

## Care Standards

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

[2018] 3269.EY-SUS

Considered on the papers on  
Wednesday, 14<sup>th</sup> March 2018

Before  
Tribunal Judge T Jones  
Specialist Member Ms Heather Reid  
Specialist Member Ms Michele Tynan

Between

Mrs Lillian Anne Raasch

Appellant

-v-

Ofsted

Respondent

### DECISION

#### The Appeal

#### Paper Determination Paper Determination

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.
2. In this case, we have sufficient evidence regarding the nature of the allegations made and the conclusions reached. In the circumstances, we consider that we can properly make a decision on the papers without a hearing.

### **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 up to the issue of the notice of statutory suspension**

4. This is a summary of events taken from information provided by the Respondent. It is not a full narrative of the documents the Respondent filed with the Tribunal and supplied to the Appellant.
5. By letter of 27<sup>th</sup> February 2018 the Respondent notified the Appellant that the Respondent was to suspend her registration from the Early Years Register and General Childcare register for a period of up to six weeks (i.e. until 9<sup>th</sup> April 2018 unless deemed no longer necessary by the Respondent).
6. The Appellant had been registered on the early years register and both the compulsory and voluntary parts of the general childcare register since 1<sup>st</sup> October 1996.
7. Ofsted inspections followed in 2004, 2007, 2011 and 2015 and each time received a judgement of "good".
8. Concerns were raised with the Respondent on 27<sup>th</sup> February 2018. Information had been received that a child ("M") had told her mother she had been touched on her bottom by the Appellant's 15 year old nephew (G) who was a visitor to the Appellant's home at the time. This is said to have occurred whilst M was in the care of the Appellant. The incident is said to have occurred in a bedroom at the Appellant's home (and placement) on Sunday 25<sup>th</sup> February 2018.
9. M's mother when she was told of this by her child contacted the Appellant and later went to the Appellant's home. Having discussed the alleged details, M's mother and the Appellant, together, called the police. Further detail of the alleged assault is set out in the papers and do not therefore require further description herein. The panel has read the same and comments thereon by both parties.
10. Police enquiries are said to continue on the papers before us. A responsible local authority designated officer (LADO) is aware of the allegations. A multi disciplinary agency review is due before the end of this month.

11. The review of the information concerning the current matter by the Respondent confirms that a young child may have come to significant harm while in the care of the Appellant.
12. The disclosure by the child suggests a serious sexual assault may have occurred on the child minding premises. By her own admission, the Appellant acknowledges she was not effectively supervising the child as she was in a separate room on a different floor of the home and was distracted as she was on her computer.
13. The Respondent further suggests the Appellant agreed in the course of discussion with an officer of the Respondent, that it was irrelevant whether the child was present under a childminding arrangement, or whether she was a visitor. What was clear was that the child had been placed in the Appellant's care to be looked after and kept safe.

### **Legal framework**

14. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of a registered person's registration. The section also provides that 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 9 of the 2008 Regulations as follows:
  16. *"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."*
  17. *"Harm"* is defined in regulation 13 as having the same definition as in  
18. section 31(9) of the Children Act 1989:
    19. *"ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another"*.
20. 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.
21. 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.

22. 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.

### **Appellant's case**

23. In applying for the current suspension to be lifted the Appellant has said she had no reason to suspect anything might happen. The Appellant has stated she was not working at the time, if she had been no child would have gone upstairs, bedroom doors are kept open. The house is not a big house, so she was not far away from the children.

24. She has known both children from birth and always thought they had a good relationship. Her husband was doing a household repair, she was on her computer, the children had been running up and down the stairs, in and out of the bedrooms, playing hide and seek.

25. The elder (allegedly offending) child (G) though related to her is barred from her home presently.

26. She is undertaking a further safeguarding course on 7<sup>th</sup> March to improve her "setting".

### **The Respondent's reply**

27. The Appellant has told the Respondent she feels she is being punished when all she did was have the children over the weekend. She hopes from what the police have said they may close the case.

28. Whilst noting this, the Respondent remains concerned that the Appellant places emphasis on the claim she was not childminding at the time. The child (M) was nevertheless in her care. (M) is/was aged three at the time and requires supervision to be kept safe. The Appellant's proximity does not appear to have prevented the alleged incident which is serious and in respect of which enquiries continue. A statement made by the Appellant in support of the appeal also raises further concern. This is as to the Appellant allowing (M) to be taken to the toilet in a public coffee shop by the male child (G) (aged 15 years) the day before the alleged incident, with the instruction to G to show (M) (aged three) "which one is the ladies and she can go herself".

29. The Respondent asserts that pending investigations are yet to be concluded by the Respondent and other agencies. The Respondent believes they are progressing matters without delay; and that if children

are placed in the care of the Appellant at this time they may be at risk of harm.

### **The Tribunal's conclusions with reasons**

30. The standard required to justify a suspension is not a high one. During the short period of the suspension, it is for the Respondent 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. The Respondent is dealing with the matter without any apparent delay.
31. We reminded ourselves of the threshold for confirming the suspension. At this stage we are not finding facts or determining the veracity of allegations which would require a full hearing. In doing so we find credible concerns akin to a case to answer have been placed before the panel as to a current risk to the health, safety and well being of children. These concerns have been acknowledged by the Appellant. She has sought to address them. Though she has barred the alleged offending child from her home and is seeking guidance as to how to improve her "setting" this does not mean, in this panel's judgement, that remaining issues as to supervision and safety of children have been sufficiently acknowledged or addressed by the Appellant at this time.
32. In overview we concluded that we were satisfied that there may be a risk of harm to a child placed in the Appellant's care at the present time.
33. In reaching our decision we have taken account of the serious nature of this allegation, the claimed concerns as to the level of supervision of the children at the time; and in some smaller measure (we say this as we appreciate the Appellant is not legally represented and the Respondent acknowledges she is under some stress) the comments and approach taken by her as commented upon by the Respondent. The reference made by the Appellant in her supporting letter as to the child (M) being taken to the toilet the day before by the other child (G) is also of concern to the panel, when considering the safety of children if in the Appellant's care until these matters are resolved.
34. We cannot determine the veracity of any allegations; our role is to carry out a risk assessment. This includes taking account of any and all responses received even up to the date we entered into our decision making. We have to carry out a risk assessment as set out above under the heading legal framework.

35. Whilst reference is drawn from case law as to our “placing ourselves in the shoes of the Chief Inspector”, we stress that we are an independent Tribunal making a risk assessment against the threshold set out above.
36. We also concluded that the Respondent is taking all steps necessary, at this stage, and is awaiting further engagement with co agencies and the Appellant.
37. We acknowledge the positive previous Ofsted inspections and the long time the Appellant has maintained her registration. The Appellant also took steps to call the authorities when M’s mother raised concerns.
38. In reaching our decision, we also took into account a further range of factors including the Appellant’s circumstances such as we are aware of them; the interests of parents who may use the services and the disputed nature of the allegation. However, in our view, the nature of the allegations led us to conclude that at this point, there is a risk of harm if a child is placed with the Appellant in her setting at this time. As a result, we find that the action taken by the Respondent is both a necessary and proportionate response.
39. We reminded ourselves that 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 the suspension is necessary.
40. We conclude therefore that the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm at this time.

## **Decision**

41. The decision to suspend registration is confirmed and the appeal is dismissed.

**Tribunal Judge T Jones**  
**Primary Health Lists/Care Standards**  
**First-tier Tribunal (Health Education and Social Care)**  
**Date Issued: 15 March 2018**