

First-tier Tribunal Health, Education and Social Care Chamber

Care Standards

Considered on Papers

On Tuesday 25th March 2014

Before

**Deputy Chamber President Judge John Aitken
Specialist Member Ms Heather Reid
Specialist Member Mr Graham Harper**

ML

Appellant

v.

Ofsted

Respondent

[2014]2183.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, indeed there is no substantial dispute on the facts, 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 draw final conclusions about the 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 27th February 2014 to suspend the appellant's registration to provide childcare at

non domestic premises on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 9th April 2014.

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 appellant, any children or their parents, not previously identified in the press so as to protect their private lives.

The Law

4. 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.

5. 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.”

6. 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”.

7. 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.

8. 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.

9. There is no suggestion before us that any minded child has come to harm as a result of the actions of the appellant. The suggestions are that the appellant is operating under such stress that she may lose control, and may have done so in grabbing her own child aged 3 and her own child is on occasion difficult and may bite or otherwise injure minded children. Ofsted make it plain that it is the combination of those factors which has led to the suspension whilst matters are investigated, and they have produced a timetable. The appellant has always co-operated with inspections, but has been very obviously stressed by them and had difficulty coping which is of course one of the points raised by Ofsted.

Conclusions

10. The investigation will continue whether the appellant is suspended or not, and it may be firmer conclusions can be reached, but looking at the risk factors put forward on this occasion and at this stage we consider that the risk of the appellant losing control with the minded children and the risk of a 3 year old child, whose behaviour is not uncharacteristic of that stage of development, harming others does not indicate that there is a risk of harm justifying suspension.

Decision

The appeal against interim suspension is allowed.

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Tuesday 25th March 2014