

First-tier Tribunal Care Standards

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

[2023] UKFTT 981 (HESC)
[2023] 4885.EY

Hearing held at Tribunal Centre Manchester
On 6 – 9 and 10 November 2023

Before
Tribunal Judge Ian Robertson
Specialist Member Mike Cann
Specialist Member Josephine Heggie

Between:

(1) Godswill Uzzi Daniel
(2) Sarah Uzzi Daniel

Appellants

-v-

Ofsted

Respondent

DECISION

The Application

1. This is an appeal brought by Mr Godswill Uzzi Daniel and his wife Sarah Uzzi Daniel against the decision of OFSTED dated 16 January 2023 to cancel both their Registrations as Childminders on the early years register and both the voluntary parts of the Childcare Register. They are separately registered, but their appeals have been consolidated.

Attendance

2. Mr Praveen Saigal of counsel represented OFSTED. He called live evidence from Rachel Waterhouse, Helen Wood, Donna Birch, Shauneen Wainwright, Emma McCabe and Alison Tranby

Mr and Mrs Uzzi Daniel represented themselves they called no witnesses.

Late Evidence

3. Mr Saigal sought to admit as late evidence i) The Appellants Certificates of Registration, ii) The OFSTED code of conduct and iii) three E mails involving Rochdale Children Services in 2021. All late evidence was agreed by the Respondents and we allowed it on the basis that it was relevant.

Background

4. Sarah Uzzi Daniel was registered as a childminder on 7 April 2009 her husband Godswill, on 10 March 2011. On 2 February 2015 following an inspection Godswill had a finding of requires improvement. On the same date Sarah was inspected but had no children on the roll and therefore requirements were not met. Through 2016 Rochdale Children Services put in considerable help and assistance and at an inspection on 4 November 2016 Godswill received a Judgement of Good. Again Sarah had no children on roll.
5. In March 2021 there was communication from Children Services to OFSTED passing on concerns that had been expressed by a social worker visiting the house in respect of a child she had responsibility for, regarding the environment and atmosphere in the house. There were also referrals from school expressing concern about Mr Uzzi Daniels aggressive attitude.
6. On 26 April 2021 following a regulatory visit both were found to be not meeting requirements for a) risk assessment (both) ii) recording childrens attendance (both) and iii) adequate supervision of children. Actions were issued.
7. On 1 November 2022 during a routine announced inspection grave concerns were raised about the failure to follow up on the actions and regarding the attitude and aggression of Mr Uzzi Daniel. The environment in the house was considered wholly unsuitable for children and dangerous. An inspection outcome of inadequate was issued for both Appellants. Both registrations were suspended on 2 November 2022. Notice on Intention to cancel were issued on 13 December 2022 and Notices of decision to cancel issued on 16 January 2023. On 16 March Notices of Appeal were lodged by both Appellants. Through 2023 there were a number of further inspections detailed below. It is alleged that there was a deterioration in both physical standards in the home and in the relationship between the Uzzi Daniels and OFSTED.

Legal Framework

8. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006 (“the Act”).
9. Section 32 of the Act provides for the maintenance of two childcare registers. The first register (“the Early Years Register”) includes “other early years providers” registered to provide early years childcare for children (from birth to the age of five years) for which registration is compulsory. The second register, with which we are concerned in this appeal is “the General Childcare Register”. This is divided into two parts: A register which contains those providers registered to provide later years childcare for children aged between 5 and 8 years for which registration is compulsory (“the compulsory part”). A register which contains those providers registered to provide later years childminding/childcare for children aged over 8 years for which registration is voluntary (“the voluntary part”).
10. Section 68 of the Act provides for the cancellation of a person’s registration in certain circumstances. Section 68(2) provides that Ofsted may cancel registration of a person registered on either part of the General Childcare

Register, if it appears: (

a) that the prescribed requirements for registration which apply in relation to the person's registration under that Chapter have ceased, or will cease, to be satisfied:

(b) ...

(c) that he has failed to comply with a requirement imposed on him by regulations under that Chapter.

11. The prescribed requirements for Later Years registration are provided for by Part 1 of Schedule 2 of the Childcare (General Childcare Register) Regulations 2008 and include that:

The applicant is suitable to provide later years provision (paragraph 1).

12. The prescribed requirements for "other childcare providers" are provided for by Part 1 of Schedule 5 of the Childcare (General Childcare Register) Regulations 2008 and include that:

The applicant is suitable to provide later years provision (paragraph 1).

13. "Harm" is defined in regulation 13 of the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 as having the same definition as in section 31(9) of the Children Act 1989. This refers to harm as:

"ill treatment or impairment of health or development, including for example impairment suffered from seeing or hearing the ill-treatment of another."

"Development" means physical, intellectual, emotional, social or behavioural development.

"Health" means physical or mental health.

14. The right of appeal against the decision lies under section 74 of the Childcare Act 2006. This provides that (as applicable):

S74 Appeals

(1) a registered person may appeal to the Tribunal against the taking of any of the following steps by the Chief Inspector under this Part—

..... (e) the cancellation of registration.

(4). On an appeal the Tribunal must either—

(a) confirm the taking of the step.....or

(b) direct that it shall not have, or shall cease to have, effect.

(5) Unless the Tribunal has confirmed the taking of a step mentioned in subsection (1) (a) or (e) or the making of an order under section 72(2) cancelling a person's registration, the Tribunal may also do either or both of the following—

- (a) impose conditions on the registration of the person concerned;
- (b) vary or remove any condition previously imposed on the registration.”

15. The Respondent bears the burden of proving any breaches alleged, including the core allegation that the Appellant is unsuitable. The standard of proof is the balance of probabilities.
16. When a party makes a specific allegation, the general rule is that he/she must prove that which is alleged. In so far as the Appellant has alleged that the OFSTED inspectors have lied and fabricated evidence the burden is on them to prove the allegation on the balance of probabilities.
17. The persuasive burden regarding necessity, justification and proportionality rests on the Respondent

Evidence

18. We received a bundle for the Appeal running to 1722 pages. This is a difficult bundle to manage particularly where the Respondents are unrepresented.
19. The first witness we heard from was Rachel Waterhouse. She is contracted to OFSTED as an Early Years inspector. She visited the Property on an inspection on 1 November 2022. She said that she met Sarah Uzzi Daniel in the front room with a child. She asked where Godswill was and was told by her that he was upstairs with another child. She went upstairs and saw him in his office with that second child aged 2. The child was in the office. She told us that with discussions regarding dates over the preceding days the Uzzi Daniels had 10 days Notice of the visit. She said she made it clear that the inspection was a joint inspection. She described to us the chaotic nature of the property. We were shown a number of photographs, taken by a colleague, of the property which we will return to later.
20. She said from this point Mr Uzzi Daniel became very hostile to her so much so that at one point in the inspection she went outside to call a colleague to assist her as she felt intimidated. That colleague was Shauneen Wainwright who took the photographs. Together they inspected the property and asked questions of the couple. She was at the property from 8.20 to 5.30 or so. She observed Sarah Uzzi Daniels change one child's nappy and then later in the day change the other child's nappy disposing of this in the same nappy sack that had been used some hours previously. She described chaotic feeding with Sarah chasing after a child with a bowl of warmed food and a fork trying to get the child to feed. There was no evidence that the child had washed their hands. She described Mr Uzzi Daniel playing with a child using Duplo and taking the brick away from the child causing that child to have a tantrum and throw his head back so he hit it on the hard floor. She described the child doing this twice more but neither of the couple checking to see if he had hurt himself nor making any note that he had hit his

head.

21. She indicated that whilst at the property a mother arrived who confirmed that her child had previously stayed overnight. There was no issue with this in principle as the couple were registered for overnight minding. She subsequently confirmed this in a telephone call with Ms Waterhouse however both Mr and Mrs Uzzi Daniel denied that any child had stayed overnight.
22. Ms Waterhouse was cross examined by Mr Uzzi Daniel to the effect that he had been told that the inspections were separate and he had taken the child upstairs to be away and that it was she who had come upstairs and was aggressive to him. He put it to her that she had been aggressive throughout and had lied about the incident where the child hit their head. Sarah Uzzi Daniel said that the food incident involved snacks not warm food and that the nappy changing did not involve reusing the same bag. She did not alter her evidence under cross examination.
23. The photographs of the property are compelling. They show the following;
 - i) A Plastic bag accessible in playroom
 - ii) A wide shot of playroom showing extreme clutter
 - iii) Piles of suitcases
 - iv) 4 Photographs of an extremely cluttered office with hazardous objects lying around
 - v) A room with dirty bedding
 - vi) A broken mirror on the floor at the top of the stairs
 - vii) A huge pile of boxes in corridor
 - viii) 4 Photographs of dirty/mouldy area of basement/playroom
 - ix) Toilet with dirty towel stuffed behind toilet U bend
 - x) Sealed window in basement
 - xi) 2 photos of multiple bicycles stacked in basement area
 - xii) Two office divider screens wedged in corner of basement to screen off bicycles but with gap at bottom
 - xiii) 2 photos of decorating material behind chairs in the basement
24. It was put to Ms Waterhouse that some of these photographs had been deliberately set up by herself and Ms Wainright. She vehemently denied this.
25. The next witness was Helen Wood. She is an Early Years Advisory Teacher employed by Childrens Services in Rochdale. She helps child care providers improve their practice and delivers safeguarding advice. In her written evidence she explained how her predecessors had helped the couple in 2016 improve their practice so that they received a good inspection from OFSTED in that year.
26. After the issues raised in the inspection in April 2021 and that on 1 November 2022 she visited on 6 January 2023 to try and assist in delivering good practice for the couple. She indicated that she had visited a number of times and was always warmly welcomed and found the couple receptive. Mr Uzzi Daniel had undertaken a number of courses. She accepted on cross examination that her role was very different to OFSTED as she was following a supportive as opposed to regulatory brief. She was shown the photos of the house taken on 1

November and confirmed that she had not seen a lot of the property and found the photographs concerning. Concerningly she was unaware of the referrals made to her own manager Ms Henry in 2021 from a social worker and the school expressing concerns about Mr Uzzi Daniel in particular and the conditions in the home.

27. Donna Birch was the next witness she is an Early Years Regulatory Inspector. She first visited on 26 April 2021. This was following a S47 enquiry undertaken by Children Services following the referral from a social worker pursuing an issue of Private Fostering at the Uzzi Daniels home. This enquiry produced no actions however the LADO referred the matter to OFSTED because of concerns regarding the state of the property. There were three children over 5 at the house. She saw de-icer on the shelf in the hallway and cough medication on the table in the lounge. Whilst at the house Mr Uzzi Daniel left to pick up some children. At this point Sarah Uzzi Daniel left the children to make them some food. The children went into the room Ms Birch was sitting and started to become very over excited jumping from the sofa over a glass table and performing handstands on the sofa.

28. Ms Birch shouted for Sarah but got no response she walked down the hallway but still got no response. It was her view that she had gone outside to take a phone call. The children were unsupervised for 8 minutes in all. She asked to see the attendance registers, for the three children who were in the house originally, the two who arrived back with Mr Uzzi Daniel and the two Early Year's children who arrived at about 5.00. Some old registers were presented but no contemporaneous record was found. As a result of her observations, she raised some actions. It was put to her by Mr Uzzi Daniel that she was lying about the registers and indeed the two EY children arriving later. She denied this. No explanation was forthcoming from Mr Uzzi Daniel as to why she should have been lying.

29. She was tasked to visit the premises again on 12 June 2023 following the Welfare Requirements Notice dated 23 May 2023. That had been issued following a visit by Ms Wainright. and Ms McCabe a senior inspector. She informed us it was an unannounced visit. This was the fourth such regulatory visit and it led to yet another Welfare Requirements Notice. Set out below are the terms of the Notice which precis the evidence she gave to us.

30. Welfare Requirements Notice following visit on 12/6/2023

During the regulatory visit I found that despite this being the fourth time you have had actions raised in relation to risk assessment, particularly, to identify and remove potential hazards in the environment that may cause children harm, you have failed to do this. At the visit I found that there were hazardous items in the lounge, such as plastic bags, wires, cables, and medication. You told me you were tidying up and sorting out the contents of drawers and cupboards. However, when asked, you stated that the medication would be going back in the low-level

drawers. You also told me that children can sleep in this room out of your sight, but not hearing. This exposes children to risks. This is because medication is within easy reach of the children. Furthermore, you stated that the medication was not yours, and that on checking it, you told me that it was out of date. This, again, does not demonstrate that you conduct regular and robust checks of the environment that children have access to. At the visit you showed me the playroom, situated in the basement. You showed me that you had removed a chainsaw out of a low-level cupboard. This was because this was pointed out to you at the last visit by another inspector as a risk to children. You showed me how you had moved this to a secure locked cupboard situated under the stairs in the playroom. However, despite this, there was another saw still in the cupboard that you had failed to remove. When I spoke to you about the potential dangers this poses to children, you did not demonstrate a secure understanding of potential risks. This is because you stated, this was not part of the concerns or, part of the welfare requirements notice raised by the previous inspector that visited you. This demonstrates your poor understanding to identify and remove potential risks to children. In addition, the drawers connected to the cupboards, that are also easily accessible to the children, were filled with un-suitable and potentially dangerous items. These included packs of nails, screws, small plastic bags and a candle lighter. This again, demonstrates your poor understanding to identify and remove risks to children. I am deeply concerned that you continue to fail to meet requirements as part of your registration.

Due to this continued poor practice and inability to identify and manage risks within your setting, Ofsted intends to issue you with a Welfare Requirements Notice.

31. Mr Uzzi Daniel challenged the issue of medication saying that it was out on a table in his personal living room and therefore not accessible to children. Ms Birch responded by saying that the whole premises were registered and needed to be properly risk assessed. She told us that she had taken photographs of the property, and we were handed these after she had finished giving evidence. These are alarming as after the photos from 1 November one would have expected improvements. However these photographs show extreme clutter with

so many hazards for children that appear to have gone unnoticed. There are sharp tools, endless wires, tissues, small objects and most alarmingly the sabre saw. It was described by Mr Uzzi Daniel as being a handsaw in a scabbard to trim branches. It turns out to be a very large power saw in a broken box. An object that would be of great fascination to a child and potentially incredibly dangerous

32. The next witness was Shauneen Wainright. She is the inspector who has probably had most to do with the family. She is employed by OFSTED as an Early Years Regulatory inspector. Her involvement began on 1 November 2022 when she agreed to join Ms Waterhouse later into the inspection because of her fears of intimidation. It was she who took the photographs. As with Ms Waterhouse she confirmed that the photographs were a true reflection of what she had seen and were not doctored in any way. She confirmed that as the inspection progressed after her attendance Mr Uzzi Daniel became more and more aggressive and could not see that the self evident hazards shown in the photograph's were anything that needed to be corrected.
33. A case meeting was held on 2 November and the decision taken to suspend both of their Registrations. As the hazards within the house posed a significant risk to the safety of children. She visited the house further on 9 December to follow up on the issued raised by the visit on 1 November. She was concerned that environmental hazards remained and both of them were unable to understand the risks posed and the necessity for risk assessment. Another WRN was therefore issued dated 13/12/22

During your inspection on 1 November 2022, we found significant hazards within your premises. These hazards significantly impact on children's health and safety. We have raised these concerns with you previously, in 2015 and 2021. During your regulatory visit on 9 December 2022, we found that you continue to fail to ensure your premises is safe and suitable. The areas in which children are minded continue to be hazardous and pose a risk of harm to children. You demonstrate a lack of ability in identifies serious hazards to children. For example, we found the children's main playroom to be very cluttered with stacked furniture, tools, plastic bags, and toxic substances within easy reach of children. Some improvements have been made, however this is not enough to support children's safety and well-being within the provision.

You show a repeated inability to effectively risk assess your premises. Despite actions being previously raised, you still do not provide a safe environment for children. Your risk assessment procedures continue to be ineffective, and this places children at significant risk of harm.

34. OFSTED took the decision to continue the suspension and also to issue a Notice of intention to cancel registration. Ms Wainwright delivered these on 13 December. Notice of Decision to Cancel was issued on 16 January 2023. She visited further on 3 February for a monitoring visit. The actions appeared to have been complied with but she was concerned that they were persisting in saying that Ms Waterhouse had made up the incident of the child banging his head and had lied. Following this visit the suspension was lifted on 6 February although the Notice of Intention to Cancel remained operative.
35. On 28 March she conducted a further unannounced regulatory visit accompanied by Emma McCabe. Discussion was had about Mr Uzzi Daniel using an X Box both as a reward and education tool. On going downstairs she noted that X Box plugged into the TV with a number of 18 rated games next to it. At this point Mr Uzzi Daniel denied that the children ever used it. His explanation, which seemed very plausible that they were his sons games and he had neglected to put them away. Instead of having a reasonable discussion about this understandable slip Mr Uzzi Daniel became aggressive and denied having spoken of the X box. This is a theme that we will come back to. The previous concerns regarding the environment were raised once more and it was clear that there was no evidence of risk assessing taking place. Accordingly a further WRN dated 31 March 2023 was issued

During the visit on 28 March 2023 the inspectors found that toxic substances, such as paints, glues and cleaning materials were stored in an unlocked, child-level cupboard, within the children's playroom. The inspectors asked you to assess this risk and you were unable to identify any safety issues associated with this and deemed your presence as enough to dissolve any risk. Despite actions surrounding risk assessment being raised on multiple occasions throughout your registration history, you continue to fail to demonstrate an ability to independently identify and rectify risks.

Furthermore, you showed the inspector's a current childminding contract in which parents have given permission for 'any member of your family' or 'any person appointed by KRR' to collect children from school. You then explained that this clause was within the contract to enable your daughter to pick children up from school if needed. Again, you fail to risk assess this procedure effectively. You have not considered the risks associated with allowing a person without paediatric first aid training to collect children from school. You also fail to understand that any person caring for children under your registration must be made known to Ofsted as an assistant, not only as

a household member. You lack understanding of your roles and responsibilities, and this undermines children's safety. Your continued lack of ability to accurately identify and rectify hazards places children at risk.

36. When she fed this back to Mr Uzzi Daniel on the phone she was greeted by abuse from him including him calling her a liar, acting on an agenda, and "deliberating lying and creating madness to de register him". On 17 May accompanied by Ms McCabe a further unannounced regulatory visit took place and Mr Uzzi Daniel refused to take part. On the basis of her inspection of Mrs Uzzi Daniel Ms McCabe issued a further WRN dated 23 May

During the inspection I viewed your premises and discussed with you your understanding of risk assessments. I found a chain saw in an unlocked cupboard at children's level. I was able to put my hand into the cupboard and remove the cap off the blade of the chainsaw. It is concerning that you did not see this as a risk. You said chairs were in front of the cupboard, however the chainsaw was still accessible. In addition, when I asked you to discuss the risks in your living room, which is the room where you would care for babies and toddlers, you were unable to identify all risks. You told me you would put a glass table in front of the fire and remove the fans, however there were other items in the room you had not considered. You also have not considered what potentially could happen if a child was going through a climbing phase. You told me that children would never be left unsupervised. However, you have not identified all potential risks and what steps you would put in place to minimise these. Despite actions surrounding risk assessment being raised on multiple occasions throughout your registration history, you continue to fail to demonstrate an ability to independently identify and rectify risk

37. She visited further with Alison Regan a senior Inspector on 3 July 2023 they were greeted by Mr Uzzi Daniel who became progressively more agitated and aggressive accusing her of being a liar. This continued throughout the visit with him calling Ms Birch a liar also. They went down to the basement and once more this was littered with obvious risks; masonry screws in drawers accessible to children, long loose wires, precariously stacked chairs. He was asked to risk assess the room he responded by saying there was nothing to risk assess. She felt it was inappropriate to feed back in person. She therefore phoned him on 7 July. She explained that a repeat WRN would be served. He became extremely

angry and stated “God will judge you in the end because God knows you are a liar, he knows I speak the truth and he will judge you harshly”

38. On 22 August she made a further visit with Senior His Majesty's inspector Elaine White. A summary of visit with Elaine White is set out below;

The majority of this visit was taken up by conversation between CM, co-CM and Elaine White. EW offered CM and co-CM opportunity to air grievances and frustrations from previous visits and inspections and this was lengthy. CM was frustrated and angry at times and repeatedly called SW a 'liar' and asked demanding questions of SW, such as asking SW verbatim to recall questions asked by other inspectors etc. CM's main grievance was that SW (as well as Emma McCabe (EYSO), Donna Birch (EYRI) and Rachel Waterhouse (OI)) had exaggerated evidence to suit our own narrative.

With regard to the WRN - SW gathered enough evidence to show that CM is able to risk assess on a basic level. He is able to identify some hazards in the premises and can discuss ways to minimise these hazards. Some hazards remain unidentified by CM, such as long trailing wires, stacked adult chairs and cluttered resources. However, tense nature of the visit did not always allow for effective discussions between CM and SW. The premises remains in an unfit state for children to attend. The furniture in the basement area (adult chair arms, leather sofa) are covered in mould. The play areas are noticeably unclean and the air is thick with the smell of mould in the basement. Although, CM demonstrates on this occasion a basic ability to identify risks, the fact remains that this is not currently an acceptable premises for the care of children.

Elaine White made the decision during the visit that no further visits will be carried out to the CM. EW was of the view these visits are no longer productive, partly due to the damaged relationship between the CM and the regulator. EW made the decision that the next logical step is to attend the tribunal for the appeal against the cancellation process.

39. Ms Wainright was subjected to hostile questioning by Mr Uzzi Daniel. In a nutshell his case was that she was hostile to him and had exaggerated evidence

against him and his wife and got other OFSTED officers to do the same in reinforcing her false evidence. The Photos were he says manufactured by them and did not reflect the actual situation. In cross examination he made no concessions to her professionalism.

40. The next witness was Emma McCabe she is an Early Years senior officer. Her first involvement was to send Shauneen Wainright to join Ms Waterhouse at the assessment on 1 November. She chaired the meeting that agreed the suspension on 2 November. She was part of the decision making leading to the Decision to cancel and the Notice issued on 16 January 2023. On 28 March she went out with Miss Wainwright on the assessment set out above. She wanted to see for herself in the light of the appeal received on 16 March whether there had been any improvements as the suspension had been lifted on 6 February so they were entitled to mind children. Mrs Uzzi Daniel told her they had not minded any children Mr Uzzi Daniel said they had but was non specific. It transpired when looking at claims made that children have been minded since 7 February (the day after the suspension was lifted). We were also shown on Day 4 a Register for this period showing three children attending.
41. During the inspection the parent who Ms Wainwright had spoken to on 1 November and had indicated that her child had stayed overnight arrived at the house. She confirmed that her children had stayed but when pressed by Mr Uzzi Daniel said that they had not stayed for money. Ms McCabe described her being harangued by Mr Uzzi Daniel into saying the children never stayed
42. On cross examination by Mr Uzzi Daniel she explained that the issue she had with him was his inability to demonstrate a secure understanding of learning or how to sequence learning. There was discussion about whether children had been minded since 1 November 2023 and it became clear that Mrs Uzzi Daniel had made claims in respect of children who they had looked after. The claims were made under Mr Uzzi Daniels Unique Registration Number (URN).
43. Allison Regan was the final OFSTED witness she is also an Early Years Senior Officer and took over from Ms McCabe in June 2023. She visited with Ms Wainwright on 3 July to introduce herself and monitor the WRN compliance. She shared the complaints process with Mr Uzzi Daniels as she was aware of his discontent with Ms Wainwright. She said that the atmosphere was hostile she only saw three rooms (the two sitting rooms and the basement) in each room she asked Mr Uzzi Daniel to risk assess he refused to do so saying there was nothing to assess all was fine. He said as no children were being minded there was no need to assess risks. At the end of the visit Mr Uzzi Daniel was clearly very angry and stated he had no trust in OFSTED. He refused to work with Ms Wainwright.
44. Mrs Uzzi Daniels then gave evidence. She went through each of the OFSTED inspectors in turn. She said the children always washed their hands and sat down for meals. She said she is a registered child minder in her own right but acts as a team with her husband. She plans curriculums involving the parents in this and takes time for self reflection and evaluation. She said that they risk assess all the time and that when the basement is used the two of them always supervise one at one end the other and the other end. There is no danger of the

children for example getting into drawers, she said baby changing was done in a specified place that recognised privacy of child.

45. Of the criticisms by Donna Birch she said that the children were unusually excited when they met her. She took them to meet her in their private front room then took them back to their play room and instructed them to remain there whilst she made their food. Under cross examination she refused to accept that the children were unsupervised for 8 minutes although she accepted she was out of the room for 8 minutes. She said the children were over excited by Ms Birch's visit and they had never left their room before. She denied leaving the house to make a call, but said she had called her husband to discuss food options, but could not explain why she did not hear Ms Birch shouting for her.
46. As far as Ms Wainwright is concerned she did not accept the criticisms of the state of the property as shown in the photographs. On cross examination there were two bases for this firstly the only room the children had used in the last few months was the other front room. The basement was not used as a playroom despite being described as a playroom and confusingly previously describing it being used with both of them supervising. Her second tack was to say that effectively the 1 November photographs were not a true depiction of what was there. In other words that Ofsted inspectors had falsified the photographs. She at no point raised any explanation as to why they should have done this. Her evidence regarding what rooms were used by the children was confusing. It is patently the case that the basement is used. It has been described throughout as the playroom. The sitting room upstairs is also used as the quiet room. We have no doubt that both are used extensively.
47. She was very keen to say that she was not in any way under the thrall of Mr Uzzi Daniel. She was her own woman and worked with him in partnership. She described him as never aggressive but rather assertive. She described her relationship with OFSTED as moving from guidance to "something else". She did not elaborate. She was questioned about attendance registers she said she completed these at the end of the day but did accept that this could pose a risk if something happened to her whilst minding and information was required about the children. She did not explain why so many registers were missing or had been haphazardly completed.
48. Mr Uzzi Daniel then gave evidence. His evidence in chief was the submissions he made with his Notice of Appeal. He was extensively cross examined for nearly three hours. His case in a nutshell is that the inspection on 1 November was defective and that managers at OFSTED having signed this off were from that point onwards lying and manufacturing evidence to back up that false position. He went through each of the photographs taken by Ms Wainwright on 1 November and claimed that a number of them were not taken on that day as he was clear what they showed was not present on 1 November. Mr Saigal presented him with a computer trail showing that all photographs were downloaded to a computer on 2 November but he refused to shift his position.
49. He presented a number of photographs that showed an improved environment in his house. The juxtaposition between those and what was seen by the inspectors could not have been more stark but he did not seem to accept this. He maintained that they had not child minded since 1 November so there was

nothing to risk assess. However he was shown claims made to student loans after 7 February (when the suspension was lifted) and their own registers which showed numerous occasions when three children were minded. He told us variously that his wife had put in the claims without his knowing (even though under his UFN) and then that the children had never returned to the property but his wife without his knowledge had taken the children to the park. The Register recorded that this was for three hour periods in February. He appeared to be making it up on the spot. It is perplexing that he did not simply acknowledge the minding as his suspension had been lifted and he and his wife were perfectly entitled to child mind.

50. It was in the area of risk assessing that his evidence was most confusing. He did not seem to understand the nature of risk assessment. He said that whenever anything was raised he dealt with it. His thinking around this was entirely concrete. He did not appear to grasp the concept of assessing risk ie: looking around to see if there was anything that could harm a child and planning accordingly. The photographs taken by Ms Wainright and Ms Birch demonstrate this. He refused to accept that these were a true reflection of the situation or if they were that they posed a risk, as he said the children were double supervised throughout. This is patently not the case as by his own evidence he is often out on the school run and the evidence of Ms Birch regarding the children being left alone by Mrs Uzzi Daniel He refused to accept this saying that the basement in particular was not used.

51. He denied being angry or aggressive towards OFSTED inspectors he said they were the aggressors. He denied ever having issues with any professionals

The Tribunal's conclusions with reasons

52. Inspection is at the heart of the Regulatory regime. Child minders are strictly regulated as, after all, they are looking after other people's extremely vulnerable children. Childminders carry a huge responsibility and it is only right that their activities be scrupulously, but fairly monitored.

53. We were referred to the OFSTED Code of Conduct by Mr Saigal which sets out expectations of Providers to, amongst other things, be courteous and professional treating inspectors with respect, to treat the regulatory activity with integrity, be open, transparent and honest. It appears to us that this is core to the smooth running of the inspection regime

54. We have set out the evidence we heard in some detail. Essentially the OFSTED case is that the physical environment of the property was such that it was dangerous for the children, that Mr and Mrs Uzzi Daniel had demonstrated over time an inability to understand and rectify defects and their deteriorating relationship with OFSTED characterised by inspectors being called liars and being accused of manufacturing negative evidence, made them unsuitable to be Child minders

55. The case of both Mr and Mrs Uzzi Daniels is that the environment for the children is fine and that they are the victims of a "conspiracy" by OFSTED to disqualify them. The rationale behind such a conspiracy remains unexplained. This case manifests itself at its greatest extreme by the allegation that the

photographs taken on 1 November were somehow manufactured or doctored by inspectors.

56. We found each of the OFSTED witnesses in turn to be measured and professional. They gave their evidence in a clear manner and retained their professionalism in the face of aggressive and sometimes unpleasant questioning. We find that they each in turn did their best to explain the issues and to talk them through. There is absolutely no evidence that the photographs taken by Ms Wainwright and Ms Birch are anything but a true depiction of what they found. The photographs show a frankly a disgraceful picture of a lack of care. We do not accept the Uzzi Daniels assertions that the basement was not used as a playroom nor do we accept that it is possible that every time the children went down there they were supervised by both of them
57. We simply cannot understand why the things that were depicted in the photographs were stored in the basement. Their business is as childminders, to run that business they should have designated rooms that are warm comfortable and safe for the children. None of the rooms come into that category. Why are sharp tools stored in those rooms, paints, white spirit, power tools. Why is there a temporary block at the end of the room hiding a dumping ground for bikes. That block being room partitions wedged in place with a toddler sized hole at the bottom. There is no excuse for what was found on 1 November 2022 and quite rightly OFSTED suspended their registration. That neither Mr or Mrs Uzzi Daniel could see this is frankly astonishing. For them to fail to acknowledge them at the hearing and to allege that they had been doctored by the Respondents is a powerful argument against their suitability.
58. We would have expected any objectively reasonable person to hold their hands up to the manifest issues and to knuckle down and correct them and present to OFSTED and to us on appeal a clear plan of a now child friendly environment backed up by clear and well thought through documentation and a degree of embarrassment at the state that existed through late 2022 onwards.
59. Instead we were presented with a ludicrous conspiracy theory and failure to recognise any fault. We find that Mr Uzzi Daniel since 1 November 2022 has become increasingly angry and agitated with inspectors and has failed to act on the numerous WFNs served upon him. He has been joined in this stance by his wife sadly as she appears to us to be otherwise a caring and thoughtful person.
60. We find that children did stay overnight from time to time though we cannot say that the photographs of the room with bedding necessarily reflect where they stayed. We raise the question as to why the denials that any child did stay overnight, since they were perfectly entitled to provide this service. We find that children have been minded in the premises since 7 February and again ask the question as to why the denials. We find that Mr Uzzi Daniel has become increasingly aggressive and un-co-operative with inspectors and find that he has accused each in turn of lying. The relationship has fundamentally broken down.
61. We agree with OFSTED that Mr and Mrs Uzzi Daniel have palpably demonstrated that they are not suitable people to child mind. We find that their premises on 1 November and at all subsequent inspections were unsuitable to mind children.

62. There is no doubt that Mr and Mrs Uzzi Daniels have Rights that are protected under the Human Rights Act and that any breach of those Rights has to be lawful and proportionate. In this case OFSTED clearly applied the law as set out in relevant legislation set out above and applied it for the lawful purpose of protecting children. Given the evidence we have reviewed above the decision was clearly proportionate.

Decision:

The Appeal is dismissed.

Judge Ian Robertson

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 21 November 2023