

Care Standards

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

Heard on the papers 11 December 2015

BEFORE
Judge Meleri Tudur
Specialist Member Jeff Cohen
Specialist Member Graham Harper

[2015] 2544.EY-SUS

BETWEEN:

RD

Appellant

-v-

Ofsted

Respondent

Decision

1. The appeal was listed for consideration on the papers, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('2008 Rules'). Both parties must consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have sufficient evidence regarding the allegations made and the conclusions reached and there appears to be no substantial factual dispute which might affect our decision. In the circumstances 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 12 November 2015 to suspend her registration as a childminder on the Childcare Register for six weeks to 24 December 2015 pursuant to section 69 of the Childcare Act 2006 ('2006 Act') and the Childcare (Early Years and General Childcare Registers) Common Provisions) Regulations 2008 ('2008 Regulations').

Restricted reporting order

3. The Tribunal makes a restricted reporting order under Rule 14(1)(a) and (b) of the 2008 Rules, 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

4. The Appellant was first registered as a childminder since 2 May 2008. On 9 November 2015, the Respondent received a Significant Incident Notification via Rotherham Local Authority Designated Officer (“LADO”) that a two year old girl minded by the Appellant since July 2015 had been admitted to hospital with grave injuries. On the 7 November 2015, an ambulance had been called by the child’s parents. The child was rushed to intensive care at Sheffield Children’s Hospital. The child’s mother and step-father have been arrested and are currently under police investigation. The Local Authority section 47 investigation is under way and care proceedings have commenced.

5. The police in the course of their initial investigations spoke with the Appellant regarding her knowledge of the child and the family. The child’s step-father is the Appellant’s step-brother. The Appellant had herself noted a number of significant injuries to the child throughout the period that she cared for her and had been keeping a record of the injuries. She had been sufficiently concerned to have made detailed notes about the injuries, had prepared diagrams marking the bruising sites and had taken photographs of the injuries. She had not shared the information about the injuries with any appropriate authority.

Legal framework

6. The statutory framework for the registration of childminders is provided under the 2006 Act. Section 69(1) of the 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.

7. When deciding whether to suspend a childminder, the test is set out in regulation 9 of the 2008 Regulations as follows:

“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.”

8. “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”.

9. The 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.

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.

Evidence

12. This is a case in which the allegations made are in the process of investigation. The Tribunal had in evidence before it a document bundle of 101 pages as well as emails received from the parties on the 8, 10 and 11 December 2015 all of which were taken into consideration in the appeal.

13. We have read the Appellant's grounds of appeal and note that she states that she has followed ".all my procedures for the well being of all the children in my care and followed all safeguarding procedures to the best of my knowledge, significant safeguarding concerns were reviewed as per my procedures, logged/reviewed/questioned and assessed." She had no concerns about the well being of the child and concluded that there was no abuse.

14. The Appellant further explained her failure to notify the Respondent of the visit to her home by the Police stating that it was a visit that had taken place out of childminding hours and setting and she had been told that she was not under investigation and that the visit was a fact finding visit. For these reasons, the Appellant did not consider that the children in her care had been exposed to risk of harm

15. The Respondent submitted witness statements in support of the decision, explaining the circumstances leading to the suspension. The statement of A Stanger dated 7 December 2015 exhibited a copy of the notes and photographs of the child made by the Appellant, where she recorded injuries sustained by the child on three separate occasions:

- i) On the 24 July 2015, the child was recorded as having very little movement in her left arm and her stepfather had explained that he had grabbed her arm the previous day to prevent her running into the road;
- ii) on the 29 July 2015 she noted bruising to her right hip underneath her nappy and recorded "...just seems a very strange place to have a big bruise." She also noted a bruise on her chin;

- iii) On the 29 July 2015 the Appellant recorded a query made of the child's mother about the bruises which were alleged to have been sustained at a big indoor play area apart from the bruise on her chin which she sustained slipping from her chair and banging her chin on the table.
- iv) On the 13 October 2015 she arrived with bruises to the left side of her face and chest explained by a fall from her bed.

16. The inspector's report referred to another logged entry dated 27 October 2015 [which was not produced in the evidence] and six photographs of injuries to the child which were undated in the Tribunal bundle.

17. In a statement dated 7 December 2015, Ms A Law, Early Childhood Regulatory Inspector for the Respondent confirmed that at a strategy meeting on the 24 November 2015, the South Yorkshire Police Public Protection Unit had confirmed that the police investigation is ongoing and that a statement would be taken from the Appellant but was not expected to be completed before the 4 December 2015.

18. Ms Law confirmed the reason for her decision that the Appellant is unable to safeguard children in her care, because of her concern that the Appellant cannot see the "big picture" and views the injuries in isolation. She described the injuries as being in ".classic non-accidental injury sites". She confirmed that the Appellant had not followed the Early Years Foundation Stage welfare requirements for child protection and concluded that children in her care are at risk of significant harm.

19. The Respondent confirmed by email dated 10 December 2015, the Respondent's representative confirmed that they had been unable to obtain a copy of the Appellant's statement to the police dated 7 December 2015.

20. By email dated 10 December 2015, the Appellant confirmed that having read the evidence in the hearing bundle she could see that with hindsight she should have shared information about the injuries with other authorities and would ensure that she would do so in future. She further confirmed that she wished to share the reasoning for her failure to do so with the Respondent at her interview which is to be arranged as soon as possible.

Tribunal's conclusions

21. We have considered the evidence presented and conclude that the Appellant's failure to comply with the requirement to share information about injuries sustained by a minded child is a serious cause for concern and the Respondent has satisfied the relevant burden of proof required in this appeal.

22. We note that the quality of the information gathered by the Appellant about the injuries sustained by the child as set out in the notes, diagrams and photographs were to a very high standard. The Appellant is currently a witness in other potential criminal proceedings, and the quality of her

evidence is likely to be very good based on the information which she has provided to the Respondent.

23. We have concluded that the very sad sequence of events in this case may display the risks of information not being shared and the individuals involved in a case not having all the pieces of the jigsaw available to them to create the overall picture. There was a failure by the Appellant in sharing information with the relevant authorities about the injuries she had seen, and her grounds of appeal display a fundamental misapprehension about her role in relation to such injuries – it was not for her to assess whether the adult's account of how the injuries were sustained were feasible and sufficient, it was to pass on the information that she had found for others to make a decision about the safeguarding issues. In those circumstances, we conclude that the suspension should continue in order to enable the Respondent to conclude the investigation regarding the issues and until those investigations are concluded, we consider that there may be a risk of harm to children placed in the Appellant's care.

Decision

The appeal is dismissed and the notice of suspension served is confirmed.

**Judge Meleri Tudur
Deputy Chamber President
Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 14 December 2015