

PROTECT

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

**In the First-Tier Tribunal (Health, Education and Social Care)
Considered on Papers
On Wednesday 6th February 2013**

Before

**Deputy Chamber President Judge John Aitken
Specialist Member Mr Graham Harper
Specialist Member Ms Michele Tynan**

Miss Alex Stevens

Appellant

-v-

Care and Social Services Inspectorate Wales

Respondent

[2012] 2015.EY-W- SUS

Decision

1. This matter was listed for consideration on the papers. That is permissible under rule 23 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 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 2nd January 2013 to suspend her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 14th February 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

PROTECT

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. The Appellant has entered into a sexual relationship with Mark Weston. That man recently stood trial for an allegation of child sexual abuse. He was acquitted, but as they are entitled to do the Care and Social Services Inspectorate Wales wish to consider whether there are reasons to consider whether he still represents a risk to minded children. The Appellant has made it plain that she is in such a relationship and that he does on occasion remain at her house overnight, that is the same house in which she child minds. In December 2012 the Appellant was asked to sign an entry in a Police Officers notebook indicating that she was aware of the Case presented against Mr Weston, she did so.

5. Care and Social Services Inspectorate Wales are concerned that the Appellant may have been deceptive about what she had signed with regard to the Police Officer when they spoke to her, and as a result consider that the appellant may not ensure there is no contact between Mr Weston and the minded children.

6. On 2nd January 2013 a decision was taken to suspend the registration of the Appellant and she was notified accordingly, further representations were considered and the decision affirmed on 15th January 2013.

The Law

7. 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.

8. 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.”

9. 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

PROTECT

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”.

10. 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.

11. 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

12. There is a minor factual dispute. The Care and Social Services Inspectorate Wales claims that the Appellant denied signing an officer’s notebook, the Appellant says she denied signing anything in front of Social Services and the Police, but did sign an officer’s notebook. We do not find this to be significant. The words in the Police Officer’s notebook are confusing, they suggest that the Appellant has seen a transcript, she may have, in such cases a transcript of a video interview from an alleged victim is often supplied to the defence. It is not a “Court” transcript as such, which we take to be a transcript of recorded court proceedings, rather it is overwhelmingly likely to be a transcript of a video tape which will be used in court.

13. The Appellant indicates that when she signed the officer’s notebook she had not seen court transcripts, and has never seen them. There is every reason to believe from the statements we have seen that this is simply a misunderstanding, no one is being deliberately deceptive, and the matter has become simply confused. In connection with this we note the Social Services report on her own children which indicates that on 29th November 2012, well before any pocket book entry was signed, or questions asked about this by the Care and Social Services Inspectorate Wales, the Appellant was entirely open and frank about Mr Weston and her knowledge of the Case. We do not consider that this factual dispute (if there is in reality one at all) needs to be resolved for us to take a proper decision in this Case.

PROTECT

Conclusions

14. We understand the concern of the Care and Social Services Inspectorate Wales, and consider that it is proper to take steps to ensure that the children minded by the Appellant are protected, until a full picture of Mr Weston is available in addition to the regular safeguards, we do not however consider that this requires suspension on the information that we presently have. There is no evidence that he has ever been on the premises at the same time as the minded children, although he has stayed overnight. We do not consider that the evidence around signing the notebook, even taken at its highest, amounts to something which could at this stage indicate that the Appellant could not be trusted to ensure that he is not allowed on the premises at the same time as the minded children. We consider that imposition of a condition that he should not be on the premises, supported as it is by the opportunity to inspect to ensure compliance, and in the certain knowledge that any breach of such a condition would be likely to jeopardise the Appellant's registration would be sufficient until the investigation is complete and a decision made on registration.

15. The Respondents have asked about a mechanism to have the Police disclose material about Mr Weston. The Tribunal has the power to direct such disclosure, however these proceedings are now effectively closed, subject to any Appeal. The investigation continues and that information is still sought. We consider that it would be wrong for the Tribunal to become involved in what would amount to pre-action discovery in investigations. It cannot be the Case that in every investigation Care and Social Services Inspectorate Wales have to seek a summons from the Tribunal to gain access to such material, in almost all Cases there would be no proceedings before the Tribunal at that stage. This type of material is legally subject of exchange between Parties such as the Police, Social Services and Care and Social Services Inspectorate Wales, we are confident that such a mechanism exists, as material is so often disclosed in similar cases, it is not however a matter for the Tribunal.

Decision

The Appeal against interim suspension is allowed, the suspension is removed.

**Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Wednesday 6th February 2013**