

## CARE STANDARDS

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

[2015] 2504.EY-SUS

Dribble Drabble Day Care Ltd

Appellant

-v-

Ofsted

Respondent

### DECISION

#### BEFORE:

Mr Hugh Brayne (Judge)  
Ms Heather Reid (Specialist Member)  
Mr Graham Harper (Specialist Member)

Heard at Manchester Employment Tribunal on 14 October 2015

Mr King, counsel, represented the appellant.  
Ms Birks, solicitor, represented the respondent

#### The appeal

1. The appellant appeals against four decisions dated 15 September 2015 to suspend its registration as a provider of childcare for six weeks until 26 October 2015. The decisions relate to the appellant company's premises at
  1. 77 Alexandra Road, South, Manchester M16 6GJ
  2. The Pineapple, Garratt Way, Manchester M18 8HE
  3. Kingfisher Close, Manchester M12 4PW

4. 39 Russell Road, Whalley Range, Manchester M16 8DH

### **The legal framework for suspension**

2. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. This Act establishes two registers of childminders: the early years register and the general child care register. Section 69 (1) Act provides for regulations to be made dealing with the suspension of a registered persons' registration. The section also provides that the regulations must include a right of appeal to the tribunal.
3. Under the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 when deciding whether to suspend a childminder the test set out in regulation 9 is  
that the chief inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.
4. The suspension shall be for a period of six weeks. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist.
5. "Harm" is defined in regulation 13 as having the same definition as in section 31 (9) of the Children Act 1989, "ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another".
6. In determining risk, the Tribunal stands in the shoes of the Chief Inspector, looking at reasonable belief both at the date of the original suspension and the date of our own decision.
7. The burden of proof is on the respondent. The standard of proof 'reasonable cause to believe' falls somewhere between the balance of probability test and 'reasonable cause to suspect'. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child might be at risk.

### **Preliminary issue – validity of suspension notices**

8. In directions issues the day before the hearing, Judge Brayne requested submissions on the validity of the suspension notices. This was because the wording relating to registrations under Chapters 2 and 3, and of section 69, appeared to relate to individual childminders not corporate providers. At the start of the hearing we considered the written submissions and invited brief oral submissions. We are now satisfied, having considered in particular sections 36 and 55 of the Childcare Act 2006, that the power of suspension applies to providers, such as Dribble Drabble Nursery Ltd, as it does to individual childminders.
9. We therefore reject Mr King's application to strike out the notices of suspension.
10. Mr King also made submissions as to the validity of the notices of suspension on the basis firstly that they lacked clarity and secondly that they had been amended the day after they were issued to remove

inappropriate references to a spent conviction. However after questioning Mr King about the submission, he agreed that these matters relate to weight of evidence of risk not validity of the actual notices.

### **The hearing**

11. The Tribunal makes a restricted reporting order under Rule 14 (1) (a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any child minded by the appellant, so as to protect their private lives.
12. We heard in turn from the respondent's five oral witnesses, PC Coulson, Patricia Graham, Regulatory Inspector for Ofsted, Elizabeth Grocott, Regulatory Inspector for Ofsted, Diane Plewinska, Senior Officer for Ofsted, and Elaine White, Senior Officer for Ofsted. It was agreed that examination in chief was not required, as each witness had produced a witness statement or statements. Each witness confirmed his or her statement and was tendered for cross examination, questioning by the Tribunal, before, where necessary, being re-examined. The respondent's oral evidence was concluded by the time of the lunch adjournment.
13. Before adjourning we asked if Mrs Noreen Aslam, the responsible person for the appellant company, had, and if so could produce, the night book which would record events of relevance to the appeal. This was produced after the lunch adjournment. It was the subject of questions put to Mrs Aslam. It was returned to Mrs Aslam after the hearing. A night log comprising four sheets for relevant nights in September 2015 was also produced and returned.
14. The appellant's first witness was Ms Ayesha Malik, project worker at the Saheli Refuge. She was in attendance throughout the morning. She had been the subject of a witness summons and, we were told at 2.15 pm, could only remain until 3 pm because of a medical appointment. Ms Birks objected to hearing her evidence, on the basis that no witness statement had been produced. Mr King apologised for the failure, accepting that he could have arranged for one to be produced no later than the end of the lunch break. We retired briefly to consider whether to hear from the witness and decided it was appropriate to do so notwithstanding the lack of notice and of a witness statement. Ms Birks in her submission had identified no detriment, and the evidence was, on Mr King's submission as to relevance, potentially of some importance to a particular allegation. Because of the time pressures, and with Mr King's agreement, the Tribunal carried out the initial questioning of the witness. Mr King had the opportunity to examine her but said this was not now necessary, and she was tendered for cross examination.
15. After Ms Malik completed her evidence, Ms Graham, by agreement, was recalled to give brief evidence on the night book which had not been available when she gave her evidence. After this Mrs Noreen Aslam, sole

director and responsible person for Dribble Drabble Nurseries, gave evidence. In reliance on her witness statement, Mr King examined her only briefly. She was then cross examined and questioned by the Tribunal before re-examination. Nicole Mulrennan, employee of the appellant company, was the final witness. There was no examination or cross examination, and the Tribunal questioned her only briefly.

### **The issues**

16. The appellant company is separately registered at four sites as a provider of childminding services. Mrs Aslam is the sole director. She is herself a former childminder, but is not now registered as such.
17. The notices of suspension, as corrected on 16 September, identify three areas of concern. These are risk of harm from the employment of Mr Raheel Rehman as driver for the settings; the suitability of Mrs Aslam's son, Mr Salman Gull; and "other safeguarding and suitability matters requiring further investigation".
18. It is not disputed that Mr Rehman was employed by the appellant, and it is now agreed that Mr Rehman is not a suitable person to be employed by the appellant in any capacity. Additionally the evidence that he has been dismissed is not disputed. There is no submission that he personally presents a risk to the children minded at any of the sites. .
19. Mr Gull's involvement with Dribble Drabble is in dispute. The appellant's case is that he has had no involvement and has not attended the premises. The respondent submits he has been seen on the premises and there is evidence that he is paid by the company. The respondent submits that if there is a possibility that he is involved with the nursery, this requires further investigation, and if confirmed, it puts the children at risk because of his character and associates.
20. There have been a number of safeguarding and compliance concerns, documented in the hearing bundle, which arose in the period leading up to the suspension. The respondent relied at the hearing on incidents arising when two looked-after girls, aged four and eight, were accommodated for five nights at the nursery, at the request of the refuge where their mother was then living and with social services consent, during a period when the mother was to be in hospital. It is alleged they were allowed or made to watch inappropriate material on an iPad or similar device, and subjected to other potential harms. It is acknowledged that for some two to three hours each evening while in Dribble Drabble's care they were taken to Mrs Aslam's home.
21. The general safeguarding and suitability concerns relied on by Ofsted are not freestanding. They derive, in the main, from alleged failures of judgement and understanding in relation to the above concerns. It is alleged that Ofsted and the Tribunal have been misled by statements made by Mrs Aslam about the employment of Mr Rehman; that she has provided misleading evidence about her son's involvement; and that she

- has failed to demonstrate understanding of safeguarding concerns when providing overnight stays for the two girls.
22. Ms Birks reminded us in relation to the above issues that we do not need to make findings of fact. Standing in the shoes of the Chief Inspector our task is to decide if the evidence shows a risk of harm justifying further investigation.

### **Tribunal's conclusions with reasons**

23. Before the hearing we carefully read all papers provided in the bundle, including statements of witnesses not called to give evidence orally; in making our decision we take account both of the written and the oral evidence, and written and oral submissions. We have to determine whether or not there is reasonable cause to believe, pending the conclusion of investigations, that there is a risk of harm to minded children from the continued operation of Dribble Drabble nursery: we do not, in order to make this judgement, need to consider each and every admitted or alleged shortcoming of the company. We need to identify the principal risks alleged by Ofsted and decide whether the belief in that risk is reasonably held.
24. We consider the evidence of risk in each of the areas identified above in the section headed "Issues".

### Involvement of Mr Rehman

25. Mr Rehman has a serious criminal record, including a conviction for drug supply on 14 September 2015. Mrs Aslam agreed in oral evidence that he is not a suitable employee and she sacked him as soon as she heard of this conviction.
26. Ofsted believed when issuing the suspension notice that he is Mrs Aslam's son-in-law. Ofsted does not now dispute the evidence that he had a relationship with Mrs Aslam's daughter five years ago but is not her son-in-law.
27. We cannot identify any ongoing risk from his now-terminated association with the company. The risks which Ofsted rely on relate to how Mrs Aslam handled his employment, and the evidence she then gave about this employment to Ofsted and to the Tribunal. This, it is submitted, shows poor recruitment and vetting practices, and to the extent she has tried to mislead Ofsted and the Tribunal, a serious breach of the necessary trust between provider and regulator
28. We set out, in the order in which it is found in the hearing bundle, the evidence relating to Mr Rehman (omitting repetition of material)
1. Page 44, reasons for appeal (sent with the appeal form). *"Mr Rehman was working for me but on a site where no children was present it was a pub and he was doing loads of building work and painting. He drove the van that I had to move stuff around to other nurseries... he never ever worked with children ... he never collected children from school."*

2. Page 200, email to Ofsted 1 October 2015. *“He worked for me from the end of March 2015 as a handyman and driver for my new nursery in Longsight which was not open till the 7<sup>th</sup> of September 2015. His basic dutys was painting, plastering, cleaning, gardening, picking up stuff from retailers and sorting any problems that we needed fixing in our new provision to get he provision up to an inspection standard. When Mr Rehman worked in our new provision in Longsight we did not have any children on role, as we opened on the 7<sup>th</sup> September. Mr Rehman did not go into the provision once children started care at Longsight...Mr Rehman use to do gardening at Alexandra road south provision but this was totally from outside he use to do funny dances in the garden and children could see him dancing so he got the name as Funny man. At no time was Mr Rehman allowed to work directly with children or ever left alone with children.*

*He did have a DBS check done 3 and half years ago and seeing this I did not employ him, he came to see me again in March 2015 saying he would like to have a job and I offered him a handy man all in one job. I still did not let him work with children direct. As his dedication to working for me I did offer him a 2 year contract to do all the repair work and in the near future co-ordinate pick ups with the dedicated school pick up drivers as I would have had more provisions as he was a taxi driver in his previous job he would of fitted the role perfect to make sure all drivers will pick up the children on time...*

*I also have evidence by colleagues and parents to say that Mr Rehman does not work with children and only works out of hours, when children have left the building or on weekends, to make any in door repairs.*

*He was rarely called to do the gardening while children are in the building but when he did pop round he did not enter the building and no direct contact or any harm was placed on our children.*

3. Page 205, reference given for Mr Rehman when sentenced for drug offences on 14 September 2015.

*Mr Rehman has been working for our company for the past 6 months he is a great member of our staff and is relied on for the smooth running of our nursery.*

*We have four nurseries in total and another 2 in the pipe line. Raheel will be offered a more managerial position to co-ordinate the rest of the drivers to make sure all our children are picked up from school on time...*

*Mr Raheel has had a full DBS check and we are aware of his history on the disclosure form, seeing this we as an equal opportunity business thought it would be in the good interest to give*

*this person a chance, to prove that mistakes can be put right and we have never regretted our decision.*

*We as a company do hope that you will consider a much better solution for him than a custodial sentence...*

*The kids absolutely love him and call him the FUNNY MAN, as he makes our children very happy and comfortable.*

4. Page 206 email Mrs Aslam to Mr Rehman sent on 27th September but dated 15<sup>th</sup> September 2015. *Further to our telephone conversation on Tuesday 15<sup>th</sup> September at 12.20 pm where you disclosed your conviction, unfortunately due to the conviction I am emailing you to confirm what I already said on the phone on that day, your instant dismissal from any further employment...*

5. Page 207, email Mrs Aslam to Mr Rehman 25 September 2015 and copied to Ofsted:

*You lied to me to obtain the character reference.*

*You told me that you was going to court to deal with a road traffic incident which was a total accident and you needed this reference to show that you have a good job waiting for you...If I knew that you was up for a drug charge (which the next day you told me) I would off never given you the character reference*

6. Page 208, email from Mr Rehman to Elizabeth Grocott at Ofsted.

*As your aware I was working for Noreen Aslam at her nursery branch in Longsight. My role was to get the building ready and suitable for inspection.*

*Whilst I was employed by Noreen I asked her to give me a character reference. She asked me why it was required and I said to her I needed it for a charge which was against me and I needed to show that I was working and was of good character.*

*At the time, Noreen did ask me what the charge related to and I changed the subject. At a later date when she asked me again, and I mentioned it was a minor traffic offence.*

7. Page 218 and 240 onwards: a number of letters from staff and parents, for example, parent CC at 218: *At no point during these visits did I observe any male on the premises;*, staff member Nicole Mulrennan at 240 *I have never in my five years seen any male the name of Raheel or Salman Gull in the setting [at Alexandra Road] and can confirm they have never worked with children"*

8. Page 285, witness statement of Noreen Aslam.

*Paragraph 10: On or around March 2011, Mr Rehman approached me to ask for a job. However, I did not employ him at the time because, as I recall, his DBS check took around 4 months to come through and at that stage, the vacancy was filled.*

Paragraph 11: *In March 2015, Mr Rehman again approached me for a job...I decided to employ Mr Rehman as I needed someone to help with the renovation of the [Longsight] property and to undertake general “handyman” duties. His duties consisted of painting, cleaning, gardening, and picking items up from retailers...I checked in the Early Years Foundation Stage Handbook and it was confirmed that I did not need a DBS check for Mr Rehman, due to the fact that he would be a “handyman” and help with various building work and would not come into contact with children at any point.*

Paragraph 15: *On 7<sup>th</sup> September 2015, Mr Rehman asked me if I could provide him with a character reference for a serious traffic offence, which he said was not his fault.*

Paragraph 19: *Had I known the real reason he wanted the reference, I would never have agreed to give it to him. I was naïve and I relied on the fact that I grew to trust Mr Rehman, as he was doing a good job for me – he was reliable, dedicated and hard working. For this, I am being penalised, which I consider grossly unfair.*

Paragraph 20. *In addition, Mr Rehman has not at any stage undertaken any childcare duties for me at any of my day nurseries. Any “handyman” work that needed to be undertaken internally while the children were present, would be done by him either over the weekend (when the premises were closed) or after the children had gone home during the weekdays.*

Paragraph 21: *In the reference that I drafted for Mr Rehman dated 10<sup>th</sup> September 2015...I make the following comment. “The kids absolutely love him and call him the FUNNY MAN, as he makes our children very happy and comfortable.” What I meant by this comment is that sometimes the children would see Mr Rehman outside working and he would often do funny dances, or make funny facts, which the children would laugh at. This is when the staff started calling hi the funny man. At no stage was Mr Rehman inside the building with the children and so direct contact with the children was not possible. At no point did Mr Rehman undertake childcare responsibilities.*

29. There are aspects of the above written evidence which are hard to reconcile. In her email to Ofsted of 1 October 2015, and in her character reference for Mr Rehman, she appears to wish to communicate that she has seen his DBS check. The email states “He did have a DBS check done 3 and a half years ago and seeing this I did not employ him.” In cross examination she said this particular sentence should, effectively, read as follows: “He did have a DBS check done 3 and a half years ago. Seeing that it took four months to come through last time I did not employ him.” In other words the “this” is something the reader was meant to realise was a reference to previous delays with DBS checks. We find it



- very difficult to accept this explanation. Mrs Aslam says she wrote this document under pressure, which we accept, and that she has little education, which may or may not be the case. However she is articulate and capable of running a relatively large enterprise. She asks the reader, and now the Tribunal, to believe that she is referring in this communication to delays with DBS which, up to the date of this communication, she had never previously mentioned. We do not accept this explanation. The reader could not be expected to draw that conclusion from what is a clearly written sentence, and the explanation now given as to what she meant the reader to understand lacks credibility. It is very difficult to read the document the way she suggests, and she had no possible reason to leave out that important point when writing to Ofsted. Her explanation is, in addition, wholly inconsistent with what she says in Mr Rehman's character reference, whereas the obvious meaning of the sentence is entirely consistent with what she says in that reference.
30. Mrs Aslam says in the character reference, again, that she knows about Mr Rehman's history and quite clearly wishes the reader to believe she has seen his DBS check. Her explanation during cross examination that she did not mean she had seen the DBS check, and that when referring to a second chance that she was referring to Mr Rehman having been involved in a driving incident for which he was not to blame, and that he had said he was at risk of going to prison because he already had six points on his licence, is extremely difficult to accept. Mrs Aslam cannot be expected to know the law on sentencing or driving penalties, but it is common knowledge how the points system works, and that people do not go to prison for minor traffic incidents. There is a real possibility that when giving her oral evidence Mrs Aslam was attempting to mislead the Tribunal as to what she knew about Mr Rehman's convictions at the date of employing him and at the date of giving his court reference.
31. There are discrepancies in relation to the evidence about when Mr Rehman was on site. Mrs Aslam's email of 1 October claimed to Ofsted that Mr Rehman was *never* on site when children were present. At the time she wrote it she would not have known that Ofsted already knew the content of Mr Rehman's reference. In cross examination she said *once or twice* he needed to do gardening work at Alexandra Road, where he could be seen through a glass door. She denied that her earlier email saying he had never been on site when children were there was misleading. She then said that there had been two occasions when Mr Rehman had been seen in this way.
32. Ms Mulrennan, the employee who is referred to above, initially said in her witness statement that Mr Rehman had never been on the premises at Alexandra Road. In her oral evidence she contradicted this statement by agreeing with the evidence of Mrs Aslam, that Mr Rehman had been at the site twice. Both witnesses told us he had been supervised throughout this time by the deputy manager, Ms Butt. Ms Mulrennan told us that at all

- times Ms Butt was supervising Mr Rehman she was not engaged in any other duties.
33. Ms Mulrennan's inconsistency is unhelpful to her employer's case. It is now impossible to place weight on either claim, that Mr Rehman was present only twice and supervised by Ms Butt, or that he was never on the premises. In attempting to confirm what she had earlier heard Mrs Aslam saying in oral evidence she undermined her own credibility.
  34. The language of the reference refers to a clear and strong relationship between Mr Rehman and children at the nursery, and the use of words like "used to" in Mrs Aslam's description of Mr Rehman's "funny man" behaviours suggest more than two occasions when the children would have seen Mr Rehman on site. The suggestion that Mr Rehman made the children "comfortable" is inconsistent with the children's casual sighting of a man carrying out gardening duties and performing entertaining antics on no more than two occasions. We also question the effectiveness of Ms Butt's claimed supervision, if Mr Rehman was providing this level of entertainment to children who he was not employed to have contact with. Neither Ms Butt nor Mr Rehman were asked to give evidence, so neither could clarify what actually happened.
  35. Our conclusion is that Mrs Aslam knew Mr Rehman's criminal history throughout the relevant period. Mr Rehman probably attended the site or sites on many more than the two accepted occasions when children were present. We think Mrs Aslam attempted to mislead us about all of this, making some of it up as the questioning went on. Even if we accepted her explanations, we would have to conclude that she wrote an extremely misleading reference for the court, wrongly attempting to convince the court that Mr Rehman had a significant role in the nursery's running and the comfort and happiness of the children there.
  36. By providing misleading evidence and changing her position, Mrs Aslam undermines not only her own credibility, but the level of trust between Ofsted and Dribble Drabble Nurseries. We also conclude that Mrs Aslam was willing to appoint to work at nursery sites a person who, she herself agrees, is wholly unsuitable to be such an employee.

#### Relationship with Salman Gull

37. Mr Gull is Mrs Aslam's son. The evidence relied on by Ofsted that he has been involved with Dribble Drabble Nursery is not strong. Ofsted produced a bank statement showing a payment of £200 to him from Dribble Drabble, a payment made on the nursery's normal payday. A police witness who had never previously met Mr Gull identified him once on the premises when attending on other business, at a time when Mrs Aslam's unchallenged evidence was that a number of parents were looking around the nursery with a view to placing children there. This is weak identification evidence. Mrs Aslam's explanation that she would make payments to Mr Gull from time to time to help out with her son's rent, although erratic in accounting terms, was not the subject of challenge in

- cross examination and is not strong evidence of being on the payroll. Although in relation to Mr Rehman we found Mrs Aslam an unreliable witness, the evidence that Mr Gull has had any involvement in the nursery is too weak to cause us to have any concerns as to any risk he might pose, were we to consider his suitability. Nor can we see his alleged involvement as evidence of poor judgement on Mrs Aslam's part.
38. Given this finding we do not need to consider the evidence of his suitability, or the fact that there is conflicting evidence as to whether he lives with Mrs Aslam. Mr Gull's own credibility on which addresses he uses for what purposes is not relevant.

#### The overnight stays 2-6 September

39. Ofsted's concerns are derived from disclosures made by the eldest of the two girls, an eight year old. DC Terina Arthern said in her witness statement that she had spoken to the girl at school, and the girl had said "she and her sister had been made to sleep on the floor without blankets and had been removed from the Nursery setting and taken [sic] to Noreen's house, where she was shouted at a lot and made to watch films containing violence and childbirth. [She] told me she didn't like staying at the Nursery as she had woken up alone in a room and had felt frightened."
40. Elizabeth Grocott's witness statement of 12 October 2015 adds further information provided to her by DC Arthern. At paragraph 4 she says "I was informed that child A said that Noreen shouted at her and her sister a lot and made her feel sad. She has not indicated that she was left alone in the building at any time, but at night, if child B (child A's 4 year old sister). Cried, she was told off and to "stop being a baby". She said she was made to watch a film/programme at Noreen's house, where a man had hit someone and also a film where a woman was giving birth. She said she had tried to leave the room as she didn't want to watch it, and was told by Noreen to "sit down and watch it". Child A said she slept on a very thin mattress on the floor with no pillow and a thin unclean blanket."
41. Mrs Aslam agreed when cross-examined that these allegations, if true, meet the definition of harm. The question is one of risk while further investigations take place. Risk of further overnights occurring is not argued – Mrs Aslam was careful to check with Ofsted before offering overnights, and has now been told no further overnights are permitted. Any risk which arises is not from a repetition, but from the present evidence reflecting on issues of suitability which pose present potential risks.
42. The evidence of Ms Malik was clear and compelling. There have been investigations into children at the refuge having watched birthing videos there. Ofsted could investigate this further, but we see little chance of any conclusion being reached other than that this is what the child was referring to, not seeing them at Mrs Aslam's home. Ofsted has not yet received the transcript from the police of their interview with the child, but it is in our view unlikely to change any conclusions which could be reached

- already. Given that this child has probably confused what happened in the refuge with what happened at Mrs Aslam's house, and no further information is likely to come to light, there is not enough evidence to conclude that the references to shouting and being made to watch a violent video present risk. Ofsted has already withdrawn the reference to being left alone.
43. However our concerns are not limited to these allegations. Mrs Aslam, with the mother's explicit agreement, took the two girls home each evening. Since Ofsted has not made any submissions about the fact that Mrs Aslam is not herself registered as a childminder, we place no weight on our own potential concerns on that matter. What concerns us, after inspecting the night book, which is in fact the daybook for the relevant site, is that it is inaccurate in relation to the girls being taken out each evening. Mrs Aslam confirmed to the Tribunal that she understands the purpose and importance of the book showing when every person arrives at and leaves the nursery. Yet she failed to understand our questions as to why no entry showed that these two girls, placed into the nursery's care, had been taken off site each evening at around 6.30 and brought back at around 9 pm. She said this would be reflected in the staff day book, which in our view shows a misunderstanding of the function of accurate records in the day book for the children. Children's departure and return, as well as that of the staff, must be recorded accurately. She should understand that.

#### Suitability

44. In the period leading up to suspension Ofsted was closely involved in Dribble Drabble Ltd. There were inspections leading to agreed actions, a welfare notice, and potential warning (though the latter was not followed through). As a result of shortcomings, Mrs Aslam took determined steps: she demoted a member of staff responsible for one of the sites where several problems were identified, many improvements were recorded, not all of which had been required. All of these problems, which are detailed in witness statements and do not need to be addressed here, were being addressed through means other than the suspension.
45. We note, from the witness statements of staff, that all staff other than Ms Mulrennan who chose to provide evidence that Mr Rehman was not on the premises had only been employed for a matter of weeks. The nurseries were therefore undergoing a period of some significant change at the relevant time, none of which appears to be a concern to Ofsted. No specific concern was identified at the hearing in relation to the issues raised in earlier inspections, or when the notices of suspension were issued. In particular Mrs Aslam was not questioned about them and given a chance to explain or qualify the evidence. We do not, therefore, ourselves identify in any of that history a present cause for belief in risk of harm. All matters were being dealt with in other ways, outside the suspension process and present appeal.

46. Our concerns are limited to those raised in the discussion above. We remind ourselves of the threshold for suspension. We must, in the shoes of the Chief Inspector, ourselves find reasonable cause to believe that the continued provision of childminding services may present a risk of harm. We find the test is satisfied, not because actual harm has been demonstrated, but the management of the four sites is in the hands of a director who has misled the Tribunal about the employment of Mr Rehman, a person who is not suitable to be employed in this nursery. She has misled us about the extent of his contact with children. She has kept inadequate records of children's movements. The risk of harm arises from the fact that until Ofsted can be satisfied in its regulatory role that trust has been restored, effective regulation is impossible. The risk of harm is therefore a generic risk that overall quality in these nurseries cannot effectively be monitored by the regulator.
47. We do not consider the problem to be irremediable. There is considerable evidence that in most respects Mrs Aslam is wholly co-operative, and that she works well with Ofsted staff. She has been proactive, for example, in seeking approval for overnight stays and she has responded quickly and effectively to earlier concerns. She has never hidden her own conviction for fraud in 1999. The question of whether trust can be restored is an issue which itself requires investigation during the period of suspension. Until Ofsted is satisfied these nurseries can be effectively regulated, the suspension remains necessary.

**Order**

The appeal is dismissed.

**Judge Hugh Brayne  
Care Standards / Primary Health Lists  
First-tier Tribunal (Health Education and Social Care Chamber)**

**Date Issued: 16 October 2015**