

Care Standards

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

Heard on 25, 26 and 27 March at Sheffield Magistrates Court
Panel deliberations for full reasons on 02 April 2019

BEFORE

Ms Melanie Lewis - Tribunal Judge
Ms Marilyn Adolphe - Specialist Member
Ms Pat McLoughlin - Specialist Member

BETWEEN:

Emma Victoria Battersby

First Appellant

and

Flutterbies (Childcare Solutions) Limited

Second Appellant

V

Ofsted

Respondent

[2018] 3464.EY

DECISION

Representation:

The Appellant did not attend the final hearing nor did any of her witnesses.
The Respondent was represented by Mr. Gordon Reed Solicitor.

Witnesses:

We heard oral evidence from the following witnesses:

Respondent:

1. Parent EC
2. Parent GT
3. Parent MS
4. Parent LL
5. Staff Member Sarah Peel
6. Staff member Laura Smith
7. PC Holmes
8. PC Darbyshire
9. Tara Street: Ofsted Inspector
10. Helen Blackburn: Ofsted Inspector
11. Diane Plewinska: Ofsted Decision Maker

Reporting order

1. There shall be a Restricted Reporting Order under Rule 14(1)(b) of the Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 (“the 2008 Rules”) 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.

2. For that reason, we have deliberately referred to parents who gave evidence by their initials

The Appeal

3. These are consolidated Appeals dated 17 September 2018 against Ofsted’s Decision to Cancel the Registration of the two Appellants as Providers of daycare to children. The First Appellant Mrs Emma Battersby is the Registered Provider of daycare on the Early Years Register and the Compulsory Part of the Childcare Register at a nursery (“the Parkgate Nursery”). The Second Appellant is the Registered Provider in respect of the Early Years Register only at another nursery (“the Unity Nursery”). Both settings are in the Rotherham area. Emma Battersby is the sole director and sole shareholder of the Second Appellant Company, and is the Nominated Individual in respect of that Registration.

4. In consequence evidence in relation to each setting is highly relevant in relation to the other.

5. Mrs Battersby has worked in childcare for about 15 years and has a BA honours degree in Early Childhood studies and Education. She also holds the “Early Years Professional Status”. Up until 2016 there were no concerns about her as Registered Provider. She managed Parkgate Nursery in 2016, then bought the Unity Nursery at the Unity Centre. Ofsted now seek to cancel her registration at both settings on the grounds of suitability. The key issues in the appeal are her:

i) mental health and well being,
ii) her independence and following that,
iii) her ability to bring about sustained change in the light of a number of significant concerns that have been brought to Ofsted's notice or emerged during the course of their prolonged investigations. It remains unclear to Ofsted how an experienced practitioner who was successfully managing their own nurseries came to the position where their understanding of the regulations and principles of practice was not of the level expected from a Registered Person. In particular, her knowledge of safeguarding issues and her personal honesty and integrity came to be challenged. Ofsted concludes that Mrs Battersby has become subject to the coercive control of Mr Shaun Perera and this has meant that children in her care have been placed at risk.

6. At the conclusion of the hearing we announced our decision to dismiss the appeal, with full written reasons to follow. This was because there was an outstanding suspension on which directions were required but in view of our decision was bound to fail.

The Law

7. The Requirement for Registration on each of the Registers is that the Registered Person is suitable to provide the service. In respect of the Early Years Register, this arises from Section 36(3) of the Childcare Act 2006 ("the Act"), and Regulation 3 and Schedule 2 Paragraph 1 of the Childcare (Early Years Register) Regulations 2008. In relation to the Compulsory Part of the Childcare Register it arises under Section 55(3)(b) of the Act, and under Regulation 4(2) and Schedule 2 Part 1 of the Childcare (General Childcare Register) Regulations 2008 ("the GCR Regulations"). (In respect of the Voluntary Part of the Childcare Register it arises under Section 63(4)(b) of the Act and Regulation 10 and Schedule 5 Paragraph 1 of the GCR Regulations.

8. These are ongoing Requirements as is indicated by the fact that the Chief Inspector may Cancel a Registration if it appears that the prescribed Requirements (i.e. suitability) have ceased or will cease to be satisfied – Section 68(2)(a) of The Act.

9. The Procedure for cancellation and appeals is set out in sections 73 & 74 of The Act.

10. As the First Appellant offered a resignation in respect of the Registration on the Voluntary Childcare Register the cancellation issue for Parkgate arises only in respect of the Early Years Register and the Compulsory Part of the General Care Register.

Suspension Hearings

11. This decision should be read in conjunction with the decisions relating to oral suspension hearings:

[2018] 3302.EY-SUS Heard: 10/05/2018 – Dismissed

[2018] 3349.EY-SUS Heard: 25/06/2018 – Dismissed
[2018] 3401.EY-SUS Paper Hearing: 30/07/2018 – Dismissed
[2018] 3434.EY-SUS Heard: 13/09/2018 Continued:17/09/2018
Dismissed
[2018] 3473.EY-SUS Heard: 22/10/2018 – Dismissed
[2018] 3576.EY-SUS Heard: 18/01/2019 – Struck Out
[2018] 3657.EY-SUS (No directions given as decision would be issued
before it expired).

Relevant directions given at Telephone Case Management Hearings

12. Further, this case has a large number of Telephone Case Management Hearings (TCMHS) with two scheduled the week before the hearing, because it was still not clear who Mrs Battersby was going to call as a witness and then to check on her health and whether she would attend.

13. At a TCMH on 21 February 2019, Judge Lewis ruled that Mr Perera could not be both Mrs Battersby's representative and witness. There were a large number of contested issues and many allegations were about him and the control held over Mrs Battersby. He could not be in the position of questioning witnesses who made those allegations, some of whom who said that they had been intimidated by him. This issue had been dealt with at the many Suspension hearings, by his leaving the hearing room whilst Mrs Battersby gave evidence and the only witnesses were Ofsted Inspectors. However, at the final hearing on cancellation, the Tribunal was going to have to decide the issues of fact not just make an assessment of risk. This made Mrs Battersby a self representing litigant, when she had said she had no money to pay legal representative. However, this been known to her for many months so there had been opportunities to ask someone else to support her and give advice and assistance.

14. At a TCMH on 19 March 2019 Mrs Battersby did not attend and relied on a letter from her GP dated 18 March 2019, which stated she was not fit to attend but no indication when she may be able to participate in the hearing. The decision to proceed in that event, was hand-delivered to her house by Ms Street, Ofsted Inspector, because of established difficulties of her not giving a phone number or responding to email correspondence.

15. A further TCMH was set the following day: 20 March 2019. Mr Perera attended and was given permission to address the Tribunal. He confirmed that Mrs Battersby had received the order of the previous day. The application was refused and the reasons are set out in full.

The GP's letter sent on 18 March 2019 did not give a medical diagnosis, and did not mention Mrs Battersby having hospital treatment. The doctor stated that she 'appears unfit', not that she was in fact unfit to participate in the Tribunal proceedings.

The information given by Mr Perera was that she had been to hospital twice. He had seen the notes which read 'panic attacks' Additionally she

was in hospital today so could not attend the TCMH, but he could not be specific as to why. He stated that her stress is not just due to these proceedings and being displaced from the nursery premises. There were other factors related to bereavement, illness and other concerns in her family, regarding added stress of bankruptcy issues. His view was that in 4-6 weeks, the anti-depressants should take and she would be better placed to present a case. She has a part time job in a supermarket which should assist with her financial difficulties.

This is not a temporary situation and we were not persuaded that a few weeks adjournment will change that. Other than the view of Mr Perera, no medical evidence supports that.

Further, Ofsted make the powerful point that Ms Battersby has still not returned the M40 consent form (Health Declaration form) in over 9 months. That would allow Ofsted's Medical Advisers to speak to her GP, as would be the usual procedure. Mr Perera has reported that Ms. Battersby is prescribed Diazepam and Seratalin. (an antidepressant) and has anxiety and stress issues, going back some months. Ms Plewinska is Ofsted's National Lead for health referrals since 2002. The depression, prescribed medication and lack of openness and compliance would of itself be grounds to consider that she is not suitable for continued Registration. That is separate from the issue that she has no premises.

I record that Mr Perera recognised that difficulty. Mr Reed confirmed that if the Appellant put a proposal in writing that she consented to cancellation on the grounds of ill-health, then he would take instructions from Ofsted. However, there are disputed factual matters, which on his current instructions, findings of the Tribunal are sought.

Mr Perera stated that the forfeiture proceedings in the County Court (in which he represented Mrs Battersby) have been adjourned, which accorded with the information given to Mr Reed by the Solicitor for Unity Care. I accept Mr Reed's submission that there were is no obvious prejudice to the other party in agreeing an adjournment and a saving of legal costs. The benefit is to Mrs Battersby in challenging the forfeiture.

These are regulatory proceedings and very different. Most of the issues have now been outstanding since the events of 19 February 2018. There is a risk that memories will fade and it will become difficult to determine the issues.

There is considerable prejudice to both Ofsted and the Tribunal in adjourning the case listed for 10 days. A large amount of resources, both in terms of preparation time and costs have already been invested in the case. A large number of witnesses have made time to attend the hearing. All had to make arrangements and it cannot be assumed that their attendance can be re arranged.

16. Additionally, it was recognised that the proceedings were very stressful for Mrs Battersby in the context of other stresses in her life. However, that stress was not going to go away. Mr Reed wrote to her and suggested that she might like to consider the case being determined on the papers but no response was received.

17. There is a history of non-attendance at hearings for medical reasons. Mrs Battersby failed to attend TCMH on 2 November 2018; Mr Perera said this was due to an urgent medical appointment and seeking medical attention on three occasions. She was referred to A & E by the GP. Her health (both physical and mental health) has been an ongoing issue. For that reason, the Tribunal on 14 November 2018 made further orders in relation to her production of a Health Declaration Booklet which would have to be completed by both Mrs Battersby and her general practitioner. Mrs Battersby said she could not afford to pay the £150 fee.

Renewed application at hearing by Mr Perera for an adjournment due to Mrs Battersby's ill-health

18. On Friday 22 March 2019, the Tribunal received an email at 12.56 pm stating that Mrs Battersby had overdosed and been kept in hospital for a mental health assessment. That was not supported by the attached letter from the locum GP, which simply stated she had been to the surgery twice and referred to the Crisis Team. The Tribunal drew on its own specialist knowledge that she had not been detained in hospital under the Mental Health Act as she had been sent back home to see the Crisis team in the community at a drop in on Tuesday 26 March 2019. We were aware that this is standard assessment practice in most cases of people presenting with stress and anxiety.

19. The full Tribunal had by this point carefully read the 2000 pages of evidence and in accordance with the usual practice of the Tribunal, had a pre-meeting to discuss the issues in the case. It found no additional reason to revise the decision of Judge Lewis sitting alone on 20 March 2019. We concluded that overall the history was of a failure by Mrs Battersby to address issues within the proceedings and get on and make her case. This was inevitably a stressful situation for her, but it was not going to go away or get any easier for her

20. This was not a case where it could be said Mrs Battersby was being denied an opportunity to present her case, due to the long history of five suspension appeals. On 26 October 2018 the Tribunal assessed there was a real risk to children because in the face of considerable evidence from Ofsted, Mrs Battersby did not convince that she understood the risks and could be relied on make changes. At the subsequent suspension, the appeal was struck out because there was no material change. We are not just looking at risk but making findings of fact, but the key issue remains Mrs Battersby's understanding of risk and ability/willingness to take forward change.

21. It was made very clear to Mr Perera, as it had been on 20 March 2019 that the Tribunal would make any reasonable adjustments to accommodate Mrs Battersby. Mr. Perera again recognised the difficulties in her succeeding given that she had no premises and her ongoing health issues. He said that she had difficulty understanding this. It was explained that it was the role of the Judge to explain the procedure and the law to her. If she attended, the Tribunal could not make a case for her, but it could explain the options and probe the evidence which required amplification.

22. At 12.30 pm we invited Mr Perera to travel to and deliver this information to Mrs Battersby in Rotherham and return that afternoon. She did not return but at 13.34pm there was an email from Mr Perera's own email (which had not been used before in the proceedings). Mr Reed received a suggestion/compromise from Mr Perera which he had marked 'without prejudice'. Mr Reed replied at 13.49 that it would be necessary for Mrs Battersby to attend in person and confirm these were her instructions.

23. Mr Reed raised an issue as to how far it was appropriate to put matters on a 'without prejudice basis' in regulatory proceedings', because it was for Mrs Battersby to comply with the Regulations. We did not need to determine that point. It was obvious what the compromise would relate to but that was not the point. We agreed that we would need to hear from Mrs Battersby in person, especially because of concern that she was subject to the coercive control of Mr Perera.

24. At the request of the Tribunal Mr. Reed emailed Mrs Battersby over the lunch adjournment on 26 March 2019. Additionally, Ms Street hand delivered the email at the end of the day to Mrs Battersby's home due to uncertainties about which email address she used. The key sections were:

The Tribunal has heard evidence from a further six witnesses this morning.

Two further witnesses are to be called to give evidence this afternoon, Helen Blackburn and Diane Plewinska from Ofsted.

The Tribunal had indicated that as you are neither present nor represented, there is no need to call any of the other Ofsted witnesses to give live evidence.

Ofsted's case will therefore close this afternoon.

Tomorrow morning, Wednesday 27th March, will be your opportunity to give evidence, and to call any witnesses whom you wish to call.

It is anticipated that the Hearing will conclude at some time tomorrow.

25. Mr Perera replied the following morning that witnesses would not be able to attend at short notice and had expected to attend next week. The original 10 Day estimate was based upon Mr Perera's assertion that they would be calling 8 witnesses. That email was shortly followed by an email from Mr Perera stating that Mrs Battersby 'wished to give evidence but subject

to medical advice/ability. No medical documentation was attached to support Mr Perera's email.

26. The expectation that the original 10 Day listing would hold cannot sensibly have been relied upon. It was discussed at the TCMH on 21 February 2019 and only retained because it was still not clear who Mrs Battersby wanted to call as a witness and also because it was recognised she may need reasonable adjustments to be made. Mr Reed's email had made clear we expected to finish that day if she did not attend. Again, there was no time frame as to when Mrs Battersby would attend. Accordingly, we proceeded.

27. We kept under continual review the decision not to adjourn because of Mrs Battersby suffering from stress/anxiety. At all points, we kept in mind the overriding objectives, but balanced the need to give her an opportunity to have her say against a failure to set out in writing what changes she was going to make to run a safe nursery and the failure to engage fully in the proceedings. In particular, she had not sent a response to Mr Reed's Witness Template indicating which witnesses she required to give oral evidence and she had not filled in the Scott Schedule.

The Premises, Health Issues and the attendant consequences

28. As Mrs. Battersby is no longer has possession of Parkgate, her appeal must fail on this ground in any event. Whilst various suspension appeals proceeded in respect of Parkgate, it only emerged via Mr Perera at a Telephone Case Management Hearing on 16 January 2019 that the lease had been forfeited and there was no intention to challenge it. As registration is only for specific premises it is not possible for a person or organisation to be suitable for registration if they do not have premises.

29. Therefore, the Tribunal has no alternative but to cancel the registration of Mrs Battersby at the Parkgate Nursery due to the lack of the premises. She becomes a disqualified person due to the operation of The Act and the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement)(Amendment) Regulations 2018 Regulation 4(1) & (2) and schedule 1 para 21. Mrs Battersby is the sole director and Nominated Individual of the Flutterbies. By virtue of Section 76(2) Childcare Act 2006 she would not then be able to be directly concerned in the management of Early Years or Later Years Provision to which that Section applies – i.e. the Early Years Register and the Compulsory Part of the General Childcare Register.

30. Additionally, the Unity Centre took back possession of the nursery space due to non payment of rent and let it to an organisation which cares for people with dementia.

31. The application for relief from forfeiture was listed for hearing on 8 March 2019 but was vacated by consent, due to Mrs Battersby's ill-health with

no known fixed date for a hearing. Therefore, at the date of the hearing, there are no premises at the Unity Centre.

32. By her own evidence, the appeal must also fail on health grounds as Mrs Battersby has a history of stress/anxiety and is currently taking anti-depressant medication. We develop those reasons when examining the application for an adjournment on health grounds.

33. Ofsted invited us to nevertheless go on and determine the appeal and make findings on other grounds as to suitability. There was a real practical purpose in doing that, as otherwise at some future date the application for a Waiver could be made. In the light of the substantial history, the likelihood is that would be refused. There would then be a further appeal and at some future date a Tribunal would have to make findings. We agreed that in view of the time that had already elapsed in this case, the considerable resources/costs of preparing this case that it was proportionate to proceed. Further, it is inevitable as time moves on memories fade and individuals move on so that any determination of the facts, should be made as close to the events as possible.

Background and Chronology/Ofsted's concerns

34. The Tribunal was helpfully provided with a very detailed chronology cross-referenced to the evidence. For brevity, we do not set out the extensive detail but focus on the findings that Ofsted invite us to make and what led them to suspend the settings and then move to cancellation.

35. A major element of Ofsted's concerns relates to Mr Shaun Perera. His past, present and future role in relation to both settings while obviously involved remains unclear. What has been shown over the long course of these proceedings is that he has played a major role and devoted considerable effort and resources to acting as Mrs Battersby's representative, until banned from doing so.

36. Ofsted infers that is because he has stated on occasion that he owned either all or at least 51% of each setting.

37. Ofsted considers that Mr Perera is not a suitable person to have any involvement in a Registered Childcare setting. This is because of:-

(a) His police record:

- June 2016. Cautioned for harassment.
- 2014 subject to a restraining Order under the Protection of Harassment act upon acquittal for a criminal charge.

(b) The history of incidents of domestic abuse, controlling coercive behaviour between him and Mrs Battersby.

- June 2016 police were called to an incident in the car between Mrs Battersby and Mr Perera when Mrs Battersby was visually distressed. There were allegations of assault on that occasion and in the few days previously.
- August 2016, Mrs Battersby admitted an argument had taken place between herself and Mr Perera in the nursery office. She agreed with Ofsted he would not come to the nursery premises.
- 16 September 2016, an incident occurred during which Mr Perera called an ambulance because Mrs Battersby said she had overdosed. Both made allegations against the other.
- 6 February 2017 an argument took place between Mrs Battersby and Shaun Perera in the setting in front of children at the Unity nursery.
- 19 February 2018. Further argument between Mrs Battersby and Mr Perera in the setting, Sarah Peel, senior staff member called police. It was this incident that led to Ofsted suspending the nurseries.

(c) Mr Perera's controlling and coercive behaviour towards others, especially members of staff, in the Parkgate Nursery setting.

38. Mrs Battersby has been unable and/or unwilling to exclude Mr Perera from involvement with either of the registered nurseries which demonstrates that she lacks an adequate understanding of domestic abuse and controlling coercive behaviour and its effects upon the protection of children. The history shows that she isn't able to protect children being embroiled in a relationship that comprises her capacity to function as a protective responsible adult, whoever it originates from.

39. Additionally, by her own admission, during an incident in September 2016, she had admitted that in trying to persuade Mr Perera to initiate a romantic relationship with her when he was unwilling, she falsely told him that she had overdosed. As is recorded in the written evidence and the audio recording we heard, he called an ambulance which she then sent away.

40. Mrs Battersby was historically a respected Registered Provider but over the course of her relationship with Mr Perera she degenerated to the point where she was unable to give straightforward accounts on a number of issues, such that her integrity/honesty is questioned.

41. There is evidence that her health is not sufficient to make her suitable for continued registration. On a number of occasions, she has been seen to be very tired and unwell, this was cause for concern about her physical health. Further there is evidence, including her own that she doesn't cope well with stress. The current evidence is that she is taking antidepressants and being seen by the Crisis Mental Health team in the community.

42. Mrs Battersby failed to notify either the LADO (Local Authority Designated Officer) or Ofsted of various significant events, which should have been notified.

43. Children's confidential records were found at Parkgate, which constitutes a breach of data regulations. She has failed to work in a cooperative and transparent way with Ofsted.

44. There have been two descriptions of incidents which a child got out of the Parkgate nursery.

Evidence:

45. In advance of the final hearing, the panel read the bundle of over 2000 pages. The evidence for Ofsted was sub-divided into evidence from parents, statements of staff and students, statements from the Unity Centre, Local Authority statements, Police statements and Ofsted statements.

46. In the event, the Tribunal decided that it needed to hear limited evidence. Whilst the Tribunal can fully use its inquisitorial powers, the case was well presented by Ofsted with a great deal of detail in the witness statements and attached cross referenced documentation.

47. The only witness statement on behalf of the Appellant were from Mrs Battersby, parent MC, Ms. Latif, Ms Peel staff member (who also gave evidence before us) and Mr Perera. Extensions had been granted to submit this evidence but in the event it was the same statements that have been served at the suspensions.

48. We heard from parents GT, LL and EC. Their evidence was strikingly consistent. They all accepted that Mrs Battersby in the past had been understanding and flexible, when personal circumstances meant they were in arrears with their nursery fees. All denied this gave them a motive to speak against her. All accepted that they owed money but were concerned that when a demand was made, in one case in particular, this appeared to be for more than could possibly be owed since their child went into the nursery; far in excess of what they thought was actually owed.

49. Whilst there were some invoices in the bundle, the Tribunal probed how this discrepancy arose, which in some cases amounted to some thousands of pounds. The parents had bank statements to prove if money was paid by card but the difficulty arose in relation to cash payments, because they had not always been given a receipt.

50. All were consistent in saying that initially they had found Mrs Battersby a very approachable, competent and personable manager to deal with. However, over time they felt that she changed in both her manner and physical presence at the nursery. There was a notable change in her personality she became fraught at times. Parent GT described how she

shown her bruising on her legs and arms with descriptions of how she had fallen down. The Appellant posted this explanation on Facebook.

51. Parent MS said her child had night terrors which she attributed to Mr Perera shouting and the police being called. The parent never met Mr Perera but was concerned as to how her child remembered this, particularly as family friends were police officers, so men in uniform shouldn't be something to be frightened of.

52. This parent estimated that she owed about £3000 and was very concerned about the accuracy of the invoices she latterly received, which were intermittent, with no explanation as to how they were calculated. Despite requests and offers to meet to resolve this issue, Mrs Battersby only produced one invoice for the money due in October 2017 for £14,000. This witness concluded from the tone of the letter that this came from Mr Perera, not Mrs Battersby, as it was not her manner in dealing with people.

53. In February 2015, the same parent had employed an ex-member of staff that had just finished working at the nursery but was known to them as a family friend. Neither had realised that her contract had a six-month prohibition on this. Mrs Battersby had asked the parent what happened to the child on the day that they were not in nursery and they had volunteered this information. They were extremely surprised to receive a letter from Mrs Battersby's Solicitor showing a photograph of the child with the ex-worker taken by a private investigator. They had given no permission for their child to be photographed. They couldn't understand why she had not discussed this with them. Her husband was able to speak to Mrs Battersby about this who brushed it off and said there was nothing to worry about, which she also said in a follow-up letter. With our permission the parent produced that letter. They concluded that this action and the pursuit for an excessive amount of outstanding fees was led by Mr Perera.

54. Parent LL spoke about overhearing an argument about 2 years ago which she heard coming from the office. Laura Smith, nursery staff member spoke to Mrs Battersby about this and said she was told it would not happen again and Mr Perera would not be allowed in the nursery. However, both she and other staff members saw him subsequently. Parent LL also described a concerning situation whereby her child got out but accepted a reassurance that this would not happen again. This incident was not reported to the LADO or Ofsted.

55. Staff member Laura Smith was employed at Parkgate from January 2014 until she handed in her notice on 11 April 2018. She also described an initially pleasant working environment but which changed over time. Principally, her evidence concerned what happened on 19 February 2018. What she heard Mr Perera shouting verbal abuse at Mrs Battersby, caused Sarah Peel to ring the police. The tribunal listened to the audio with the transcript. This was not the first time she had heard a row between the couple and she accepted that she should have told Ofsted about her concerns

when they asked her in 2017, but did not do so because she felt intimidated by Mr Perera. She corroborated other evidence that he came back to the nursery the morning following the incident on 19 February 2018. Mrs Battersby was in tears saying she wanted to be based at Unity. Mr Perera said that he owned half the nursery.

56. PC Holmes was the lead officer on 19 February 2018. She described what she witnessed when she arrived at the nursery. The staff were shaking and crying and visibly agitated in the presence of Mr Perera. He attempted to intimidate PC Holmes, saying he would report her to police officers he socialised with. She knew he had made a complaint about her but it had not had been resolved at the time of the Tribunal hearing.

57. PC Holmes decided to exercise her discretion and made a Child Protection referral to the Local Authority because she was concerned that Mrs Battersby had walked out of the building with Mr Perera, rather than tending to the welfare safety of the needs of staff and the children in her care. The staff were visibly upset.

58. PC Darbyshire was called as corroboration. However, with our permission he disclosed additional information that had come to his attention. We decided that without knowing what that was, we couldn't know its relevance. He stated that he recognised Shaun Perera at local police station the previous week and that he had been informed he was arrested for assault and the alleged victim was a Mr Battersby. We indicated that we could attach little weight to that uncorroborated information, but would record it in our decision because we had heard it. We noted there was a probable link with information given at the TCMH by Mr Perera on 20 March 2019, that Mrs Battersby had issues about her son, which he was not at liberty to disclose.

59. Ms Street set out her evidence in a full statement dated 12 December 2018. She carried out monitoring visits and took responsibility for leading at the Parkgate nursery while Ms Blackburn took responsibility for Unity nursery. She updated that she had been checking Companies House daily. Mr Perera was not registered as a Director. During the course of these proceedings, it appeared that Mrs Latif might take over as the Registered Individual and owner of Unity. She had checked with the Ofsted registration team, but no application had been made.

60. Ms Street made a number of visits to the Parkgate Nursery with Dawn Woodhouse-Wykes in 2017. On 22 and 24 March 2017, Welfare Requirement Notices were served to each setting. She was therefore concerned when Mrs Battersby questioned why Mr Perera was not allowed on the site. It should have been clear to her, he could not be there because of his convictions and the history of domestic abuse between them.

61. Ms. Tara Street adopted her statement dated 12 December 2018. She has had close involvement in the case and given evidence at a number of the suspension hearings. When asked by the Tribunal for an overview, she as

with all the witnesses for Ofsted stated that she was not without sympathy for Mrs Battersby but it appeared she had lost control, such that she is either unable or unwilling to operate the nursery in a way that kept children safe. For whatever reason, she was unable to break away from Mr Perera who she believed, from his extensive involvement in this case, had a financial interest in the business.

62. Ms Street set out her concerns that an interview with Mrs Battersby to discuss these matters, took many months to arrange. It was originally scheduled in June 2018, and it took 12 proposed dates, with no response given apart from an email indicating that she would be on holiday for a period. The Interview did not take place until 26 September 2018. It could be set up much earlier. There was a difficulty on the day in recording the interview. We read the transcript. Mrs Battersby was an experienced childcare practitioner and Ms Street was struck, even making allowances for nerves, how closely she stuck to her notes to assist her with answers to questions about domestic abuse, her role in safeguarding children in her care and also when explaining why she considered that she was not a victim of domestic abuse. Her answers did not evidence a robust knowledge and understanding of safeguarding and child protection. She had undertaken some recent online training about domestic abuse but her answers didn't show a robust understanding. Ms. Street said that she would have expected such an experienced practitioner to speak with ease and give a number of examples from their own experience, but this did not happen. She showed little insight on whether she was a victim of abuse and coercive behaviour from Mr. Perera and the risks of his being involved in the nurseries. The witness was also concerned about the vetting procedures at the nursery in particular in relation to DBS checks concerning Mr. Perera. There were still ongoing concerns about Mrs. Battersby's physical and mental health and her understanding of the GDPR. In addition, there was concern about whether she had followed appropriate procedures with the LADO concerning the suspension by her of a member of staff who may have posted a picture of a child on a Facebook profile. Mrs. Battersby continued to have difficulty identifying the risks posed to children in her care and was unwilling or unable to manage such risk.

63. Ms Blackburn has also been involved in the case since February 2017 and the lead inspector since February 2018. Ofsted had conflicting accounts from Mr Perera and Mrs Battersby about how they had met and the exact nature of their relationship but the concern was that Mr Perera was accessing the nursery without appropriate suitability checks. Moreover, Ofsted had information from a student learner in the setting who had heard a verbal argument between them on 6 February 2017. A meeting chaired by the Local Authority Designated Officer, heightened rather than reduce concerns because the police had evidence of two other incidents between the couple. In June 2016 a member of the public reported a violent domestic argument occurring in a vehicle. Police attended. The second incident, of which we heard the audio recording, occurred in September 2016 when Mr Perera called an ambulance because Mrs Battersby said she had overdosed. She spoke to the call handler, denied she was suicidal but wanted 'that man out of my life'. In her statement of May 2018 Mrs Battersby said she had threatened

suicide but only because she been trying to persuade Mr Perera to have a romantic relationship with her. Mrs Battersby initially denied the incident and only admitted that she could recall it when Ofsted played the audiotape to her.

64. Ms Blackburn questioned Mrs Battersby's willingness to work in an honest and open way with Ofsted, because she only found out that they had been given notice at the Unity nursery when she saw an eviction notice on the door in August 2018. Adults from an organisation dealing with dementia were using the single room at the site and all equipment relating to children had been removed. This new organisation had moved in on 2 August 2018 and had a year-long lease. She last visited the Parkgate nursery on 11 October 2018 and she saw that the children's equipment was piled up in the middle of a room.

65. During the inspection she was told by the facilities manager that equipment and confidential files belonging to the Unity Nursery had been found and moved to a secure location. The witness took photos of the equipment and confidential files which included photos of children and personal data relating to the parents. There was also evidence that a fire had been deliberately started at the nursery and that Ms. Latif had been informed of this but had not informed her employer Mrs Battersby.

66. Diane Plewinska adopted her statement dated 20 December 2018. She was the decision maker on both the decision to cancel registration and on the various suspension appeals. She has considerable experience and has been a manager of inspectors since 1991. She set out in close detail the history of concerns 2016, 2017 and 2018. Ofsted were concerned that on 7 March 2017 when they visited both settings Mr Perera described himself as Mrs Battersby's legal representative and did not allow her to speak freely. They were concerned that she looked pale and withdrawn. This concern remained.

67. Ms Plewinska described how shocked Mrs Battersby was when they played back the audiotape to her relating to the incident in September 2016 when an ambulance was called, which she had denied. She showed a mixture of shock and embarrassment in having been caught out in a lie. She then became very upset and tearful. In her statement Ms Plewinska described that they then had some informal discussion, which she clarified was that she leaned across the desk and said to Mrs Battersby 'Emma, you have to sort this out'. Mrs Battersby replied that she knew that and she would do so. In the absence of other evidence available at the time, her assurance was accepted. Ofsted now have evidence that in fact at the time of this interview he was still coming into the premises. Had Ofsted known that she had in fact already allowed Mr Perera back into the nursery from August that year it might have taken a different view in that interview.

Conclusion and reasons:

68. In reaching conclusions we have had regard to all the evidence both written and oral. We remind ourselves that on a cancellation hearing we are making findings of fact, not simply assessing risk. However, this case has had

what is in our experience an unprecedented number of suspension appeals. We are of course not bound by their conclusions on assurances given by Mrs Battersby that Mr Perera would not attend the setting with children present, but at the final hearing we have received no new or different evidence from her to reach a different conclusion. Our task is to make findings on issues in dispute and then weigh them together in the context of all the evidence to make a decision on suitability. That exercise and the length of time that this case has gone on, enforces our view Mrs Battersby has had numerous opportunities to demonstrate that she does understand safeguarding concerns and to work in a way that is compliant with the regulations. Unfortunately, the clear picture that emerges supported by numerous pieces of evidence over a nearly three-year period is that she has lost control and that her word cannot be relied upon.

69. Overall, we conclude that the case on behalf Ofsted was measured, balanced and that the conclusions reached were based on evidence from a number of sources. On the basis of her previous good standing they gave the benefit of the doubt initially to Mrs Battersby. She failed to take up the opportunity to show that whatever the issues in her personal life, she could nevertheless safeguard children. Where a straightforward explanation was needed, she did not give one. Where she could be expected to remember events, she claimed that she could not do so.

70. We acknowledge the considerable stress that Mrs Battersby has been under, in part due to the multiplicity of proceedings: numerous suspension appeals, the proceedings in the Employment Tribunal and now challenging the forfeiture of Unity nursery in the County Court. However, we find that she has not taken the clear message from the first suspension hearing that she had not shown that she understood the risk and her assurances were not accepted. Instead she, or more particularly Mr Perera as her representative focused on perceived procedural wrongs, not to the key questions of what they needed to do to provide overall suitability as a Registered Provider and an acceptable level of service to parents.

71. The picture that emerges is of a woman who on her evidence in 2016, was an experienced competent child care practitioner, with about 15 years of experience, a relevant degree in the subject and rated 'good' by Ofsted. She was a trustee sitting on local safeguarding committees and undergoing regular training. She moved up from being a childminder, to being, an employee and then owning two nurseries. The picture thereafter is of a loss of control on her part combined with stress/anxiety, such that she has been unable or unwilling to make changes in the face of what we conclude is clear risk to children and has been accepted as such by her at suspension hearings. Currently, there are reasons to be concerned for her mental health and well-being. We were struck when, as an experienced practitioner she could be expected to show a comprehensive and solid working knowledge of safeguarding and the effects of domestic violence and coercive control, she did not do so. We conclude that as an experienced child care practitioner, she should have an awareness, understanding and the ability to translate that into practice. Integrity and trust are key for those who choose to work in in

childcare. Her private life is her own, except that there are many examples of the toxic relationship with Mr Perera effectively being imported into the nursery and putting children and staff at risk of harm.

Findings of fact:

Premises

72. At the date of the hearing, there are no premises the appeal must therefore fail on that basis for the reasons given.

Health grounds

73. Further, the Appellant is not suitable to be registered on health grounds.

74. In her one detailed witness statement dated 25 July 2018 Mrs Battersby states that she is in perfect health. However, there are parts of the evidence where concern was expressed about her physical and mental health and well-being which appeared to be an ongoing issue with frequent absence at the setting.

75. Mrs Battersby failed to return the Health Declaration Booklet (HDB) to Ofsted despite several requests. Ofsted required the completion of the HDB in order to address the concerns raised following a standard procedure utilised whenever there are health concerns about a provider who would then refer the findings to their own Medical Advisor once the HDB has been provided.

76. Such letters as have been provided by her GP only gave a very brief overview of her health. The letter dated 6 September 2018 raises a number of questions and does not cover the areas that the HDB would have covered. As we have set out, the recent letters from her GP do not go as far as Mr Perera suggested was the case, namely that she was unfit to attend the hearing, suicidal and subject to a Mental Health Assessment.

77. After several requests Mrs Battersby did eventually provide a partially completed HDB shortly before 21 January 2018, but only by coercion of an 'unless order' from the Tribunal. We accept the concerns raised by Ms Plewinska in her third statement dated 18 February 2019 that the HDB was not fully completed, including omitting a contact telephone number and was not signed by the GP. Further, the detail on issues such as her stated 'dizzy spells' is not there and would have required a follow-up interview, which was offered but never taken up. Further, it makes no reference to her current mental health problems and antidepressant medication being taken by Mrs Battersby, which we accept can cause drowsiness and would of itself make for unsuitable at this time.

78. Mrs Battersby sought to explain away lapses of memory /anxiety, when interviewed, by citing a 'personality trait '. That is not supported by medical

evidence. Again, that requires further explanation/investigation because of the impact it has on safeguarding children and the need to remember and recount accurately significant incidents and take action accordingly.

Background facts:

79. We find it telling that the Appellant has never responded to the Scott Schedule. We find that the specific factual incidents set out in the Skeleton Argument and Scott Schedule are made out on the balance of probabilities.

80. It is a matter of record that Mr Perera was cautioned for harassment on 25 October 2011 and made the subject of the Restraining Order under Protection of Harassment Act on 27 November 2014.

81. On 2 September 2016 there was an altercation between Mr Perera and Mrs Battersby's son. Whilst outside the nursery setting, that should have been reported to Ofsted pursuant to the Early Years Foundation Stage ("EYFS") paragraph 3.77;] and paragraph 26 of Schedule 3 to the GCR Regulations. It has not been challenged that he had a role within the nursery setting at that time.

82. On 16 June 2016 bruising was observed upon the Appellant.

83. An incident occurred on 23 of June 2016, whereby Mr Perera assaulted Mrs Battersby in a car, held her in a headlock and prevented her from leaving. It looked sufficiently serious for a member of the public to call the police. PC Wright provided a witness statement. Mr Perera was arrested but no further action was taken. When she was asked about this in an interview by Ofsted on 22 June 2017, only a year later, Mrs Battersby said she couldn't remember it. We find that implausible given the police were involved.

84. Mrs Battersby's toxic relationship with Mr Perera impacted on the staff in fully carrying out their duties in what had become a fraught environment. On an unspecified date in 2016 Mr Perera and Mrs Battersby had an argument in the office which came to light through a complaint. When she was asked about this during a visit from Ofsted on 22 August 2016, she said she owned the setting, that her boyfriend was doing some IT things but had nothing to do with staff and children. She said he '*came in once in a blue moon*' but didn't any more after the argument. She said she had changed the pin code so that he couldn't access the premises at all. Ofsted relied on that assurance. It is clear that staff felt compromised to report the unsafe practices which were happening in the nursery through fear and intimidation by Mr Perera.

85. On 16 September 2016, following an incident outside a gym Mr Perera called an ambulance. We have read the transcript and heard the audio recording in relation to this. At the time he was concerned enough to call an ambulance because she was threatening suicidal ideation, but she told the call handler he was making it up and she wanted him '*out of her life*'. And; '*He is getting more and more threatening.....He's just ruining my life frankly*'. In

her Witness Statement dated May 2018 she says she told him that she had overdosed to win him over and recognised this was an irresponsible thing to do. Those explanations are inconsistent. This, together with more recent evidence about her mental health and well being raises issues about her stability to provide a cohesive and compliant service having the best interests of the children in her care as a priority.

86. This experience should again have alerted Mrs Battersby to the suitability of Mr Perera to be within the nursery setting. Instead, Ms. Marsh of the Local Authority noted that he attended a management meeting with Mrs Battersby in 2017 He also attended the meeting on 16 January 2018 when Ms Marsh observed “playful” behaviour between them which she felt was inappropriate in a public professional forum. She noted one of the visits to the nursery in January 2018 that Mrs Battersby had significant bruising on her legs. She said she had *‘fallen off the curb’*.

Change of management:

87. We note that at some point in the proceedings it was mentioned that Ms. Latif would take over the management or purchase Unity nursery. We do not need to consider it because there is no evidence that has been taken forward and in any event, it is now too late, because there are no premises. We note that Ofsted has set out in the Skeleton Argument that they would have had some concerns about her. She was a senior worker at the setting yet did not alert Ofsted or the Police when she should have done. For example when collecting confidential material left behind unsecured at Unity she described it to Ofsted as a ‘clear up’ and did not say that the lease at Parkgate have been forfeited. Questions would inevitably have been asked as to whether she was in reality acting as the agent of Ms. Battersby and Mr Pererea.

Issues relating to the nursery 2017/18:

88. Concerns started to rise in respect of the nursery in 2016 and continued more strongly into 2017/18. Parent EC raised concerns with Ms. Battersby about the care her child received in toilet training, food, not being introduced to new staff and issues as to how much money she owed.

89. Two children have independently told their parents about their fears of the ‘coat monster’. We found the evidence of parent MS compelling.

90. She said that her child appeared very unsettled at the time and subsequently had “night terrors” about fear of the Police. The child told her mother, the Police came to the nursery, and said *‘I am used to Shaun shouting’*.

91. We are not invited to make specific findings but find it relevant to record it that on 14 February 2017 there were allegations about a member of staff. However, it is of concern because it is another example of Mrs Battersby not referring a safeguarding concern to the LADO, as she should do.

Moreover, when it was being investigated, Mr Perera at a number of points described himself as her legal representative and did not allow her to speak, even though she was the childcare professional. We noted that this is a theme.

92. A further example of poor practice was that in approximately August 2017, a child disappeared and was found alone in a toilet cubicle by their parent.

93. A key meeting took place with Mrs Battersby with Diane Plewinska and Dawn Woodhouse-Wykes on 5 October 2017. As an experienced practitioner her assurances were accepted and absent other evidence to move to enforcement, she was given the benefit of the doubt.

The Suspension hearings:

94. The trigger incident to the suspensions occurred on 19 February 2018. Evidence about what happened is overwhelming and again comes from evidence from the staff, parents and the police. Each corroborates the other and their accounts are consistent. We find that this was a serious incident where Mr Perera was shouting at Mrs Battersby, banging items verbal abuse, swearing and intimidating and threatening staff. That is why Ms Peel called the police. He threatened the police officer and subsequently made a complaint, which it appears remains outstanding.

95. The Appellant's case was that while she accepted an incident had taken place she didn't believe it occurred in the manner described by Ofsted. That is her view but in the light of the compelling evidence, we reject it. Further, we find it is another worrying example of attempts to minimise incidents. The Tribunal suspension appeals dated 15 May 2018, 27 June 2018 and 2 August 2018 all concluded they could not rely on Mrs Battersby's assurance that she has taken, and would adhere to, steps to reduce or eliminate the risk, by controlling Mr Perera's presence and involvement in the nursery, such that there was no risk to children.

96. Also, we find it relevant that at the date of the next suspension 17 September 2018 she had still not attended for a recorded interview. The Tribunal observed that the whole suspension process may well have taken less time had the Appellant 'fully engaged with the process and done what she, at the hearing, committed to at an earlier stage in the process (for example, attending a recorded interview and completing the health declaration booklet). Based on all the evidence that we have heard and read we make a formal finding that she has not understood or addressed the issues in this appeal in a timely manner. The reasons are unclear, be it that she is either unable or unwilling to do so, the tribunal considers that it sadly all points to a loss of control.

97. Further, it was the case for the Appellant that CCTV footage would disprove this account. Ofsted inspectors sat through this footage for 2 days and found nothing of significance. The Appellant did not take the opportunity to highlight why certain parts were relevant, as she had said she would.

98. The incident on 19 February 2018, the trigger incident, was undoubtedly a serious issue and instead of showing any contrition or insight, the response of the Appellant was to take Mr Perera to a Team Around the Child meeting on 20 February 2018 with the parents of a child with special educational needs. Given that he was only ever claimed to have an administrative role, this requires explanation and none has been forthcoming.

99. Overall, the evidence strongly supports the contention that Mr Perera has been driving the challenge to Ofsted's case. His tendency is to pick up on the detail and not acknowledge the concern. The incident on 19 February 2018 was completely unacceptable and would inevitably raise questions about the risk pose to staff and safeguarding children. We heard a recording of him speaking to the police on 25 February 2018 seeking detail of the incident number and time of the report on 19 February 2018. He was there and it should have been clear to both him and Mrs Battersby, why the staff called the police.

100. Mrs Battersby acknowledged in interview on 26 September 2018 that staff member CP had been suspended around April or May 2018 but she had not informed Ofsted of this, as she should have done. Again, this is not the first time that this has happened and this is at a point when she is under suspension and knows Ofsted has moved to cancellation.

101. We conclude that the picture that arises from all the evidence was that at this point Mrs Battersby was losing the control that she needed to demonstrate as the Registered Individual and manager. The witnesses for Ofsted observed that she was very different in Mr Perera's presence. The evidence is that she has lost confidence and is now suffering from stress and anxiety.

Financial and transparency Issues:

102. The case of parent CM, is we find a clear example of a haphazard and disproportionate approach to financial management. Why Mrs Battersby felt she had to go to a solicitor and then retract that position in a friendly meeting and email is not clear. They had offered to settle the debt for fees owing. The concern is that she was not able to invoice the sums due and give an accurate account of what they were owing. Instead of discussing the issue of their employment of a past staff member with them, she went to a private investigator who took photos of their child without their permission. This would not only appear disproportionate but also raises significant safeguarding concerns.

103. Mrs Battersby took until shortly before the TCMH on 8 February 2019, to produce documentation requested by Ofsted to examine the concern that Mr Perera had a financial interest in the nursery. The evidence came from things that he said and that he did. By his letter to Mrs Battersby dated 4 July 2018 Mr. Perera gave notice and stated that he wouldn't pursue an Employment Tribunal Claim for unpaid wages since 20 February 2018.

However, when this was probed at the TCMH there were none of the usual documents of employment such as an employment contract, references and job description, National Insurance or pay slips. If as stated, they had been shredded it was suggested there would be tax returns that could have been provided. None have been. Mrs Battersby provided a bank statement to show sums in her account at the point that Unity was purchased but there is no evidence as to where those funds came from.

104. This is compounded by the fact in July 2018 the Appellant's tenancy was terminated, due to non-payment of rent. She should therefore have removed all confidential documents and items belonging to the nursery even if the forfeiture was going to be challenged. The premises were taken over by Vintage Care. We had detailed statements from Mr Akhtar the Centre manager and, Mr Markham the facilities manager and Ms. Wilson of Vintage Care. Mr Perera discussed the money owing and said that he hoped they *'were not recording the conversation as he was having issues with Ofsted and couldn't have money going into Emma's account so he had given it to Ms Latif to pay bills'*.

105. Despite the ongoing suspension proceedings and by now the notice of cancellation having been served, the response from the Appellant is still far from straightforward. There is no dispute that a fire took place at Unity but Mrs Battersby said she hadn't told Ofsted about it because she didn't know. We do not accept that. There is evidence that a WhatsApp message was sent to Ms Latif attaching a video of the fire, at 18.04 pm on 29.05.2018 and acknowledged with the words *'thanx Paul'* at 18.06 on that day. We do not find it credible that Ms Latif would not have told Mrs Battersby about this key incident. We heard an audio call to her insurers and it was striking how vague she was about the fire in her nursery setting. It would be expected that she would make sure she was clear about the facts.

Honesty, Integrity and competency:

106. Mrs Battersby has been given numerous opportunities by Ofsted. Her assurances that she had changed the PIN code and would not permit Mr Perera entry when children were present have been proved not to be true.

107. The forfeiture of the lease for Parkgate is an extremely important piece of information which Mrs Battersby failed to report as a vital change to her setting at the point it happened, instead Ofsted had to find out about it, through monitoring visit to the premises.

Ability to work with the regulator:

108. Mrs Battersby has shown that she cannot be trusted with the initial confidence that Ofsted placed on her assurances that Mr Perera would not be permitted in the setting with the children. She has failed to cooperate with their valid concerns about her health, some of which emanates from her own evidence. She did not provide the Health Declaration booklet, requested in

the summer of 2018 through to February 2019; even then when finally provided it was incomplete.

109. Additionally, on various occasions as set out, Mrs Battersby has failed to notify Ofsted of events which should have been notified. This is a breach of regulatory requirements on each occasion and indicates an inability to work with the Regulator which is likely to continue and therefore supports the Appellants unsuitability for registration.

Findings in respect of Shaun Perera:

110. This Tribunal has had a unique opportunity to assess Mr Perera through five oral suspension hearings, Telephone Case Management hearings and documents submitted during the course of the proceedings. He has also been involved in the County Court and Employment Tribunal proceedings. We find that he was also involved in the debt collection because we accept the evidence from the parents that the tone and style of the communications was out of character for Mrs Battersby. We found that he has invested considerable time and effort in the settings.

111. How and why Mrs Battersby became involved with Mr Perera and the exact relationship with him is not the issue. The issue is that she is the registered manager and responsibility rests with her. Since 2016 she has lost control which coincides with her using Mr Perera to assist with IT and administrative tasks in the settings. There was a clear incentive for her, particularly once a suspension hearing started, if not before, to sever at least her professional ties with him. She did not do so. What matters is the way that this has impacted on her ability to keep children or her staff safe and the way she discharges her responsibilities as the registered manager.

112. Mr Perera has a record which should have alerted Mrs Battersby as an experienced Registered Provider to concerns about his suitability to be in a childcare setting.

113. There is clear evidence based upon his record and dealings with individuals, particularly staff in the nursery that his manner can be intimidating for example stating that he owned the whole or at least 51% of the setting. In his own Witness Statement he says he would put Sarah Peel on a 'disciplinary investigation for the way she was behaving towards me' and *"I felt it was important to re-establish my authority if I were to perform my duties at Flutterbies"*.

114. Another example is anonymous complaint sent to Ofsted on 23 February 2018; the caller did not think it material at the time but realised its significance when they heard of concerns about the nursery. They were in a meeting with Mrs Battersby when Mr Perera came in and dragged her out saying *"I can shut this place down if I wanted to"*.

115. He demonstrated the same type of behaviour to the Police on 19 February 2018 as we have set out in our findings above. He would not allow

Mrs Battersby to speak and told her not to give her details to Officers. He was also verbally intimidating to Sarah Peel, saying that she would be disciplined for calling the Police, and continued to intimidate staff, saying that he was the owner of the premises and had control of their contracts.

116. The Tribunal has had an unusual opportunity to assess not just the role but the tone of Mr Perera's communication, because at all points until he was banned, he put himself forward as being Mrs Battersby's representative. We note that on 4 July 2018 he purported to give her one months' notice of his contract. He also said that he had carefully considered her request that he represent her in any ongoing related Tribunals until she was financially stable but warned that might be *'perceived incorrectly by other parties, which in turn could act to your detriment'*. That is correct but it appears that thereafter she had no confidence to put her case together, even though the facts within her knowledge. He has continued as we have set out in detail to be very closely involved in this case.

117. He also stated that he had no ownership claims to her establishment. That doesn't fit with things that he said and his actions which we have recorded in the evidence. There are no documents to prove he was just an employee, save one P 45 in a different name, albeit one he apparently uses.

118. Despite his denials, we accept the behaviour of Mr Perera has a direct impact upon children, which we set out in more detail below. Also, his behaviour affected the staff who were so concerned that they called the police on 19 February 2018. Sarah Peel was reduced to tears. A staff member accepted that in 2017 she should have shared her concerns with Ofsted but felt intimidated by him.

119. We accept the submission that there is very clear evidence from which the Tribunal can conclude that Mr Perera has had, and continues to have, a significant role in the operation of both settings. It is not possible to say exactly what role is and whether it is different in respect of each setting.

120. Ofsted have put together very detailed cross-referenced schedule of comments about Mr Perera and his involvement in the nurseries. This document runs to 11 pages of A4. Ms Plewinska's Statement also gives detail on this. Initially the Appellant said that she and Mr Perera were putting together an application for a new registration and that he would be a business partner. Staff suggested he was funding the Unity purchase. He has described himself as an owner of a 51% interest in the setting to both staff and the police. In particular when asked in the first suspension appeal, Mrs Battersby was unable to give a coherent or satisfactory response as to why Mr Perera claimed 51% share of the nurseries.

121. The position was the same in the second suspension appeal. At the fourth suspension appeal, the Appellant said that he had spoken to staff because they were reluctant to give an explanation to him for matters such as lateness, so she accepted he needed to show that he had *'more clout'* but was unable to give a coherent explanation as to why he had rung the police

following the attempted burglary at Unity, claiming he was the owner. The Tribunal concludes that she would have been the obvious person as the Registered Manager to deal with any staffing issues rather than a person who she described as employed in a part-time capacity to assist with the administration and IT issues.

122. We agree with the conclusion of Ms Plewinska, the decision maker that it appears more likely than not that Mr Perera had some form of financial interest in the nurseries. Whether it was as a joint owner, or someone who had lent money to the Appellant, or in some other way, it is impossible to tell. That would make it more difficult for the Appellant to act independently. However, it also impacts upon her integrity because she's been asked about this a number of occasions and been unable to give a straightforward and credible explanation, backed up by documentation which would be reasonable to expect an employer to have. If he has no financial interest at all, then his motive could only be control.

The risk of harm to children

123. Despite her previous positive record, we have found clear evidence that Mrs Battersby has said one thing and done something else or she was unable to recall significant incident that placed herself and the children at risk of harm. As one example, on 22 August 2016 she confirmed that she had changed the PIN number to access the nursery but by the summer of 2017 Ofsted put together evidence that he was once again able to enter when children were present and that when he did so he behaved in the same aggressive and intimidating manner.

124. In October 2017, Mrs Battersby again indicated that she would safeguard children and it was made clear to her that she was responsible for individuals who came onto the premises. She was warned by Ms Plewinska of the view that Ofsted was likely to take if there were any further incidents. She said she understood she needed to sort things out.

125. Despite the seriousness of the incident of February 2018, the very next day Mr Perera was present at the Parkgate nursery again, as indicated by the signing in sheet and evidence of the staff. On 21 February he was at the Unity Nursery. This suggests that neither he or Mrs Battersby were unable or willing to understand the seriousness of Ofsted's concerns which were based upon the risk to children. There is documented evidence from staff that he was in and out of the nurseries after that.

126. Even if children were at their rest time during the argument on 19 February 2018, there is a possibility that some heard. More particularly, this was not the first time an argument taken place between Mrs Battersby and Mr Perera. We found the evidence of parent MS compelling that her child had remembered '*Shaun shouting*'. We did not conclude that she was exaggerating when she concluded that her child's upset was about things that she later disclosed had happened at nursery.

127. There is direct evidence, which we have accepted that staff were upset which could easily affect the quality of care they are able to provide to children. It is extremely concerning one staff member was so intimidated by Mr Perera, that she didn't share concerns with Ofsted in 2017 which she later acknowledged she should have done.

128. On 19 February 2018, at the height of the incident, Mrs Battersby left the premises with Mr Perera, rather than attend the welfare and well being of the staff and children. She has in her evidence accepted that he can be volatile, so possibly she was trying to calm him down by removing him from the situation. However, there is no evidence that she subsequently returned to speak to staff about what had happened and give assurances it would not happen again, with reasons why. On any view, it appears that Mr Perera was her priority.

129. We have set out how during the long history of these appeals, Mrs Battersby has not satisfied Ofsted or the Tribunal she can take appropriate steps to ensure that children in the settings are safeguarded at all times.

130. In summary, we conclude that there is overwhelming evidence that for a number of reasons Mrs Emma Battersby is not suitable for continued Registration and nor is the Second Appellant. Many of these reasons would each individually justify Cancellation of the Registrations.

131. We have found that the issues extend beyond Mrs Battersby's current lack of premises or health issues. It is the evidence of Ofsted, the children, staff and parents that provides such concern that shows she lacks insight to comprehend the repercussions of her actions in terms of her responsibilities as a Registered Provider.

132. The history of the concerns was that Mrs Battersby was involved in an abusive relationship. This established the risk posed to the children, staff and indeed herself. It has been noted that Mrs Battersby has anxiety /stress issues (including emotional distress) which has been potentially the result of domestic abuse and coercive control. Whilst this has promoted sympathy for Mrs Battersby, her failure and inability to afford the children the required level of protection in her care it means that she is unable to behave in appropriate and protective manner which does render her an unsuitable person to be the Nominated Individual. In respect of either registration. Taken together, the grounds for Cancellation are overwhelming.

Order:

The appeal is dismissed in respect of both Appellants.

**Tribunal Judge M Lewis
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 12 April 2019