

Care Standards

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

[2016] 2683.EY-SUS

Before

Mr Hugh Brayne (Judge)

Ms Michele Tynan (Specialist Member)

Ms Bridget Graham (Specialist Member)

LC

Appellant

-v-

OFSTED

Respondent

DECISION

Determined by the panel on the papers in telephone conference on 25 May 2016.

The appeal

1. The appellant appeals against the respondent's decision dated 4 May 2016 to suspend her registration as a child minder for six weeks until 14 June 2016.

The legal framework

2. 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.
3. 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.

4. 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.
5. "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".
6. 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 the respondent's decision the respondent reasonably believed that the continued provision of child care by the registered person to any child may expose such a child to a risk of harm.
7. 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.

The hearing

8. The appellant asked for a determination on the papers. The respondent agreed to proceed without a hearing. We applied Rule 23 Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 and proceeded to make a decision without a hearing.
9. The Tribunal had a bundle of papers including the decision to suspend, the appeal, submissions from LC dated 19 May 2016, the response to the appeal, and two witness statements from the respondent with exhibits. The first witness statement was that of Kathryn Bell, Early Childhood Senior Officer, and the second that of Sian Extence, Early Years Regulatory Inspector.
10. 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 child minded by the appellant, or any member of the families of these individuals, so as to protect their private lives.

The background

11. The appellant was registered with the respondent on 17 May 2012. She received a "satisfactory" grade following inspection in May 2012 and was graded "requires improvement" following inspection in December 2013.
12. The appellant operates her childminding business from her home address.

Events leading to the issue of the notice of statutory suspension

13. The following summary is based on the narrative set out in Ofsted's response to the appeal and LC's account set out in her grounds of appeal.
14. LC notified Ofsted on 19 November 2015 that her step-son had made an allegation of assault against her. LC says this was later admitted by him to be a lie. On 19 January 2016 Ms Extence visited her to discuss concerns arising from this disclosure. LC told the inspector that she had not minded children since August 2014, largely because of health problems. LC says that what she was asked was whether she had had any full-time minded children. She was in fact looking after a child for an hour each weekday morning and two hours on a Tuesday, and sometimes Thursday, but she and the parent saw this as babysitting. It had been agreed at the parent's insistence.
15. The inspector did not require AC to complete a health declaration because AC had said she would not mind children without first informing Ofsted. This agreement to notify Ofsted before starting to mind again was confirmed in writing the next day.
16. A parent notified Ofsted of concerns relating to a minded child on 14 March 2016. It was said that LC had asked the parent to write a letter saying LC was not minding children about two and a half months previously, for the stated purpose of misleading Ofsted. The parent raised other concerns.
17. After two unsuccessful attempts to talk to LC at her home, Ms Extence spoke on the phone to LC on 29 April 2016. The inspector told LC about the concerns raised by the parent and LC initially told her that she was not minding, but then said she had had a few children for settling-in visits but nothing permanent, and was considering a return to minding in May.
18. On 4 May Ms Extence visited LC, who told her she had now been cleared medically, that she had not been minding, but a few children had attended for settling-in sessions for up to an hour. She had kept no records. The inspector looked at LC's files and noticed some entries which raised safeguarding concerns in relation to a child who, LC then said, had last been minded in March 2016. LC says in her appeal this arrangement ended on March 8.
19. The inspector said LC had produced no attendance record. LC had told her the reason she had not informed Ofsted before beginning minding again was that she may have been confused about dates. Ms Extence was concerned that the dates of the entries were not marked; that a serious safeguarding concern had arisen (the disclosure by both the child and the child's mother that the child's father had hit the child) and, together with the other concerns, had not been reported to social services.
20. Following this visit Ms Bell, on behalf of the Chief Inspector, decided to suspend LC. Since that date Ofsted had sought information from the parent who had complained, and from the child's school, for the purpose of obtaining the information needed to interview LC to discuss safeguarding and suitability concerns.

21. In her submissions of 19 May LC said that, looking back, she should have spoken to social services, that she as a bit “rusting” about procedures and had looked into doing courses. When she had told the inspector that she was not minding during the visit in January 2016 she had done so under pressure and because of stress in her personal life, and then felt she couldn’t retract it. She had never been told she could not mind. She said the parent who complained to Ofsted was doing so out of spite.

Tribunal’s conclusions with reasons

22. The above account, in our view, very clearly provides cause to be worried that a child may be at risk of harm and which calls for investigation. There is evidence which suggests that LC may have deliberately withheld important information from Ofsted about whether or not she was minding children. There is evidence that she did not understand her safeguarding duties and had failed to report to social services a number of concerns, most critically that of physical abuse by a father, in relation to a minded child. There is an admission that her safeguarding knowledge needs updating.
23. LC’s appeal appears to be based on an allegation of bias, in the sense that Ofsted was looking for faults, and that there was some ambiguity about the question she was asked about current minding. However, even, if her account is accepted, LC then received a letter making it clear what Ofsted had understood her to have said – that she would not mind children (with no reference to full time) without first informing Ofsted. She has not referred in her own submissions to this letter, but we find it provides clear evidence that between receipt of the letter, at the latest, a day or two after it was sent on 20 January, and March 2016, she minded children knowing of the commitment she had made to first tell Ofsted before doing so. She admits this, in effect, when she said in her submissions of 19 May that she “couldn’t’ retract it” (meaning what she had said about not minding children).
24. LC does not deny failing to tell social services of the safeguarding concerns. She accepts that she needs further training.
25. We are not required to make findings of fact as to whether LC did or did not ask a parent to lie, nor whether other agencies were in touch with social services about the safeguarding concerns which LC had herself noted. These matters are for investigation by Ofsted and then for discussion with LC. They add support to Ofsted’s reasons for being concerned that children may be at risk if she continues minding children. We do not need to determine whether the other allegations made by the parent are true, though we note that some of the concerns could be serious.
26. The standard required to justify a suspension is not a high one. During the short period of the suspension it is for Ofsted to investigate matters to determine if there is a case for longer-term enforcement action, or whether the outcome of the investigation is that there is no longer reasonable cause to believe children may be harmed

27. Given clear evidence of LC misleading Ofsted about not minding children and the clear evidence of failure to understand important safeguarding requirements, we find that the continued provision of childcare by LC to any child may expose a minded child to a risk of harm.

Order

The appeal is dismissed.

**Judge Hugh Brayne
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 26 May 2016