

## **Care Standards**

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

**Considered on the papers on  
Monday 15 August 2016**

**Before**

**Tribunal Judge Melanie Lewis  
Specialist Member Dr Howard Freeman  
Specialist Member Ms Pat McLoughlin**

**Mrs Helen Wynne**

**Appellant**

**-v-**

**Welsh Ministers**

**Respondent**

**[2016] 2770.W-SUS**

### **DECISION**

1. The matter was listed for consideration on the papers. Both parties have consented as required under Rule 23 Tribunal Procedure (First tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ('the Procedure Rules 2008'). We are satisfied that we can consider the matter without a hearing. We have a good picture of the background, the allegations made and the risk. There appears to be no substantial dispute that a child aged two was left unsupervised and locked in a mini bus. That is conceded but the precise timing and detail is in dispute. That matter is being investigated in line with All Wales Child Protection Procedures.

2. That triggered an unannounced baseline inspection of the Blythwood Care Services where registered childminders Kirsty McCarthy (KMC) and Atlanta McCarthy (AMC) were working. The inspectors found a maximum of 10 children under five years at the setting so over ratio. The National Minimum Standards state that a child minder should care for no more than 3 children under 5. It is not disputed that they were over ratio. The detail of what was observed is challenged but we are not called on to make a finding at this stage.

3. 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 ('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.

### **Preliminary Matters**

4. We accept as late evidence a list of qualifications and certificates submitted by the Appellant, two days past the evidence deadline, accepting that they were relevant background and that she had previously mentioned them. We saw no prejudice to the Appellant in admitting them.

### **Background**

5. Blythewood Childcare Services runs from a property owned by Mr and Mrs Wynne. Mrs Wynne has been a registered childminder since 2004. Her husband Dean also a registered childminder had worked with her since 2008. Since 2008 they have worked with one to two other childminders and at present these are Ms Kirsty McCarthy and Ms Atlanta McCarthy. All four have been suspended and the others are the subject of a separate appeal.

6. Since registration, the Appellant has received inspections on 29 July 2014 and on 2 December 2010 and no concerns were noted. She submitted evidence of awards and accolades from Nursery World that she won in 2011. She has a special interest in children with additional needs and her record showed that she annually undertakes training courses to update her skills. She has submitted a number of testimonials from parents who are very happy with the service she provides.

7. The inspection took place on 28 July 2016 when Mr and Mrs Wynne were on holiday in the USA. They returned on 31 July 2016 and immediately sought clarification of the reasons for the suspension.

### **The Appeal**

8. The Appellant appeals against the suspension dated 28 July 2016 which lasts until 8 September 2016. She has set out a full response to the issues raised by the Inspectors.

### **The Evidence**

9. We read statements from Inspectors Joanne Clobberly and Suzanne Hamer who visited Blythewood on 28 July 2016. By approximately 9.15am there were 8 children under the age of three years and one child aged three under the care of KMC and AMC. They observed that due to the number of

children they were not getting sufficient individual attention and set out concerns around safe practice which met the minimum standards, for example nappy changes and poor hygiene and gaps in the childminders knowledge about the ratios. They noted that KMC and AMC became distressed, which the Appellant attributes to the stress of the inspections and the manner of the inspectors rather than that they were overwhelmed by the task of caring for so many small children on their own, which they said had happened before.

10. The two inspectors contacted their line manager that day who contacted Shirley Hawkins Registration and Compliance Manager. We read her statement. She in turn contacted Social Services, who were conducting the investigation into the child who had been reported left in the mini bus for up to 30 minutes. Parents were called to collect their children. They moved to enforcement that evening.

### **The Law**

11. 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 40 Childminding and Day Care (Wales) Regulations 2010, which states:-

#### **Power to suspend registration**

**40.**—(1) The Welsh Ministers may, in accordance with regulations 41, 42, 43, 44 and 46(8), suspend the registration of any person acting as a child minder or providing day care for children if—

(a) they have reasonable cause to believe that the continued provision of such care by that person exposes, or may expose, one or more of the children cared for by that person to the risk of harm; and

(b) the purpose of the suspension is for one or both of the purposes set out in paragraph (2).

(2) The purposes of the suspension are—

(a) to allow time for the circumstances giving rise to the belief of the Welsh Ministers to be investigated; and

(b) to allow time for steps to be taken to reduce or eliminate the risk of harm.

a. 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.

12. 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. We make no findings of fact.

### **Consideration**

13. We have reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts. We have set out only the bare chronology for that reason.

14. It is accepted that a two year old child was left in a mini bus but the detail and circumstances are disputed. This we accept is the subject of a separate but ongoing investigation through Social Services.

15. The setting was over ratio on 28 July 2016. As an experienced childminder the Appellant has failed to appreciate and/or apply the difference between registered numbers and ratios. Whilst email correspondence has been produced around the registered numbers permitted when a group of four childminders that worked together, we note that it was pointed out by the Respondent that ratios would vary according to the ages of the children. What is clear is that the Appellant went on a planned holiday for three weeks and no arrangements for cover were made. The reasons for those ratios are self evident, namely that the younger the child the higher the level of adult care that is needed.

16. We were struck by the high level of concern that caused the Respondent to move to enforcement action on the same day. The investigations are still ongoing. In particular the Appellant must be given a full opportunity to explain how why this situation developed and how risk can be eliminated in the future.

### **Conclusion**

17. We have looked at the strength of the evidence around the Appellant which clearly established that the setting of which she describes herself as the Manager was over ratio

18. We identify and agree with the initial judgement by the Respondent that there are grounds for thinking that there may be a risk to her minded children in that the evidence of the inspectors based on both observation and discussion was that the care being provided did not meet the expected standard and that children's individual needs were not being met by those working at the setting in her absence. We note that whilst the Appellant produced many positive testimonials parents who were asked to collect their children on 28 July 2016 were concerned at the care arrangements in place.

a. We have balanced a range of factors namely that this is the Appellant's livelihood, that parents who use her services may depend of the service to allow them to work and that she has a positive record but conclude that at this point it is proportionate and necessary.

**Decision**

The appeal against the interim suspension is dismissed. The suspension continues.

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

**Date Issued: 16 August 2016**