

**In the First-Tier Tribunal (Health, Education and Social Care)
Heard at Birmingham Magistrates Court
On Thursday 2nd May 2013**

Before

**Deputy Chamber President Judge John Aitken
Specialist Member Ms Sally Derrick
Specialist Member Ms Heather Reid**

Mrs X

Appellant

v

Ofsted

Respondent

[2013] 2032.EY- SUS

Decision

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Procedure Rules however not only must both parties consent, which they have, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we considered that despite having received written submissions, that the case would best be dealt with at a hearing and the matter was listed for one.

2. The appellant appeals to the tribunal against the respondent's decision dated 8th April 2013 to further suspend her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 20th May 2013. There has been a previous suspension from 25th February to 8th April 2013.

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***, 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 was suspended because of three matters considered by Ofsted.

i) A failure to inform Ofsted of significant events which it was considered impacted upon the suitability of household members. In particular, an instance of domestic violence on 17 November 2012 which was reported to the police, resulting in the arrest and bail conditions of the Appellant's husband.

ii) That the Appellant's child was involved in this safeguarding incident and therefore her ability to safeguard children in her care is in question and will be subject to further investigation.

iii) The Appellant's child is subject to a child protection plan and currently there is other statutory agency involvement with her and her family

5. A decision was taken to suspend the registration of the appellant and she was notified accordingly.

The Law

6. 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.

7. 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.”

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

“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”.

9. 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.

10. 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.

Issues

11. Ofsted are concerned that the appellant may not have notified them of a previous incident referred to in the papers as taking place in 2011, they are also concerned about difficulties which have arisen in inspecting the appellant and a breakdown in communication with her. The central issue for the suspension remaining however is the threat of domestic violence such that there would be a risk of harm to the children she minds?

Conclusions

12. We understand the concern of Ofsted to consider that it is proper to take steps to ensure that the children minded by the appellant are protected, until there is a fuller picture of what was being disclosed. We consider it was entirely appropriate to suspend at that time, indeed we found it difficult to resolve this matter until we had ourselves seen the appellant's husband and heard the appellant and her husband give evidence before us.

13. The position today is that there are no adverse comments from the parents of any minded children. We are satisfied that the appellant and her husband were involved in an argument about directions whilst the appellant was driving home from a party. The appellant refused to drive, knowing that her husband had been drinking and could not himself drive and she sat in the back seat of the car in protest. The appellant's husband then tried to strike his wife in some way in frustration, their child seems to have been in his mothers arms at the time, and the blow appears to have caught her hand. Mr X said in evidence that the child was also hit although Mrs X denied this. Certainly no one was injured and the appellant's husband came immediately to his senses.

14. The appellant reported this to the Police some days later, because she felt her husband was not taking it seriously enough, shortly after that the police informed social services and although the appellant did not notify Ofsted they were notified by the agencies involved and became aware of the situation. We note that the appellant claims to have tried to notify Ofsted, but she could easily have sent an email or made more effort to communicate. We consider she understands the importance of that now. She has invited the police not to proceed, but has not said she was not telling the truth about what happened.

15. There is a suggestion within the papers of a previous incident of domestic violence reported to the Police and retracted, this is denied by the appellant and her husband, and we see no reference to it in her latest statement. A plausible explanation is that this is a misunderstanding arising from the appellant explaining that arguments with her husband started a year or so before.

16. As regards the likelihood of an incident involving violence with the minded children, we consider that the appellant's husband, who attended with her in support of her appeal, understands how gravely that would be considered, we have looked at the circumstances in which the present incident arose and we cannot see any realistic chance of such a matter developing given that the appellant's husband is almost always out of the house when children are minded in any event.

17. We have also looked at the problems that Ofsted have had in communicating with the appellant. The appellant does not assist herself in her sometimes strident approach to matters, she must understand that it is important to ensure that other people understand that she appreciates and follows the rules necessary to conduct her business, it is not sufficient to know herself that children are safe and properly looked after, she must also demonstrate that, not only by documentation but by having an open and full communication with the safeguarding body. She needs to understand that communication involves listening to those offering views dissimilar to her own, as well as talking. We consider that she does understand that at least in the short term.

18. We have looked at the risk that the appellant would fail to safeguard the children from another similar threat, we again see no appreciable risk of that in the short term for the reasons we have given. We consider that although suspension was justified at the time of its imposition and indeed renewal, matters are clear enough now to remove the suspension.

Decision

The appeal against interim suspension is allowed, the suspension shall cease to have effect.

**Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Tuesday 7th May 2013**