

## **Care Standards**

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

**Considered on the papers**

**On Friday 8 November 2013**

**Karen Etsiwa Moore**

**v**

**Ofsted**

**[2013] 2114.EY.SUS**

**Before**

**Miss Maureen Roberts, Tribunal Judge  
Mr Graham Harper, Specialist Member  
Mrs Sallie Prewett, Specialist Member**

### **DECISION**

1. This matter was listed for consideration on the papers. This 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 clear account of the concerns of the respondent, the appellant's response to the issue and the level of risk, from the papers. There appears to be no substantial factual dispute, which might affect our decision 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 18 October 2013 to suspend her registration as a childminder on the General Childcare Register under section 69 of the Childcare Act 2006 for six weeks until 28 November 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 in this case so as to protect their private lives

### **Events leading to the issue of the notice of statutory suspension**

4. In December 2012 the appellant's son LB was convicted of the murder of a 17-year-old man. The appellant's son was one of four men who were convicted of the murder and he received a 28 year custodial sentence. In

August 2013 LB was transferred to a secure mental health unit for an assessment as staff at the prison had concerns that LB had severe mental health problems. The mental health unit is approximately 6 miles away from the appellant's home.

5. On 16 October 2013 LB escaped from the mental health unit and his whereabouts are currently unknown. The respondent stated that the police had requested them to consider suspending the registration of the appellant until LB had been apprehended. The police had stated that LB was a violent and dangerous person. The murder had been a particularly violent incident and LB had previous convictions.
6. It was also recorded that LB has made several threats to kill his ex-partner and step-daughter. He also has a five year old son with his ex-partner and the police are concerned that he would become increasingly desperate to see him.
7. The appellant stated that LB had left her home when he was 15. He is now 27. He had not been to her home in that time. She also said that she had not seen him for two and half years though she had been in telephone contact with him when he had been in prison.
8. The respondent was concerned about a hostage risk and a risk of violence to the children minded by the appellant were LB to go to her house to seek refuge or help or if he met her elsewhere whilst she is responsible for minded children.
9. On 18 October 2013 a decision was taken to suspend the registration of the appellant. The appellant formally asked the respondent to consider lifting the suspension on the basis that LB would never cause trouble at her house and have never done so in the past when he had been in trouble. The appellant did not consider that the children were at risk of harm. These further representations were considered and the respondent decided that the suspension should remain in place.

## **The law**

10. 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) of the Act provides for regulations to be made dealing with the suspension of a registered person's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.
11. 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.”

12. The suspension shall be for a period of six weeks. Suspension may be lifted any time if the circumstances described in regulation 9 cease to exist. This imposes an on-going obligation upon the respondent to monitor whether suspension is necessary.
13. “Harm” is defined in regulation 13 as having the same definition as in section 31 (9) of the Children Act 1989 namely, “ill-treatment or the impairment of health or development including for example impairment suffered from seeing or hearing the ill-treatment of another”.
14. 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.
15. 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 and evidence**

16. The respondent believes there is a risk of harm to children. It says that because of LB’s violent and threatening behaviour in the past, he may threaten injure or take hostage children at the appellant’s home or outside the property, particularly if he is cornered by the police. As noted above he has recently threatened his ex-partner and her stepdaughter with violence. He has a son by his ex-partner and appears to be desperate to see him.
17. The police have advised the ex-partner not to let anyone know her whereabouts for her own and the children’s safety.
18. The Tribunal admitted as late evidence a statement from the respondent, which recorded recent developments. The appellant had telephoned the respondent to say that she had had a ‘phone call from LB’s ex-partner who told her that LB had ‘phoned her on 5 November 2013 between 11am and 12noon. She had dropped the ‘phone on hearing his voice and she was concerned about how LB had obtained her ‘phone number. The appellant assured her that she had not told LB the number. The appellant is on good terms with LB’s ex-partner and keeps in contact by ‘phone but she does not know where she is living.
19. The appellant then went on to say that LB had come to her house at 6am on 6 November 2013. She said that he had knocked on the door and called

through the letterbox. He had not been aggressive or threatening and he was just calling her name.

20. The appellant said that she had remained upstairs and had not spoken to him. She had called the police who came about 15 to 20 minutes later with dogs.
21. The respondent received confirmation from the police call centre that the appellant had indeed called to report that her son was outside her house at 6:15am on the 6 November 2013.
22. LB is still at large.

## **Conclusions**

23. We accept that LB has not lived with the appellant since he was 15 when he left home. He is now 27 years old. He has been in prison on a number of occasions. We accept that the appellant has not seen him for 2 ½ years albeit that she has made telephone contact with him.
24. There is nothing to suggest that she is anything but a good and conscientious childminder who is appreciated by the children and families that she cares for.
25. However, her son has committed a crime of extreme violence. He has received a very lengthy prison sentence for that crime. His presentation concerned the prison authorities to the extent that they sent him to a secure mental health unit to be assessed to determine whether he might have mental health issues. The papers record that it was considered he did not have a mental disorder and he was about to be returned to prison when he escaped, apparently with the assistance of a member of staff in the mental health unit.
26. Unfortunately he has now made contact with his ex-partner and with his mother, the appellant. Whilst this is not the appellant's fault and is a situation which is not under her control, the tribunal agrees that the respondent has every right to be concerned about the prospects of unpredictable violence or hostage taking at the appellant's address or in the vicinity, when minded children might be present.
27. The Tribunal notes and commends the appellant in that she acted responsibly in telephoning the police when her son came to her house. However the tribunal accepts that through no fault of her own there could be a situation where children were put at risk of harm if her son returned to her property or met her whilst he is being sought by the police.
28. The Tribunal therefore decides that the suspension should not be lifted. The Tribunal would respectfully remind the respondents of their ongoing duty to keep the suspension under review, so that when the situation has been resolved, the appellant's suspension should be lifted so that she may continue with her livelihood.
29. We therefore dismiss the appeal.

**APPEAL DISMISSED.**

**Our decision is unanimous**

**Judge Maureen Roberts  
Tribunal Judge Care Standards  
Health Education and Social Care Chamber**

**Date Issued: 11 November 2013**