Care Standards

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

Heard on 25 June 2018 at Doncaster Justice Centre

[2018] 3349.EY-SUS

Before
Mr Hugh Brayne (Judge)
Ms Denise Rabbetts (Specialist Member)
Mr Mike Flynn (Specialist Member)

BETWEEN

Emma Victoria Battersby

Appellant

-v-

Ofsted

Respondent

DECISION

Representation: Gordon Reid, Sternberg Reid, for the Respondent; Shaun Perera, friend, for the Appellant (part of the hearing only)

The appeal

1. The Appellant appeals against the Respondent's decision of 17 May 2018 to continue the suspension of her registration to provide childcare at non-domestic premises at Flutterbies, Unit 3, Stone Row Way, Rotherham Road, Parkgate, Rotherham S60 1 SG. The suspension was first issued on 21 February 2018, and continued on 3 April 2018.
2. The present suspension expires on 26 June 2018.
3. In a decision dated 16 May 2018 the Tribunal dismissed an appeal against the decision of 3 April 2018.

The legal framework for suspension

4. 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.

5. 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.

6. The suspension shall be for an initial period of six weeks, which can be extended by a further period of six weeks where based on the same circumstances. Thereafter it can only be extended, under regulation 10(9) where it is not reasonably practical for the Chief Inspector, for reasons beyond her control, to complete any investigation into the grounds for her belief under regulation 9, or, as in the present case, for any necessary steps to be taken to eliminate or reduce the risk of harm referred to in regulation 9. In those circumstances the suspension may be extended until the necessary steps have been taken.
7. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist.
8. "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".
9. 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.
10. 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.

The hearing

11. We were not asked to make a restricted reporting order. We do not refer to any individual children in this decision and do not consider such an order to be needed.
12. The various preliminary matters dealt with before evidence was taken, and procedural matters dealt with in the course of the hearing, are considered below.
13. All witnesses gave evidence on affirmation.
14. The oral evidence on behalf of the Respondent was given by two officers from Ofsted. Diane Plewinska is an Early Years Senior Officer. She made a witness statement for the previous suspension appeal, but her oral evidence was based on matters raised in witness statements dated 6 and 23 June 2018. Helen Blackburn is an Early Years Regulatory Inspector and she also produced a witness statement for the previous appeal, but gave oral evidence in relation to the contents of two further statements of 6 and 23 June 2018. Both witnesses confirmed the contents of these witness statements, were asked brief questions by Mr Reid, cross examined by Mr Perera, re-examined, and asked very brief questions by the Tribunal.
15. The Appellant gave evidence in the absence of Mr Perera (see below). She confirmed her witness statement of 19 June 2018. She had nothing she wished to add before being questioned. She was asked questions by the Tribunal about the nursery and her understanding of domestic violence and risk, including risk from Mr Perera. She was cross examined by Mr Reid, interrupted on occasion by the Triubnal to clarify particular answers. After the cross examination she confirmed she had nothing to add.

16. After the conclusion of the Appellant's evidence Mr Perera resumed his role as representative.
17. We allowed frequent breaks to allow for reading of new witness statements, and consultation and reflection in relation to procedural matters.
18. After all submissions were concluded we indicated that, in view of the expiry on 26 June of the suspension, we proposed to indicate our decision orally. The parties both welcomed this proposal. After a short deliberation we notified the parties that the appeal was dismissed and that reasons would follow.

Preliminary and procedural matters

19. The Respondent made two applications on 21 June 2018, which Judge Khan, in directions issued 22 June 2018, directed should be considered as preliminary matters. The Appellant made two applications which Judge Khan also directed should be determined as preliminary matters
20. The Respondent's first such application was that Shaun Perera should be barred from acting as the Appellant's representative; the second application was that, in the event that the first application was refused, Mr Perera be excluded from the hearing while the Appellent gave her evidence.
21. The Appellant submitted an application to bar the Respondent from further participation.
22. The Appellant also submitted an application to exclude items of evidence submitted late by the Respondent.
23. The Respondent sought at the start of the hearing to introduce two new witness statements, a second statement from Diane Plewinska dated 23 June 2018 and a second statement from Helen Blackburn, of the same date.

Status of Mr Perera as representative

24. In the hearing of 10 May 2018 and in an earlier order made on the papers by Judge Burrow on 3 May 2016 the Respondent's applications to bar Mr Perera from representing the Appellant were both refused. The application is now renewed, on the basis of the new circumstance that Mr Perera is now a witness in the appeal. The Respondent is correct to submit that, if Mr Perera were a barrister or solicitor, he would breach the relevant professional code by giving evidence and representing a party in the same matter. There is no such rule for a non-legal representative, however anomalous that may be, and we are guided by the overriding objective of this Tribunal, under Rule 2 of the Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care) Rules 2008 as amended. We must ensure a fair and just procedure, bearing in mind the resources of the parties, the need for flexibility, and ability to participate.
25. The Respondent pointed out in written submissions that the issue before the Tribunal is the ability of the Appellant to safeguard children, where the main element of risk was the alleged coercive control of the Appellant by Mr Perera. Further we note that a finding that the Appellant had little understanding of that risk had already been made by the Tribunal. Mr Reid's submissions at the hearing echoed this point.
26. We noted that the Appellant had identified Mr Perera as a witness, who would himself give evidence on that risk. We also took account of the fact that Mr Perera is noted in evidence to have claimed on more than one occasion to be owner or part owner of Flutterbies. It was not necessary for us to make findings on ownership, but we agreed with Mr Reid that the possibility of his financial interest in the outcome of the appeal could impact on his ability to represent the Appellant with any measure of impartiality. In his witness statement of 19 June 2018 he pointed out that his employment with the nursery was at stake.

27. We are persuaded that the conflict created in these circumstances, in particular questioning witnesses and the Appellant in relation to the risk he himself is said to present makes his role as representative impossible, and would severely impact on the ability of the Tribunal to proceed efficiently and justly. Mr Perera referred to Judge Jacobs' book *Tribunal Practice and Procedure,* which Judge Burrow had cited in his order of 3 May 2018, and cited a case mentioned there. We did not have the full report but, it appears from an extract from Judge Jacobs' book obtained on a colleague of the Appellant's mobile phone during a brief break and read out to us by Mr Reid, this was a first instance tribunal case where the same person was allowed to be interpreter, advocate and witness. Without the full report little weight can be attached, but we do note that the case was given as an example of the fact that such a decision is possible, not as authority that a Tribunal is obliged to allow a witness to act as a representative in all circumstances.

28. Mr Perera submitted that the Appellant did not have the resources to pay for an advocate, nor the familiarity with Tribunal procedure necessary to represent herself. He said he had such experience. Mr Reid submitted that the Respondent had advised the Appellant of the possibility of *pro bono* representation, or seeking help from a lay person who is not otherwise interested in the outcome or a witness. He pointed out that the Appellant had told the previous Tribunal that she was not legally represented because of her disappointment with the advice of her solicitor, not the difficulty in paying. Nevertheless we do accept the Appellant's submission that she cannot pay for a lawyer now, particularly as she has received no fees since she was suspended.

29. In light of the above conflict, we directed that Mr Perera's status in the proceedings be that of either witness or representative, not both. A witness who had been found (see below) to exercise a coercive influence over the Appellant, and claimed to have an interest in the outcome, could not properly fulfil the role of representative in presenting a case that the Appellant could protect children from the risk he himself had been found to potentially present. The Appellant then told us that she had decided she would not rely on Mr Perera's testimony in order that he could continue to represent her.

30. Mr Reid had applied, should that happen, for Mr Pereira to be excluded when the Appellant gave her evidence. The reasons were those given by the Tribunal in its decision of 16 May 2018 when it directed he be excluded at that point of the proceedings. We agree with those reasons, in light of the findings of the earlier Tribunal, and do not need to repeat those reasons here in full. In summary there is good cause for concern that Mr Perera's influence over the Appellant would prevent her from giving frank evidence about how she would deal with any risk of harm to children he might pose. We confirmed this decision before the Appellant was due to give her evidence.

Notice of withdrawal

31. At the preliminary stages of the hearing, we discussed with the Appellant her options in light of our decision to bar Mr Perera from being both witness and representative. We raised the possibility that she might apply for an adjournment. We questioned Mr Reid as to what Ofsted would do if the Tribunal adjourned to allow the Appellant to seek different representation. As well as pointing out that the Appellant had had time to seek this earlier, Mr Reid said no adjournment could meaningfully take place, because the suspension would expire the day after the hearing. There would be no point in holding an adjourned hearing into a now-expired suspension. Ofsted would therefore be obliged to renew the suspension without the benefit of taking into account the Tribunal's decision, and a new right of appeal would arise. In place of an adjournment application, the Appellant could, he suggested, instead choose to give notice of withdrawal of the appeal, though under Rule 17 of the Tribunal's Rules the Tribunal would have to give its consent. At that stage he did not indicate that he had

instructions to submit that the Tribunal should withhold consent. The Appellant decided, of the three options available to her – relying on Mr Perera as witness, relying on him as representative, or seeking to give notice of withdrawal, she would want the hearing to go ahead, and choose to proceed without Mr Perera's evidence.

32. At the stage of making that decision the Tribunal had not yet decided on the Respondent's second application, which was application to exclude Mr Perera while the Appellant gave oral evidence. Having already heard submissions in the preliminary stages of the hearing, we determined this issue at the point when the Respondent's evidence had been completed and the Appellant, as sole witness, was due to give her evidence. We decided, for reasons already explained, that Mr Perera should not be present. It was at this stage, which was in the early stages of the afternoon, that the Appellant said she had changed her mind about withdrawing the appeal, and wished to give notice of withdrawal. We understand the reasons for this; indeed earlier in the hearing the Judge had pointed out that this would allow time to work with Ofsted to address concerns as to her ability to safeguard children, without the risk, at that stage, of a second adverse finding by a Tribunal. We believe, had the notice of withdrawal been made at that earlier stage, that the Respondent would not have submitted that the Tribunal should withhold consent. In the event Mr Reid forcefully pointed out the significant resource already invested in preparing for this appeal, the fact that all Ofsted evidence had now been presented, and it was in the interests of the public and of children, for a decision now to be made. We accepted these submissions and refused to accept the notice of withdrawal.

Late evidence

33. In light of the analysis of the issues below (paragraph 36 onwards), agreed by the parties, Mr Reid did not renew his application to admit documents submitted late, other than the two witness statements.

34. Mr Reid's reasons for seeking the admission of these new witness statements was twofold: firstly the witnesses would in any event be entitled to give this evidence orally, so to have it in advance in writing was more efficient; and secondly the statements could not have been made any earlier as they were a response to statements provided by the Appellant and Mr Perera on 19 June 2018. Mr Perera's objections were that he and the Appellant had not had time to read these statements.

35. We accept Mr Reid's submisisons, and admitted the statements, but adjourned to allow sufficient time for the Appellant and Mr Perera to read these.

Barring application

36. The grounds of application, in so far as they relate to matters of evidence already considered by the Tribunal in its 16 May decision, should have been raised then. We do not consider them further. In any event where the Respondent is alleged to have given inaccurate evidence, for example in relation to Mr Perera's history, the Respondent was reliant on information supplied by external agencies, and corrected any errors once known. Minor conflicts in evidence are not reasons for a party to be barred.

37. In so far as the application relates to a submission that the suspension decision was unlawful and beyond the powers of the Respondent the decision on this was refused. The submission was repeated in Mr Perera's closing submissions, and our reasons for refusing the barring application are set out in paragraphs 43 and 44 below.

The issues

38. An appeal against the suspension of 3 May 2018 has already been determined by this Tribunal on 10 May 2018. The reference is [2018] 3302.EY-SUS. It was dismissed in a decision issued on 16 May 2018. In paragraphs 17 to 22 the Tribunal outlined the events leading up to the suspension issued on 19 February 2018. It identified an

incident at the nursery involving the Appellant, Mr Perera, staff and police officers. It considered the Respondent's decision making process and reasons. It went on to identify the Respondent's further investigations, including evidence of previous evidence relating to the nature of Mr Perera's involvement with the nursery, his history and involvement with the Appellant, and unrelated previous concerns raised by some parents. It identified the consideration and the reasons set out by the Respondent for the continuation of the suspension. It noted that a notice of intent to cancel registration was sent to the Appellant on 3 May 2018. In paragraphs 30 to 52 it considers in detail the evidence received in relation to the appeal in relation to the above matters. In paragraphs 53 to 60 explained in full the reasons the Tribunal was satisfied that the test of belief there may be a risk of harm was met.

39. We have ourselves noted, as did the Tribunal in the decision of 16 May 2018, that on an appeal against suspension the Tribunal is not required to make findings of fact. Both parties recognise this. The Tribunal nevertheless found credible police and staff evidence of Mr Perera's behaviour on 19 February 2018, and of his intimidating behaviour towards staff. It found the Appellant should have been aware of potential safeguarding issues arising from this. It was not persuaded that the Appellant understood the concept of coercive control and did not see the link between Mr Perera's behaviour and potential exposure of children to risk of harm. The Appellant had not taken appropriate action to address potential risk presented by Mr Perera. Instead she had allowed him access to the nursery the following day. There was at that time no reason to believe the Appellant would comply with any agreement not to attend the nursery when children were present. The Tribunal did not accept that additional CCTV would provide effective protection.

40. The parties agreed with us that it is not for the present Tribunal to reconsider these matters. This approach is in any event supported by case law. We note the Immigration Appeal Tribunal's decision in *Devaseelan*, [2002] UKIAT 00702, upheld for example in *Mubu* [2012] UKUT 398. Although the reported authorities arise in the context of immigration law, they clearly set out a general principle that where a party brings proceedings involving factual issues between the same parties already finally determined, the starting point for the subsequent Tribunal is those findings. In *Mubu* it is clear the Upper Tribunal, in confirming the requirement in immigration cases to adhere to the *Devaseelan* guidelines, was applying well known principles of English law, citing in support, for example, *R (Coke-Wallis) v Institute of Chartered Accountants* [2011] UKSC 1. The Tribunal's findings in the decision of 16 May are not binding. However the Tribunal can only revisit them if new matters have arisen, or there is evidence which relates to the findings which could not reasonably have been brought before the earlier Tribunal. In the present appeal, there is no evidence now before us relating to the matters we identified above (paragraphs 15 and 16) in the Tribunal's decision of 16 May 2018 which could not have been raised then. The decision of 16 May 2018 has not been appealed. The issues before the present Tribunal are therefore confined to matters which have arisen since then, namely evidence of the measures put in place by the Appellant to address the risk of harm and, in the Respondent's case, new evidence allegedly indicating possibility of risks not previously considered.

The evidence

41. In light of the above analysis of the issues, much of the evidence, including CD-Roms provided to the Tribunal members showing CCTV footage from 19 February 2018 and the recording of the 999 conversation on that date, became largely irrelevant. In that the parties, including the Appellant and on her behalf Mr Perera, agreed that the Tribunal had found there to be a cause for belief in risk of harm to children from the latter's behaviour, the relevant evidence was solely that which would show whether risk had been reduced such that the requirements of Regulation 9 were no longer met.

(It was not possible, however, altogether to ignore the earlier evidence, and it is mentioned where of particular relevance.)

42. The most important evidence was the witness statements and the oral evidence referred to above (paragraphs 14 and 15).

Tribunal's findings and reasons

43. Mr Perera did not hear the Appellant's oral evidence, and confined his closing remarks to the issues raised in his strike out application. The essence of the submission is that suspension is not available to the Respondent in circumstances where an emergency cancellation of registration route is available under section 72. He relied on a First-tier Tribunal case *JS v Ofsted* [2013] UKFTT 152. The Judge in that case, Judge Rowland, was sitting as a First-tier Tribunal Judge, notwithstanding that he is an Upper Tribunal Judge. As such this decision is not binding. In any event any observation as to what process is appropriate does not show that following another process is unlawful. Judge Rowland's observations cannot reasonably be interpreted as implying that Ofsted may be acting unlawfully by invoking regulation 10(3) to extend a suspension. No First-tier decision could conceivably have the effect of making unlawful any reliance on the powers and duties set out in the Regulations.

44. Regulation 10(3)(a) explicitly provides for continued suspension after 12 weeks where it is not reasonably practical, for reasons beyond the control of the Chief Inspector, for necessary steps to be taken to eliminate or reduce risk of harm. This regulation provides for a circumstance where an investigation is completed and risk remains. (In any event, in so far as new risks have been identified in the present appeal, in light of fresh evidence from the Appellant, the circumstances may need to be investigated during a further suspension under Regulation 10(3)(b).)

45. Mr Perera relied on Judge Rowland's observations in *JS* that where risk is not removable section 72 is to be used. This is an observation relevant to the particular circumstances of that case. We do not need to explain why the facts are not comparable, because the evidence does not in any event lead to the conclusion that risk is not now removable. Both Ofsted witnesses clearly stated an opinion that it could not be reduced, but they also gave evidence of ongoing attempts to meet with the Appellant to talk to her about steps she is or will be taking, or has taken, so that they can evaluate the level of risk. The witnesses both expressed a clear willingness, in line with the legal framework, to keep the need for a suspension under continuous review. The evidence before the Tribunal shows repeated and ongoing attempts to meet with the Appellant for this purpose, evidence which is not disputed (though for reasons not clear there has been no response as yet from the Appellant). In any event, even if we were satisfied that the witnesses themselves thought risk could not now be reduced, in an appeal it is for the Tribunal, not the witnesses, to make that decision. If the evidence demonstrated that risk was reduced or eliminated, we would make the appropriate decision.

46. Before we consider he evidence in relation to addressing risk under Regulation 10(3)b) we briefly consider the submission from Mr Reid that there is new evidence which is relevant under Regulation 10(3)(a), evidence which gives additional reasonable cause for a belief that children may be at risk but which only become known after the Appellant's and Mr Perera's witness statements were received. The Appellant gave evidence of health concerns, and of a condition which, she said, makes her unable to express herself clearly under stress. Given findings already accepted, for present purposes, of controlling and coercive behaviour by Mr Perera, the ability of the Appellant to safeguard children effectively given these difficulties raises a new concern, a new cause for a reasonable belief that children may be at risk, when considered in light of other information. Ofsted needs to investigate it. This, on its

own, justifies the belief of the Chief Inspector, and now the Tribunal, that there may be a risk of harm. This, on its own, would justify the dismissal of this appeal.

47. Steps taken by the Appellant to address risk, according to her statement and her oral evidence, comprise revisions to a range of policies, though no detail or copies of these changes was available to us, so the value of this evidence was not significant., She has undertaken an on-line domestic violence training course. Ms Blackburn's evidence was that passing this course required an 80% success rate on 15 multiple choice questions, where the candidate has unlimited opportunities to repeat the attempt. Success is therefore guaranteed. We agree that the value of the course cannot be fully understood unless and until the Appellant has talked in some depth with the Respondent about her understanding of protecting children where there may be elements of domestic abuse. The examples used in the material, Ms Blackburn told us, involved an eight year old child, so exploration of the Appellant's understanding in relation to children in the early years is also important. Further, there is no evidence that the course has equipped the Appellant in any way herself to withstand any coercive behaviours of Mr Perera.

48. We were disturbed by the shifting nature of the evidence given by the Appellant in relation to Mr Perera's ongoing involvement in the nursery. We have already noted that Mr Perera said in his witness statement of 19 June that his own employment was at stake. He also drew attention to having himself taken a domestic violence training course, and of his understanding of the need to keep his voice calm when in the presence of children. The clear intent of this evidence is to show that he poses a reduced risk to children. We note the evidence that Mr Perera told Judge Khan, in the course of the telephone hearing into the Appellant's strike out application, that a new remuneration policy would reduce the likelihood of arguments over money arising. All of this evidence indicates an ongoing role for Mr Perera. There is also an inconsistency in the Appellant's evidence that Mr Perera is not an employee and is merely paid when he submits an invoice for the hours he works.

49. In answers to Mr Reid's questions the Appellant sought at one point to dispute the accuracy of agreed Tribunal findings that Mr Perera may present a risk to children. This denial is indicative of a probable failure to accept the reality of risk which has been found to exist by a Tribunal and which, earlier in the hearing, she agreed would not be challenged. Later in her oral evidence the Appellant said she now realises and did agree that Mr Perera presents (not just may present) a risk to children. She said that she had decided to terminate his involvement with all aspects of the nursery. She told the Tribunal that she had made this decision at some point since the May 10 Tribunal hearing, and that she had told Mr Perera. She could not say when she decided this, and she could not say when she had told Mr Perera, or what he had said in response. She did agree, when asked if it might be, say, at least a week ago that she had decided this and told Mr Perera that was the case, though it was pointed out to her that this was inconsistent with the contents of Mr Perera's witness statement which she, presumably, was familiar with. We find it surprising and not credible that the Appellant did not provide clear evidence of this decision in her witness statement, in communications with Ofsted, or at the first opportunity when giving oral evidence. We find it not to be credible that she has made such an important decision but cannot say when she made it or communicated it to Mr Perera, and that knowing the importance of this decision made no mention of it in her witness statement, and made no attempt to tell the Respondent. We find it not credible that Mr Perera's witness statement is inconsistent with him being aware of this decision. The only explanation which we find credible is that she had not made that decision until she decided under questioning that this would be a better answer than to seek to defend any further involvement by Mr Perera in the nursery.

50. We are, in trying to evaluate the Appellant's assurances as to her understanding of risk, puzzled that the Appellant has at all times, including in oral evidence, confirmed that she is sole owner of the nursery, but then told the Tribunal that she has at no point asked Mr Perera for an explanation for his reported claim, accepted as reliable by the previous Tribunal, that he claimed to be owner of 51%. She told us that Mr Perera has no role in terms of discipline or contracts, yet she has never confronted him about his claim, according to witnesses present at the incident on 19 February 2018, that he could terminate a staff member's contract for contacting the police. It is impossible to be sure that the Appellant can exclude Mr Perera, as his claim to be part owner may even be true.
51. Our assessment of the credibility of the Appellant's evidence is the same as that of the Tribunal in its decision of 16 May 2018. We cannot rely on her evidence. She cannot give satisfactory assurances that she has taken and will adhere to steps to reduce or eliminate the risk from Mr Perera's presence and involvement in the nursery.
52. We do not agree with the Appellant that a letter from Ofsted of 18 August 2017 saying its investigations into her own suspected offences [in failing to report a significant matter to Ofsted] would be taken no further could reasonably be interpreted as a green light to allow Mr Perera unfettered access to the nursery. While the letter could have been more precise, there is no reason it can be read as implying that the Respondent now has no concerns about Mr Perera's involvement. It was unwise of the Appellant to decide, without either consulting with or informing Ofsted, that she no longer felt bound by her agreement not to let him onto the premises while children were present and not to give him the door code. The decision is evidence of her failure to understand her ongoing safeguarding responsibilities and probably also of the inappropriate influence over her decision-making exerted by Mr Perera.
53. There are other matters raised by the Respondent on which doubts remain, but on which no further resolution is possible. An example is an arson attack on her other premises (which are also subject to suspension, which is not being appealed). The Appellant accepts she should have informed Ofsted, but says she first learned of the arson from Ofsted, though her own staff knew of it from newspaper reports and Facebook. While the explanation is unpersuasive, it could be true. This matter need not be considered further in light of the clear, indeed overwhelming, evidence that risk remains in relation to the controlling coercive behaviour of Mr Perera, The Appellant has not provided credible evidence of a determination to exclude him totally from all involvement in the business. It may be that in light of the failure of this second appeal that she will, after all, take advice other than from Mr Perera and take unequivocal and evidenced steps to ensure that he has no involvement whatsoever in the affairs of the nursery. Satisfactory evidence on this matter would constitute fresh grounds for the Respondent to review the suspension and would be helpful, if believed, in representations in relation to the notice of intent to cancel registration.

Order

The appeal is dismissed.

Hugh Brayne, First-tier Tribunal Judge

Denise Rabbatts, Tribunal Member

Michael Flynn JP, Tribunal Member

27 June 2018