

## Care Standards Tribunal

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

Heard at Filed House Tribunal Hearing Centre  
On Monday 28<sup>th</sup> April 2014

Before:

Deputy Chamber President Judge John Aitken  
Specialist Member Ms Wendy Stafford  
Specialist Member Ms Jenny Cross

Mrs Hazel Tuffield

Appellant

v

Ofsted

Respondent

[2014] 2197.EY- SUS

### Decision

1. On the 19<sup>th</sup> March 2014 Ofsted decided 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 30<sup>th</sup> April 2014. It is that decision which the appellant seeks to appeal.
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. Some details were given at the

time of service of the notice, namely inappropriate management of children, allowing an unsuitable person to reside on the premises, failing to notify Ofsted of his presence and failing to keep up to date with safeguarding matters. They have become clearer with the service of further documents, the difficulties include;

- a. On 6<sup>th</sup> February 2014 Ofsted received a referral from a parent N, who had used the appellant's services in respect of two of her children. One who is 8 disclosed that he had seen the appellant smacking minded children. He had himself been pushed into a car by the appellant, he now claimed to be frightened to attend the appellant's premises.
  - b. On 6<sup>th</sup> February at a case review the appellant's registration was suspended to allow for investigation, on 17<sup>th</sup> February enquires with the 8 year old child produced not only a repetition of the matters above but further allegations of a similar nature relating to general physical ill treatment of minded children and one allegation that the appellant's son was swearing in front of minded children.
  - c. On 4<sup>th</sup> March 2014 an unannounced visit was made by Ms J Fisher of Ofsted who noted a number of problems, including failing to report the concerns above when reported to her, rather she sought to suppress the matters by suggesting to M that she give other parents an innocent reason for their absence. The appellant admitted that her son was unsuitable to be around minded children agreed that he did swear, and failed to notify Ofsted that he was now resident at the home. She also indicated that she led children by the collar to time out sitting on the stairs and had patted a child on the hand, leading to the child screaming uncontrollably, nor had she had any safeguarding or protection training for 5 years.
4. A decision was taken to suspend the registration of the appellant on 19<sup>th</sup> March 2014, in part because it appeared that the allegations from the 8 year old were supported at least in part and other matters had come to light and she was notified accordingly. On 20<sup>th</sup> March 2014 a notice of intention to cancel was also served upon the appellant

## **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, or as in this case for successive periods of 6 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 unsafe because of specific child protection allegations and management deficiencies including an inadequate knowledge and application of safeguarding policies and procedures. 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 she considers that there is simply no truth in the allegations. That the child who originated this has invented the account given, and whilst she has not recently undertaken a safeguarding course she is in fact up to date and aware of the necessary procedures.
12. Mrs Tuffield also spoke at length before us indicating that it may be there was a contractual problem with the parent of the child who made the complaints, and that the Ofsted interview was conducted inappropriately at a time when she was unable to think properly. She also indicated she was taking the drug Prozac, as she understood matters because it would give her more energy, she did not understand that she may have been diagnosed with depression. As regards notifying Ofsted of the allegation she did not really regard the matters as an allegation she had hoped the parent concerned would make enquiries of other parents, this she was confident would have cleared matters up, but in any event she would have informed Ofsted within a few days.

## **Conclusions**

13. We make no findings as to the allegations made, however they are not obviously false, they appear to be consistent with matters admitted in interview with the appellant, but subject of course to her evidence that she was unfit to be interviewed and it had not been properly conducted. From all of the evidence we are able to say that there is a credible complaint which may yet be proved to be true. We note in particular however that it is clear that the appellant did not take steps to inform Ofsted immediately of this allegation on 5<sup>th</sup> February 2014 when she was made aware of it, we accept she was childminding that day but certainly had time somewhere between 9:30 and 5pm to do so.
14. We understand her point that because she knew the allegations to be false it assumed less importance to her, but nonetheless we consider that as a long standing professional of 18 years experience she ought to have known that she could neither call upon the person who relayed the allegation to make more enquiries, nor delay telling Ofsted. The appellant did not appear to understand that this was a problem and we consider that her lack of insight into this matter is a source of risk to children in her care.
15. The appellant also described her shock at these allegations and suspension, for weeks thereafter she was unable to cope with simple tasks such as keeping the house clean and tidy, she was unable to provide us with meaningful reassurance that another similar shock may

lead to her having problems looking after minded children at which point they would be at risk of harm.

16. The appellant has 18 years experience and we bear those matters very much in mind, but the appellant has not reacted as we would expect to an allegation of harm nor has she indicated that she has learned from that experience, and in those circumstances we consider that there is a risk of harm to minded children at present. Of course we make no comment the wider situation and whether cancellation is appropriate or not.

### **Decision**

The appeal against interim suspension is dismissed.

**Judge John Aitken**  
**Deputy Chamber President**  
**Health Education and Social Care Chamber**  
**Tuesday 29<sup>th</sup> April 2014**