, to call them out and put up the evidence that they had. A Child Protection Conference was held on 18 December 2013. Very little of the plan had been achieved. Seemingly with the support of a solicitor, she took a position that she was no longer prepared to cooperate and that if children's services felt AM was at risk of emotional harm they should initiate proceedings. They have still not done so.

71. When cross examined Mrs SM confirmed that her view was that she thought there was more involvement from FM in the sexual activity than being portrayed. She did suggest that JM had not been well advised but it was clarified that he had pleaded guilty to rape whereas lesser charges could have been made. In her mind there appeared to be an issue as to incidents which took place after FM was 13 years of age. She did say JM had to take the blame as he was the older sibling. She also said she was livid with him.

72. Mr Saigal asked Mrs SM to judge her performance as a mother, acknowledging that she had been judged a good childminder. She said that she thought she was good given the circumstances.

Conclusions with Reasons

73. In reaching our conclusions we have had regard to all the evidence both written and oral and the closing submissions on behalf of Ofsted and the response by Mrs SM.

74. We must look at the whole history, what has happened since Ofsted made its decision, and decide the matter afresh. We are not simply reviewing Ofsted's decision to cancel registration and whether it was a reasonable one.

75. We accept the position of Ofsted as a regulator. It is no function of Ofsted to support the family through their involvement and experiences with social care or the mental health provision offered to FM or other members of their family. Ofsted are contrite. With hindsight they accept that had they more fully considered the overall pattern and history within this family, they would have moved to cancellation earlier.

76. Overall this is a case where there has been a great deal of obfuscation of the key facts and focus on peripheral matters – or 'smoke and mirrors'. Our

assessment of Mrs SM is that she can come over as very plausible. At all points, including during her evidence, we found her to be very quick to criticise professionals who she stated had not properly supported her family. She may be right that she did not always get an ideal model of care, particularly if it is right that there were nine social workers involved with AM since concerns were raised. That said, it seems to us that her evidence was strongly defensive not reflective, despite very severe problems within her own family. At no point did she suggest that she had reflected on where she had gone wrong and developed any insight into what she might have done differently and what lessons she had learnt.

77. All the evidence amply supports that there was a significant and clear history of defensive and obstructive conduct with a particular theme around diverting attention from the actual issues being raised by professionals through prolific complaining about many of those professionals involved. As just one example, it was not that Mrs SM was driving too fast when Social Care and Ofsted visited on 28 August 2013 that was the issue. The issue was that serious concerns had arisen, which they had to address and she needed to answer. We can acknowledge that being suspended again may have caused Mrs SM to be very distressed and cry loudly, despite minded children being present, but we find it relevant to an assessment of her approach that she did not seek to meet the professionals again when she had calmed down and reflected. Instead she chose to lodge a complaint about Ms Roberts' comments about her driving speed.

78. At other points, Mrs SM sought to suggest that she was in some difficulties as a self-representing litigant. All procedures were fully explained to her. The evidence she was giving was about things that actually happened to her. At points, she did have legal representation. She put in evidence to support that her solicitor had advised her that non co-operation was a valid option and tactic and that the Authority needed to set out the evidence for their case. We cautiously express concern that this may not have always been helpful to her, because it appeared to focus on child care concerns and potential care proceedings relating to AM rather than the whole picture including her position as a childminder, which is very clearly something she wished to protect. We have kept in mind that we have not seen all the correspondence and advice that passed between Mrs SM and her solicitor. She was later represented by counsel but the case as put by him through her statement and response did not deal with the very considerable history, which forms a part of Ofsted's case.

79. We reject any suggestion that any witness that came before us deliberately lied to make a case against Mrs SM or to protect their own position.

80. In contrast we found the evidence of the witnesses on behalf of Ofsted to be frank and straightforward. Their evidence was supported by contemporaneous records. They readily admitted that they probably should have acted sooner. Their evidence was balanced and they readily

acknowledged the positives about Mrs SM. She notified them in relation to her son JM and there was no suggestion that she wasn't open with parents about why he had left the family home. A number of parents have come forward and Mrs FB in particular praised Mrs SM's ability to carry out her childminding duties despite the stressful events within her own family.

81. We find, as an uncontested fact, that in 2004 her daughter Miss SaM disclosed that Mrs SM lost her temper and hit her with a wooden spoon. She said that was once, but there is other evidence including from her husband that she has a temper. We found the evidence of Mrs SM that it was not wholly unusual for a child to be asked to be taken into care, troubling. It was accepted that Miss SaM had written to her mother in 2005 but no action appears to have been taken to make her feel more loved. In 2008 Miss SaM was sexually abused by a scout leader. The psychiatrist told her the issues she needed to deal with were not just the abuse but also issues from her childhood.

82. We found Miss SaM to be very defensive and aggressive in response to questions. We did not find her objective. Despite now being an adult she appears to have adopted her mother's view that the family were let down by professionals, that FM has lied and she, Miss SaM, does not want to see her. We do not accept that her medical problems explain why at the age of 14 she would ask to be taken into care, rather than seeking support within her family, especially from her mother.

83. Mrs SM contacted Children's Services in 2005 asking for her second daughter Miss AbM to be taken into care with two logged instances of physical fighting. In January 2006 when Miss AbM was 16, her mother contacted Children's Services again and said she was on the verge of evicting her from the family home. On 17 November 2011 Miss AbM contacted the Housing Options Team stating she had been 'kicked out'. In a statement upon which we place little weight not being satisfied that it was her own words or if they were upon which she didn't intend to be questioned, she sought to explain that she had exaggerated the position in order to get public housing. That in itself would be a serious admission for her to make. Again we do not accept the explanation that her challenging teenage behaviour and relationship with an older man explains such a serious step.

84. We then turn to the issue of the sexual abuse which was the trigger for these proceedings. We find it of note that FM made disclosures to a school friend on 7 October 2010, not her mother. We reject any attempt to minimise the severity of these offences. JM was represented by a solicitor. He pleaded to three counts of rape of a female under 13, two counts of rape of a female under 16, and one count of a threat to kill which supports FM's description of a knife being held to her throat and two counts of possession of indecent images of children. We have no reason to go behind those pleas of guilty, made on legal advice.

85. FM has been portrayed as a liar. Had she not become pregnant and therefore it was possible to carry out a DNA test on the aborted foetus, we

very much doubt that her account of what happened in the family home over what we accept is a very lengthy period of time, possibly from as early as 2007, would have been believed. It is the only issue on which her word has not been challenged, even if her level of collusion has.

86. The case for Mrs SM sets out a troubling history of FM running off, self harming and making allegations and then withdrawing them. We accept Ofsted's analysis that none of this happened before the allegations of sexual abuse emerged. We were concerned by the fact that Mrs SM did not appear to link in any way, post-disclosure behaviour with trauma. The chronology establishes that her family including her mother were not able to support her. On 21 November 2011 FM ran away from home. The picture the evidence presents is one of a troubled and traumatised young woman, but not one who because of her mental illness makes up stories or one who has set out to deliberately harm her family.

87. We accept the evidence of the Mental Health team who have worked with FM for some time that the manner in which parental contact was cut off lacked sensitivity for her welfare and recovery. Her parents have made some contact and she with them but we accept the conclusions of the mental health professionals that FM is being ostracised and excluded for telling. We accept that Ms Bryson accurately recorded FM's view when she says that all children who have made a complaint about the parent then go on to withdraw it save for her and that she was having to pay the price, namely exclusion from the family. That fits with the evidence overall including Mr AnM accepting his wife had a temper and could exclude and ignore her children for some considerable time.

88. The case for Mrs SM is that what FM says cannot be relied on and without her evidence, there is no case for being concerned about AM. Looking overall there is other evidence. We accept that concerns raised under the Child Protection Plan under the category of emotional abuse on 14 December 2013 have not been addressed. We cannot know and probably never will know what AM may have witnessed in a household where for some years inappropriate sexual behaviour went on, possibly from 2007. There is clear evidence that pornographic sites involving young teens were accessed, even after JM left the home. In those circumstances we cannot accept Mrs SM's explanation that when AM pinched a teacher's breast in school on 24 February 2014 it was just a playful gesture. There are other concerns raised by the school of sexualised behaviour and references by AM to rape and pornography.

89. This is a complex picture. On the one hand, Mrs SM can satisfy inspectors that she is an outstanding childminder. However, she has patently failed to apply that learning and those standards, particularly around safeguarding issues, to her own children.

90. We have no reason to doubt that Ms McNamara faithfully recorded what AM said to her when she visited him on 28 August 2014. He was positive about seeing social workers, even though he knew his parents did not like

them. There is no real reason why he would then say something so different by November 2014, other than to accord with his parent's view.

92. We had very particular concerns about AM, a child with learning difficulties being taken to a solicitor to state his view that he wanted nothing further to do with social workers. That may have been a view accurately recorded by his solicitor. She does not state if she found him to have capacity. Everything that we have read about AM which, in the interests of confidentiality we do not set out in any detail, we have real reasons to doubt that he is competent to fully understand the impact of what he was saying. He appears to have taken his parent's position. Pressure to make such statements in such a manner amounts to emotional abuse on a vulnerable child, vulnerable by way of his age and learning difficulty. This is in addition to what AM may have witnessed between his siblings as well as the fracturing of the family unit after disclosure (one sibling left the home immediately, then served a custodial sentence and cannot be seen without a social worker present; another sibling taken into foster care and subsequently detained under the Mental Health Act).

93. In her closing submissions to us, Mrs SM highlighted that Ofsted have failed to provide the best evidence. It is difficult to see how they can provide evidence when she has, we accept, not co-operated. She referred to being 'libelled' by social care but we found no evidence of that. There was, we find, ample cause for concern. Overall our view is that if Mrs SM had criticisms of social care and the provision they had made then she would have done better to work with them and highlight perceived difficulties in the support she was being offered. Mrs. SM has withdrawn co-operation. We further find that her relationship with both Social Care and Ofsted has irretrievably broken down.

94 We reject her submission that in any sense she was being 'blackmailed' to work with social care. The public must have a confidence that those who mind children will work with the relevant authorities. Mrs SM had not been able to step back and reflect on what she could have done differently, or to more calmly approach issues of criticism of care of her own children. Taken as a whole, the history of this family going back some ten or eleven years overall is very concerning.

91. Therefore, we find that Ofsted have made out their case. There is a significant history of child protection concerns regarding each of Mrs SM's own five children. AM aged 11 has twice been the subject of a Child Protection Plan under the category of emotional abuse. This may be now changed to a 'Child in Need Plan' but we are not satisfied that that is because the degree of risk has in any way lessened and that the issues identified addressed. We take account of the difficult position of Social Care who went so far as to set up a PLO meeting, which we take account of is intended to be a last step before care proceedings are issued. We are mindful that AM attends school, his care seems good and the issue is emotional abuse which is always very difficult to support with hard evidence. .

92. It has not always been easy to reconcile the very positive descriptions of Mrs SM's childminding, both from the regulators and parents who used her

care, and what at times we have regarded as a very excluding attitude towards her own children, particularly her daughter FM, who was subject to very serious abuse, under her roof.

93. In reaching our decision that the cancellation should be upheld, we have weighed proportionality. We have kept in mind at all times that childminding is Mrs SM's way of earning a living and has been for over 22 years. A number of parents spoke positively of her care. Some said they had knowledge of safeguarding but had never seen anything that made them suspect sexual abuse was happening in the home. We of course are seeing a much wider range of concerns. We acknowledge the positive aspects of various inspections. However, we are satisfied, given the serious nature of the concerns to emerge from the allegations that have been made out by Ofsted to the relevant standard, together with the findings of fact set out above, Mrs SM is no longer suitable to be a childminder.

94. In considering whether the sanction imposed by Ofsted is proportionate, we have had regard to the duration of the concerns and the failure of Mrs SM to demonstrate insight into their significance. Neither party suggested conditions nor could we see any that could realistically be imposed. Having had the benefit over four days of observing and listening to Mrs SM, we conclude that her attitude is one of defence and attack, rather than self-reflection. We have absolutely no doubt that she will find this a very hard decision to accept. No doubt she will seek to identify errors in our approach.

Decision

We dismiss the appeal.

**Tribunal Judge Melanie Lewis
First-tier Tribunal (Health Education and Social Care)
Date Issued: 18 December 2014**