

Care Standards

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

**Considered on Papers
On Wednesday 8th May 2013**

Before

**Deputy Chamber President Judge John Aitken
Specialist Member Mr Jeffrey Cohen
Specialist Member Ms Wendy Stafford**

M

Appellant

v

Ofsted

Respondent

[2013] 2034.EY- SUS

Decision

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Procedure Rules, however, not only must both Parties consent, which they have, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have a good picture of the allegations made, the response and the level of risk present. From the papers, there appears to be no substantial factual dispute which might affect our decision (although of course we will not decide the facts of the main allegation rather whether such an allegation has been made) and we consider that we can properly make a decision on the papers without a hearing.

2. The appellant appeals to the Tribunal against the respondent's decision dated 18th April 2013 to suspend the appellant's registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 30th May 2013.

3. The Tribunal makes a restricted reporting order under Rule 14 (1) (a) and

(b) of the ***Tribunal Procedure (First tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008***, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the children or their parents, or the appellant in this case so as to protect their private lives.

Events leading to the issue of the notice of statutory suspension

4. The appellant has been a registered childminder since 2000, at her last inspection in January 2010 she was described as “Satisfactory”.

5. Ofsted have previously raised concerns about children in an unattended car, requirements of registration, corporal punishment behaviour management policy and recording physical interventions, from several visits and inspections over a period of years.

6. On 11th April 2013 Ofsted received information that the appellant smacked a minded child and that she has used inappropriate language towards minded children.

7. Police have been notified and are to interview the Appellant, although they had not done so by the time this matter was considered by the Tribunal.

The Law

8. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. This Act establishes two registers of childminders: the early years register and the general child care register. Section 69 (1) Act provides for regulations to be made dealing with the suspension of a registered persons’ registration. The section also provides that the regulations must include a right of appeal to the tribunal.

9. Under the ***Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008*** when deciding whether to suspend a childminder the test set out in regulation 9 is:

“that the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.”

10. The suspension shall be for a period of six weeks. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes an ongoing obligation upon the respondent to monitor whether suspension is necessary.

*“Harm” is defined in regulation 13 as having the same definition as in section 31 (9) of the **Children Act 1989**:*

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

11. The powers of the tribunal are that it stands in the shoes of the Chief Inspector and so in relation to regulation 9 the question for the tribunal is whether at the date of its decision it reasonably believes that the continued provision of child care by the registered person to any child may expose such a child to a risk of harm.

12. The burden of proof is on the respondent. The standard of proof ‘*reasonable cause to believe*’ falls somewhere between the balance of probability test and ‘*reasonable cause to suspect*’. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child might be at risk.

Issues

13. Ofsted are concerned that the appellant has a history of somewhat similar allegations and some instances of poor record keeping and that the serious child protection nature of the allegations suggests that there is a risk of harm to the minded children.

14. The appellant points out that she has only recently been told even the briefest of outlines of the allegations, but is clear that they are untrue.

15. We have also seen two letters of support from parents of minded children indicating the trust they have in the appellant, as one points out the destabilising effect of this disruption has a potential to cause harm in itself.

Conclusions

16. We consider that the nature of the allegations whilst raising child protection issues are not such that suspension is required. We consider that certainly during the period of investigation there is in fact little risk that such behaviour, even if true, and we of course make no finding about this, would be repeated. We note the previous difficulties but also that the appellant has been registered for 13 years. We do observe that the appellant may consider it in her interests to formalise the support relationship with her daughter in law.

17 Whilst we understand the concerns of Ofsted in this case, much of the material which is present is more appropriate to the consideration of registration in the long term rather than the acute need for suspension, and that may be reflected in the fact that no interview has yet taken place with the Police. Equally of course there may be circumstances of which we are not aware which have delayed the interview and it is not a decisive factor in our consideration of all of the evidence in this case. Overall we consider that there is a preponderance of evidence suggesting that children minded by the appellant would not be at risk over the period we are considering.

Decision

The appeal against interim suspension is allowed, the suspension ceases to have effect.

**Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Thursday 9th May 2013**