

Care Standards

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

Heard at Pocock Street, 18 March 2015

Before

Tribunal Judge Melanie Lewis
Specialist Member Jennifer Cross
Specialist Member Wendy Stafford

NICHOLE TOSTEVIN-TAGBO

Appellant

-v-

OFSTED

Respondent

[2015] 2378.EY-SUS

DECISION

Attendance and Witnesses :

Mr Sagail Solicitor represented Ofsted. Ms Coffey Regulatory Inspector and Mr Jeffs, Senior Officer Compliance Investigation Enforcement Team attended as witnessed together with Ms Campbell parent.

Ms Tostevin-Tagbo attended in person.

Decision

1. At the conclusion of the hearing we announced our decision. **The suspension imposed on the registration on the Appellant on 20 February 2015 by Ofsted is confirmed.** Our written reasons now follow.

Background:

2. The Appellant has been registered with Ofsted as a child minder since 22 November 2011. At her first inspection held on 18 May 2012 she was

graded as 'inadequate' and a Notice to Improve was served. Two subsequent inspections held on 1 February 2013 and 30 April 2013 (so within the time frame under consideration) resulted in 'satisfactory' outcomes. The inspection report on 30 April 2013 recorded that the Appellant was living at the childminding address with her husband, mother and daughter, which is now on her admission not correct.

3. On 17 November 2014, Ofsted had cause to write to the appellant following concerns that an 8 year old child in her care was hitting other children. That is not material to the suspension, save it was an opportunity to have transparent communication with Ofsted. .

4. The event that led to the statutory suspension was that on 16 February 2015, Ofsted received information that the Appellant's husband may be serving a term of imprisonment for serious sexual offences. That information came from a parent. On 19 February 2015, the Local Authority Designated Officer at the London Borough of Lewisham reported to Ofsted that the Appellant's husband may have been arrested in connection with these matters as far back as February 2013 and bailed pending the police investigation, with conditions including not to have unsupervised access to children.

5. The Appellant's husband Jideofor Emeka Samson Tagbo was convicted after a trial, which took place at Woolwich Crown Court in September 2014, of several counts of penetrative sexual activity with a girl under the age of 16, over a period from 2006 to 2009. He was sentenced on 10 October 2014 to a total of 14 years imprisonment and an order that he be deported after his sentence had been served. The victim was a family member.

The Appeal

6. At a case review held on 20 February 2015, Ofsted suspended the Appellant's registration for an initial period of 6 weeks until 3 April 2015.

7. By her appeal application dated 20 February 2015, the Appellant does not deny that she failed to notify Ofsted of certain key information including her husband's conviction. She sets out that she was under very considerable stress.

8. Further to the directions issued by Judge Plimmer dated 16 March 2015, the Appellant provided a further witness statement outlining her position. She stated that she now understood that she had to work with Ofsted to ensure that all information they required was given. She set out that she is hoping her husband's conviction and sentence would be overturned. Again she does not deny that she failed to notify Ofsted of key events. She accepts an employee reported her to Ofsted. She did not deny that her husband had come to the childminding premises but states that he was never alone with minded children.

Issues and Concessions:

9. Ofsted remains opposed to the appeal on the basis that the investigation far from satisfying them that the Appellant had seen the error of her ways had heightened rather than lessened their concerns.

10. In particular, during the PACE interview conducted on 11 March 2015, the Appellant did not dispute that:-

- (i) She had failed to notify Ofsted of her husband's arrest, charge, bail conviction or sentencing.
- (ii) Failed to notify Ofsted of change in Assistants working with her.
- (iii) Failed to notify Ofsted of Social Services involvement with the family (this had happened because they come to the house to make enquiries as to whether her daughter was at risk from her husband).
- (iv) Failed to notify Ofsted of a change of address for herself and her husband, and that she herself was no longer living at the house full time because she was staying overnight with her husband.

11. We clarified at the beginning of the hearing that she wasn't denying that her husband had been at the house during child minding hours. Ms Coffey had prepared a summary of the PACE interview but Mr Saigal had the tape in the event the contents were in dispute.

The Evidence

12. We do not need to record the evidence in any detail because the Appellant was not seeking to go behind the concessions she had made during her PACE interview.

13. We record that we heard the evidence of Michelle Campbell, a parent who had used her services. The contents of her witness statement dated 6 March 2015 were not challenged by the Appellant, in particular, that Mrs Campbell stated that she had seen the Appellant's husband often in the front passenger seat of the car when the Appellant was doing school 'drop offs'. She only records seeing the Appellant's husband in the house once. Mrs Campbell had sat in and heard the Appellant's admissions and was visibly shocked. In oral evidence she confirmed that she had, after the suspension been visited by the Appellant and told about her husband's conviction in very bare detail. She was clear that had she known the full facts she would not have placed her children with the Appellant. The Appellant agreed that as a parent she too would have wanted to know that the Appellant's husband had both been charged and consequently convicted.

14. We read the witness statement of Mr Martin Jeffs, Senior Officer with the Compliance Investigation Enforcement Team. His evidence was not substantially challenged.

15. We read the witness statement of Elizabeth Coffey, Regulatory Inspector, who went to the Appellant's address on 19 February 2015 to conduct the unannounced visit. Again, the contents of her witness statement were not substantially challenged.

The Law

16. The test for suspension is that the Chief Inspector has grounds to conclude that continued provision of child care by the registered person to any child may expose such child to a risk of harm. That is set out in Regulation 9 of the Child Care (Early Years and General Child Care Registers), Provisions Regulations 2008.

17. 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, for example impairment suffered from seeing or hearing the ill treatment of another.

18. The burden of proof is on the Respondent to show that 'there is reasonable cause to believe' is established. The standard lies somewhere between the balance of probabilities and 'reasonable cause to suspect'. Belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information believes that a child might be at risk. We must look at whether the condition is both necessary and proportionate.

Consideration

19. On a suspension appeal we do not make findings but in the event the Appellant does not deny the key facts relied on by Ofsted. In the event, the Appellant admitted her failures but she stopped just short of conceding that a suspension was necessary whilst further investigations are made. Her concessions are recorded in paragraph 9.

20. The history relied on is clear. Ofsted acted promptly once they knew of the conviction and the investigation is nearly complete. They will make further enquires to find out why Social Services having been told by the Appellant that she would notify Ofsted did not appear to have checked if she had, what the Prosecution summary of case was and what were the Bail conditions imposed on the Appellant's husband and how that impacted on his admitted attendance at or near the childminding address.

21. The Appellant has not denied that she failed to notify Ofsted, those who worked for her and parents who used her services as a childminder, of her husband's arrest, charge, bail and conviction for sexual offences.

22. We cannot go behind that conviction. We note that the sentence of 14 years is a heavy one. An outstanding issue for Ofsted is to make an application for the prosecution summary of case to better understand what the factors were leading to that sentence. The Appellant is clearly hopeful that

that conviction will be overturned. We have no evidence of a live application against conviction or sentence and until overturned, both stand. In any event this is a side issue and not material to the responsibility that fell on the Appellant as a registered Childminder.

23. It is acknowledged that the events around her husband must have been distressing for the Appellant. However there was a time period of over 2 years when the Appellant accepts she did not take the steps that she needed to do, as a registered child minder. She had a number of opportunities including Ofsted inspection visits on 30 April 2013, visits by Social Services and even the initial visit by Ms Coffey to say what had happened. Her evidence, far from clarifying the position added concern that she did not appear to have really understood what she needed to do. She stated that she had found PACE interview and the hearing helpful and it appeared to be the first time that she had really put together all the obligations that she had and how others might view her behaviour.

24. Because of the very long period of time that had elapsed we have to conclude that the Appellant deliberately placed children in a position where by there was a reasonable risk of harm. She herself believed in her husband and does not believe that he ever would or has harmed a child in her care. However, that cannot excuse her failure to exercise her duties as a childminder caring for other people's children. She relied on her assistants to run the service for her but she failed to inform them so that they were aware of the boundaries and showed a woeful lack of knowledge of her own obligations.

25. By her own admission the Appellant has been very stressed by these events and the evidence both written, oral and what we observed during the hearing suggests that her mental state is fragile. It seems that her personal problems overwhelmed and continue her to the extent that she did not attend to her professional obligations as a childminder. This is ongoing and Ofsted will require her to submit medical evidence before she can be considered fit to work as a childminder.

26. The suspension imposed on the registration on the Appellant on 20 February 2015 by Ofsted is confirmed.

**Judge Melanie Lewis
Care Standards / Primary Health Lists
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 25 March 2015