

## Care Standards

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

Heard at ET Manchester  
On Wednesday 16<sup>th</sup> April 2014

Before;

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

Ms Wendy Wright

Appellant

v.

Ofsted

Respondent

[2014] 2191.EY- SUS

### Decision

1. The appellant appeals to the tribunal against the respondent's decision dated 21<sup>st</sup> March 2014 to further suspend her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 1<sup>st</sup> May 2014.
2. 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

3. The appellant was suspended because in the view of Ofsted there was a risk of minded children coming to harm. That was clarified by Ms White in evidence as relating to the hygiene of the premises, although Ofsted were still actively considering the position with regard to other matters Ofsted pointed to inspections and visits which had led to a variable demonstration of hygiene over the past few months, and most recently although it represented an improvement since suspension there were still difficulties demonstrated in an unannounced monitoring visit on 3<sup>rd</sup> April. During which photographs were taken to demonstrate the problems.
4. A decision was taken to suspend the registration of the appellant on 21<sup>st</sup> March 2014 and she was notified accordingly.

### The Law

5. 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.
6. 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.”*

7. A suspension is 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”.*

8. 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.
9. 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**

10. Ofsted are concerned that the appellant's provision of childcare may be compromised by the level of hygiene she has demonstrated, and her failure to maintain a consistently high standard. The central issue for the suspension remains however is there a risk of harm to the children she minds?
11. The appellant in her notice of appeal indicates that whilst she has had some issues including a poor vacuum cleaner the descriptions are exaggerated. In evidence before us she accepted the descriptions given by the Ofsted officers and accepted the variable nature of the hygiene around her home in which minding takes place. She produced at the hearing a plan for deep cleaning and a rota to ensure she keeps on top of it, she also indicated that she had a new vacuum cleaner, Ofsted considered the plan appropriate, but needed to be reassured it would be actually done.

### **Conclusions**

12. We consider that the standard of hygiene fell below an acceptable standard for a period, and whilst it may be that Ms Wright has remedied it now (as she claimed in evidence) it is appropriate for her to remain suspended until she can demonstrate that she has fully implemented the cleaning plan which she produced, otherwise children would be at risk of harm should there be a relapse. We understand that Ofsted will inspect within the next two weeks to satisfy themselves that the premises are now sufficiently clean and that the plan has been fully implemented and take any further decisions based in part upon those inspections.

### **Decision**

**The appeal against interim suspension is dismissed.**

**Judge John Aitken  
Deputy Chamber President  
Health Education and Social Care Chamber**

**Date Issued: 17<sup>th</sup> April 2014**