

Care Standards

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

[2018] 3418.EY-SUS

BEFORE

Mr Laurence Bennett (Tribunal Judge)
Ms Caroline Joffe (Specialist Member)
Mrs Denise Rabbetts (Specialist Member)

BETWEEN:

Essex Learning Centre Limited (Essex Tuition Centre)
Appellant

-v-

Ofsted
Respondent

Determined on the papers: 24 August 2018

Appeal

1. Essex Learning Centre Limited (ELC) appeals against Ofsted's decision to suspend its registration from the Voluntary Part of the Childcare Register under Section 69 of the Childcare Act 2006 and the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 for a period of 6 weeks from 27 July 2018 to 6 September 2018.

Restricted Reporting Order

2. 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 any child or family member in these proceedings so as to protect their private lives.

Preliminary

3. By order of Judge Khan made 13 August 2018 this appeal was listed for hearing on the papers. The directions provided for submission of

statements and evidence upon which it is intended to rely by 20 August 2018.

4. Although the time limit for submission of evidence was varied, neither party has requested an oral hearing.
5. Noting the submissions of the parties we find sufficient evidence to determine the appeal without a hearing.
6. The Tribunal convened without the parties to make its decision on 24 August 2018.
7. Page references in this decision relate to the paginated hearing bundle.

Evidence and submissions

8. The appeal form was completed by Mr Shahzad Rahim who is one of 5 Trustees of the Essex Islamic Charity and the individual nominated by ELC as responsible for the childcare provision.
9. Mr Rahim stated that he has been registered with Ofsted on the Voluntary Register since 4 March 2013 under the name ELC and had previously held a number of other Ofsted registrations.
10. Essex Islamic Academy held Islamic classes for children at the Ripple Road Mosque.
11. Ms Siobhan O'Callaghan, Ofsted Early Years Regulatory Inspector carried out an unannounced inspection of the ELC setting on 7 November 2017. She found non-compliance failures in respect of vetting procedures and recording children's attendance following which an outcome letter as issued (p.186).
12. In March 2018, an employee of the charity was convicted of preparing terrorist acts and other terrorist offences including attempts to radicalise children in classes at Ripple Road Mosque. He was sentenced to life imprisonment with a minimum term of 25 years. Another individual working at the Mosque was convicted for his supporting role.
13. Ofsted was not notified by ELC at the time although investigations were undertaken by Police, the LADO and the Charity Commission.
14. When this came to notice Ofsted commenced an investigation and on 15 June 2018 imposed a suspension on ELC. An appeal against this suspension was unsuccessful (p.284).
15. Ms O'Callaghan's witness statement (p.160) sets these events and developments since the last period of suspension. Her earlier statement for the previous appeal (p.168) gives greater detail including

interviews with Mr Rahim, information from other agencies including the LADO and Charity Commission and concerns about Mr Rahim's knowledge and understanding of safeguarding requirements.

16. Ms Pauline Nazarkardeh, an Ofsted Early Years Senior Officer includes in her statement that during the first period of suspension based on the evidence gathered Ofsted identified the need to consider the suitability of the Provider to remain registered (p.232).
17. On 11 July 2018 Ms Nazarkardeh was concerned that the Provider had demonstrated a further breach of the 7 November 2017 inspection requirements, demonstrating an inability to conduct suitability checks on individuals who had access to children resulting in children being found to have suffered significant harm, failed to inform Ofsted of significant safeguarding concerns, failed to demonstrate a robust procedure for assessing suitability, was not willing to provide information openly in order to safeguard children and had a poor knowledge and understanding of safeguarding practices. Ms Nazarkardeh concluded that the Provider was no longer suitable for registration and decided to take steps to cancel registration. A notice of intention to cancel was issued on 19 July 2018 (p.292).
18. Ms Nazarkardeh further concluded that because of significant concerns about suitability and ability to safeguard children, that grounds for suspension still applied because of a primary risk to children, lack of notification to Ofsted, significant traumatisation of children as young as 6 years old and lack of understanding of responsibilities. Also two Charity Commission Orders remain in force at the Mosque and their investigations are continuing. A further suspension was imposed and is now the subject of this appeal.
19. Ms Nazarkardeh noted that Mr Rahim appears to place blame on the teachers employed by the Trustees and seeks to minimise the seriousness of the events or failings of Trustees to fully assess the suitability of the teachers.
20. Ms O'Callaghan's statement refers to recently updated Policies & Procedures instated by Mr Rahim and the Charity Commission Appointed Manager. She considers these are expected as a minimum and not themselves a reassurance that responsibilities will be carried out in a robust manner.
21. Mr Rahim stated he was not involved in teaching children and had given 2 individuals responsibility to run the Islamic classes. Now the Charity Commission appointed Interim Manager is implementing safeguarding and stable financial policies and protocols to enable Islamic classes to recommence. He submits that Ofsted has not identified or specified the risk, how it would present harm to children and who or what caused the risk. It is submitted that evidence has not been shown about the level of risk.

22. Mr Rahim's letter of appeal (p.25) sets out a list of policies and protocols now put in place; these are appended to the form. He provided details of staff DBS checks (p.52) and completion of training for himself and other staff. He said that cameras have been installed and safeguarding is taken seriously.

The Law

23. The statutory framework for the registration of providers of daycare 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.
24. 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."
25. **"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".
26. 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.
27. 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.
28. 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.
29. *Ofsted v GM & WM* [2009] UKUT 89 (AAC) provides helpful guidance on the proper approach to suspension pending investigation. The Upper Tribunal made it clear that they did not consider that in all cases, a suspension imposed while there is a police investigation need be maintained until that investigation is formally concluded and that Ofsted may be able to lift the suspension earlier [27] depending on the facts. If Ofsted wish to resist an appeal against a suspension on the ground

that further investigations need to be carried out, it needs to make it clear to the Tribunal what those investigations are and what steps it might wish to take depending on the outcome of the investigations.

Tribunal's conclusions with reasons

30. The Tribunal's task in this appeal is limited in respect of the finding of fact and is not to determine the Appellant's ultimate suitability or issues of cancellation. The matters for the Tribunal's determination in this appeal are set out within the Law quoted above.
31. The Tribunal notes that results of investigation during the first period of suspension have been reviewed and a notice of intention to cancel registration has been issued. It is clear as stated by Ofsted that there are significant concerns arising from the investigations which are ongoing.
32. Mr Rahim has provided details of steps now taken which include some staff checks, provision of policies and installation of cameras. He questions whether Ofsted has identified risk.
33. Historic risk is evident from the conviction of persons teaching children at the Charity Essex Islamic Academy of which Mr Rahim is one of five trustees, and the significant harm to children from the need for subsequent counselling of children. The events took place during the period of registration. The steps that the Appellant has decided are necessary demonstrate an acknowledgement of lack of procedures and management which gave rise to the substantiated risk of harm.
34. From the information provided, we note vetting and policies and procedures are recent and follow the appointment of a Manager by the Charity Commission. Some documents refer to the Essex Islamic Academy, not ELC (p18 and p77). One document included is an agreement for self employed tutors (p30) which states that 'the Contractor's method of working is entirely his/her own and he/she is not subject to the control of the Client...' The Data Protection Policy (p.47) is inconsistent with appeal submissions regarding the monitoring of staff as it restricts monitoring without knowledge to a specific investigation. This does not provide reassurance that Mr Rahim has fully understood his responsibility to monitor any service he provides and ensure safe and high quality practice. There is no evidence of reflection on past failures, and why new processes are required. We do not consider those provided have become embedded.
35. The nature of the allegations and the evidence of risk is serious in nature. Mr Rahim's explanation of his role in the events gives rise to reservations about his ability to manage, control and effectively discharge his duties.

36. Mr Rahim's actions in response were a reaction to very significant events and not the failures highlighted after the unannounced inspection and in our view reflect on his ability to operate the policies now provided with the assistance of a Charity Commission Appointee. He remains as a Trustee of the Charity and responsible for the Provider.
37. For these reasons we conclude that the continued provision of child care by the Appellant may place a child or children at risk of harm and accordingly the suspension must continue.

Order

38. The appeal is dismissed.

Judge Laurence Bennett
Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 24 August 2018