

## Care Standards

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

#### IN THE MATTER OF AN APPEAL BETWEEN:

Ms Leanne Richardson

Appellant

V

Welsh Ministers

Respondent

[2016] 2828.EY-W-SUS

#### DECISION

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended) ('2008 Rules') however not only must both parties 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 after investigations, 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 pursuant to Regulation 45 of the Child Minding and Day Care (Wales) Regulations 2010 (the 2010 Regulations) against the respondent's decision dated 23 September 2016 to suspend her registration as a childminder on the Childcare Register for six weeks to 21 October 2016 pursuant to section 32 of the Children and Families (Wales) Measure 2010 (the 2010 Measure) and Regulation 40 of the 2010 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 is a registered childminder. On 20 September 2016, the Care and Social Services Inspectorate Wales (CSSIW) received an email enquiry from the Appellant requesting that someone contacts her about a concern about a child in her care.

5. An inspector, Annabel Clarke contacted her on the same day and advised her to contact the child protection services at Conwy County Council in order to make a referral in respect of the child, who had been the subject of several recorded injuries over a period of two and a half months.

6. On the 21 September 2016, the appellant sent the inspector a copy of the papers she had sent to Conwy Social Services which consisted of a Referral Form 6, "Cause for Concern Records" and Accident Form.

7. The Cause for Concern Records documented eight separate incidents between the 20 June 2016 and the 20 September 2016 and included records of bruising and injuries, wet clothes and bad smells. The child had also sustained a broken arm in the care of his mother in September 2016, but the date of the injury was not recorded.

8. The referral form to the Conwy Social Services included the following statement from the Appellant: "I do have concerns that I live in a small village and this is a big family. I am concerned about repercussions on myself and my staff and the fact that I have small children of my own as well as at my setting as I work from home".

9. On 23 September 2016, the Child Protection Co-ordinator with Conwy Council who stated: "I have taken the view that this carer has refused/failed to make child protection referrals because of her fear, her social situation and relationship with the family and community and the implication is that would prevent future [child protection] concerns being referred to us for investigation."

10. On the 23 September 2016, CSSIW made a decision to suspend the appellant's registration until 21 October 2016 to allow time for further investigations to continue.

11. In her grounds of appeal, the appellant expressed her concern that the suspension was implemented in haste and on the basis of unknown future events. In her view, she followed the safeguarding policy and reported the concerns at the correct time. She underlined the fact that nowhere in the legislation or national minimum standards is the right time to report concerns identified.

12. She explained the reasons for the delay in reporting the concern as being the fact that the mother had offered reasonable explanations for the injuries and that the child had not displayed behaviours indicative of abuse such as withdrawal, not wanting to go home or “unappropriated” (interpreted as “inappropriate”) behavior. She stated that she employed a relative of the child in the setting and found the child “..always came in well presented and happy”.

13. Under Regulation 22 of the 2010 Regulations, the registered childminder is required to have a child safeguarding policy, a copy of which was appended to the notice of decision and which was presented in evidence to the Tribunal. The first sentence of the policy stated: “My first responsibility and priority is towards the children in my care.” The policy further stated: “I will implement the local Safeguarding Children Board (LSCB) procedures without delay to minimise any risk to the child. I will call the local social services duty desk and follow it up with a letter within 48 hours. I will keep a factual record of concern of concern and will ask the parents for an explanation providing it would not put the child at risk. The EYPS welfare requirements for registered child minders in Wales require me to let CSSIW know of any concerns that I have reported without delay.”

### **Legal framework**

14. The statutory framework for the registration of childminders is provided under the 2010 Measure which provides for regulations to be made dealing with the suspension of a registered persons’ registration. The regulations must include a right of appeal to the tribunal.

15. When deciding whether to suspend a childminder, the test is set out in regulation 40 of the 2010 Regulations and it is that the Welsh Ministers:

*“ 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 to the risk of harm..”*

And the purposes of the suspension are: “a) to allow time for the circumstances giving rise to the belief ,,, to be investigated; and b) to allow time for steps to be taken to reduce or eliminate the risk of harm.”

16. “*Harm*” is defined 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”.*

17. The suspension is for a period of four weeks. Suspension may be lifted at any time if the circumstances described in regulation 44 cease to exist. This

imposes an ongoing obligation upon the respondent to monitor whether suspension is necessary.

18. The powers of the Tribunal are that it stands in the shoes of the Welsh Ministers and so in relation to regulation 40 the question for the tribunal is whether at the date of its decision it reasonably believes that the continued provision of childminding by the registered person to any child may expose such a child to a risk of harm.

19. 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.

## **Findings**

20. This is a case in which the appellant appears to have appropriately recorded a number of incidents of injuries and events involving one child over a significant period of almost three months before making contact with the CSSIW. After three months and eight recorded incidents the appellant sought the advice of the CSSIW about action to be taken. It is not in dispute that the events recorded were fully and properly recorded as causes for concern. The issue is the appellant's failure to record other known events in the child's life such as a broken limb and hospital admission during the same period and to report the events to the appropriate safeguarding officer promptly.

21. We Have read the appellant's notice of appeal, where she stated that the child attended the setting "Well presented and happy", had not displayed behaviours suggesting that he was abused, and that she had been satisfied with the explanations given to her by the parent about the injuries sustained by the child. We also noted that she recorded that she employed in her setting a relative of the child's mother.

22. The evidence of the inspector, Anabel Clarke recorded that the Appellant's Cause for Concern records were very detailed and contained exact measurements of some injuries together with some photographs. We noted however that the appellant had recorded that the mother had no idea how the child had sustained bruising recorded on the 20 June 2016, that she had responded to a query about the child smelling of urine on the 26 July 2016 by saying that it was hairspray and that the parent had not taken the child to A&E on the 10 August 2016 to treat a head injury sustained before he arrived at the setting for fear that the parent would be reported to social services. We do not consider that any of these are satisfactory explanations by the parent and should have raised the concerns of the appellant and led to the reporting of the incidents in compliance with the child safeguarding procedures. They also call into

question the appellant's assertion that she was satisfied with the parent's explanation of the injuries and incidents recorded. The records further identified challenging behaviour by the child against his mother and when he arrived at the setting, again in direct contradiction to the assertions by the appellant that there were no behavioural concerns regarding the child to suggest abuse. Finally, we noted that the referral form to Social Services recorded the appellant's concerns about the repercussions to herself and her staff which may reflect a reason for her tardiness in reporting the incidents to the relevant authorities. This is of concern because it is a failure to place the child's welfare as the paramount consideration as required by the child safeguarding policy.

23. We find that the appellant has not demonstrated sufficient knowledge of appropriate responses to her identification of concern about the child, had failed to recognise the child may be being harmed nor had she reported the concerns sufficiently quickly to prevent further harm to the child. There are further concerns that the appellant failed to place the child's welfare first and paramount as required by the safeguarding policy, because of concerns about repercussions to her own setting and family. She admitted that she was unclear about when incidents should be reported and despite having undergone training about safeguarding, was not clear about the need to report incidents, despite having reported a relevant accident involving the same child within the setting on the 20 August 2016. We are concerned that the appellant may not have developed sufficient insight into implementing appropriate safeguarding policies. WE have concluded that further investigation is necessary to identify whether it is necessary for the appellant to undertake further training in this area and to identify the extent to which she appreciates the seriousness of risk of harm to a child where reporting is delayed. There is reason to believe that the continued provision of childminding by the appellant to any child may expose such a child to a risk of harm until at least the investigations are completed. We conclude that the respondent has displaced the burden and the appropriate test is met.

### **Decision**

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

**Judge Meleri Tudur**  
**Deputy Chamber President**  
**SEND, Care Standards & Primary Health Lists**  
**First-tier Tribunal (Health Education, Social Care)**  
**Date Issued: 19 October 2016**