

## **Care Standards**

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

**Considered on Papers  
On Friday 29<sup>th</sup> June 2013**

**Before**

**Deputy Chamber President Judge John Aitken  
Specialist Member Mr Graham Harper  
Specialist Member Ms Wendy Stafford**

**LC**

**Appellant**

**-v-**

**Ofsted**

**Respondent**

**[2013] 2050.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 allegations rather whether such an allegation has been made and matters which arise from that relating to risk) 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 12<sup>th</sup> June 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 24<sup>th</sup> July 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 May 2012 and following her last inspection in November 2012, she was described as “Good”.

5. Ofsted has previously raised concerns about an incident involving a child who is a family member of the childminder.

6. On 23<sup>rd</sup> April there was an allegation from a member of the public that the appellant has given a hard smack to her 9 year old stepson in the street. Following an investigation Social Services decided to take no action with regard to that incident.

On 11<sup>th</sup> June there was a report by the stepson relating to his care, he alleged that he had been pulled from a bunk bed catching his leg, thrown to the floor and grabbed by the chest, slapped with a slipper and incidents which might amount to emotional cruelty involving threats to pour washing-up liquid down his throat, and incitement to use a knife on his stepmother.

I make it plain that we do not at this point have the advantage of the result of the meeting which was to be held by Social Services about this on 27<sup>th</sup> June. However the initial impression given by Social Services at this point was that *“we have.... a confused little boy, who is then lashing out and both parents manage this inappropriately.”*

7. We have seen five references from parents who are adamant that the Appellant gives a good standard of care to their children. We of course bear in mind that they are a selected group, and one would expect good behaviour in their presence, but generally they are helpful as it is difficult to imagine that the behaviour complained of with regard to the stepson would not have “leaked out” to such a group of parents had anything of a similar nature been observed or suffered by their children.

## 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 had two allegations made from different people, and it may indicate an inability to cope with children and a

tendency to behave badly towards them, plainly inappropriate in a childminder.

14. The appellant points out that there is some tension with her stepson and much of what is said by him has a small root of truth that is then embellished to present him as a victim. The first allegation she regards as invented, and there is no suggestion that the stepson has supported that allegation.

### **Conclusions**

15. We consider that in the circumstances of this case 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 spread to minded children.

16. Whilst we understand the concerns of Ofsted 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  
Friday 28<sup>th</sup> June 2013**