

Care Standards

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

[2015] 2469.EY

Heard on 16 and 17 November 2015 at Doncaster County Court

Before:

**Tribunal Judge Ms Melanie Lewis
Ms Bridget Graham, Specialist Member
Mr Andrew Wilson, Specialist Member**

BETWEEN:

Mrs Julie Hattersley

Appellant

-v-

Ofsted

Respondent

DECISION

Representation

The Appellant represented herself. She was supported by a friend Ms Marell. Ms Ellis Housby her former assistant attended as her witness.

The Respondent was represented by Ms Wolstenholme Counsel. Her witnesses were Ms Marina Rice, Early Years Service Inspector, Ms Denise Akers, Askem Children's Centre, Ms Beverley Redshaw, Volunteer Askem Centre, Ms Dodd former Ofsted Senior EY Inspector, Ms Plewinska Ofsted Senior Officer and Ms Lerner, Ofsted EY Regulatory Inspector.

Mr Gill Regulatory Inspector observed.

Reporting Order

1. There shall be a Restricted Reporting Order under Rule 14 (1) (b) of the Tribunal Procedure First-tier Tribunal (Health, Education and Social Care) Rules 2008 prohibiting the publication (including by electronic means) in a

written publication available to the public, or the inclusion in a relevant programme for reception in England and Wales, of any matter likely to lead members of the public to identify any child or its family mentioned in the appeal.

2. We record that the issues arising in this case found their way onto Facebook started with a post by Mrs Hattersley which she agreed to remove, so that the link and the subsequent responses were removed.

The Appeal

3. This is the appeal of Mrs Hattersley, a registered childminder, against a Notice of Decision dated 25 June 2015 cancelling her registration on the early years and general childcare register.

4. She has been a childminder since 2009.

The Legal Framework

5. The legal framework for the registration and regulation of childminders is to be found in Part 3 of the Childcare Act 2006. It is uncontroversial that these new provisions sought to elevate and regularise the standard of childminding and the demands now made on childminders and potential childminders are wide ranging and significant.

6. The requirements are prescribed by the Childcare (Early Years Register) Regulations 2008 and include that the person registered is suitable. Section 68(2) of the 2006 Act enables Ofsted to cancel a person's registration if it appears that this requirement cannot be satisfied. Section 74(1) of the 2006 Act provides a right to appeal to this Tribunal, the legal right remains vested in Ofsted, which must establish the facts upon which it relies to support cancellation. It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary; the standard of proof to be applied is the balance of probabilities. We must make our decision on the basis of all the evidence available to us at the date of the hearing, and we are not restricted to the matters available to Ofsted when the cancellation decision was taken.

7. The powers of the Tribunal can be found in Section 74 (4) of the 2008 Act. Essentially, the Tribunal may either confirm Ofsted's decision to cancel or direct that it should not have effect. If the Tribunal decides that cancellation should not have effect, it may impose conditions on the Appellant's registration or vary or remove any of the current conditions.

The Issues

8. The Respondent's case is that the Appellant is not suitable to provide childminding services for the following reasons:-

- (i) On 22 January 2015 Ofsted received a complaint that Mrs Hattersely had transported early years children on 21 January 2015 in a vehicle without suitable restraint. When interviewed on 23 January and 6 February 2015 she stated that the children had been on booster seats and maintained that the children had been transported in her mini bus which was insured for her childminding business. Only on 4 March 2015 when she was interviewed again and shown CCTV footage of her at a petrol station, did she admit that she had in fact been driving a Vauxhall Insignia which she had been cautioned for using to transport minded children in July 2014 when she had been inspected and graded as 'inadequate'.
- (ii) The two minded children in the car were with her as a result as their parents attending a training event at a local Children's Centre. When interviewed on 23 January 2015 she did not have the required records for the children, only their parents' mobile numbers. Again this had been an issue raised in the July 2014 inspection.
- (iii) Since the Decision Ofsted have identified further breaches and causes for concern. This included a male friend being on the premises when the minded children were present and who had not undergone a police check. Mrs Hattersley had drawn attention to his presence in July 2014 and, when reminded he needed to be checked, said it was a 'one off'.
- (iv) The Appellant has not expressed remorse for her deception and has sought to justify her breaches by reference to circumstances or to the actions of others rather than acknowledging and addressing the issues and has often been uncooperative and aggressive, in some cases in the presence of minded children.
- (v) Ofsted state it is in a position where it cannot be confident of any explanations or assurances offered by the Appellant and that it is impossible to effectively regulate

9. Stripped down, Mrs Hattersley's case is that she panicked and started on a lie. On 21 January 2015 two parents were late to collect their children and had not arrived by 11.30 am, as agreed. She therefore had to transport the two children in her vehicle but claimed they were on booster seats. Her view is that Ofsted have been excessive in their visits to her since that event amounting to harassment, which has caused her to make a complaint. Whilst accepting that paper work is not her strength, she does not accept that there is anything in her practice which cannot be put right. On 21 January 2015 a male friend was at the premises, who she said was helping her decorate but was not downstairs during the time the minded children were there.

10. It was not contested that the two children in question were of an age and size that they should have been in a car in a high back five point restraint seat. We had evidence about the guidelines. The next stage would be a booster seat. In this case Ofsted believe the children had only a lap belt on.

11. Neither was it contested that a childminder must only transport children in a car which has additional insurance for that purpose.

The Evidence

12. Mrs Hattersley has been a childminder for six years. We read some text messages from those who use her services.

13. The Scott Schedule and Case Summary set out the background which also emerges from a summary of the evidence. The Appellant's oral evidence, rather than clarify points, led to a different version of events which did not fit with other evidence. We have focussed on those issues which the Appellant accepts and the evidence which is not challenged. .

14. In March 2010 Mrs Hattersley was minding more children than the condition on registration allowed. Mrs Tucker's statement set out the evidence about the inspection on 17 July 2015 when Mrs. Hattersley was graded 'inadequate' and 16 'Notices to Improve' were issued. At that time Mrs Hattersley employed two assistants and Disclosure and Barring Checks had not been carried out for the assistants and they had been left unsupervised to care for the children. It seems that she had made an application to register them but not understood she had to get the DBS checks. Mrs Hattersley confirmed that she used both the Vauxhall Insignia and the mini bus to transport children and that she knew each must be adequately insured to transport minded children. The Vauxhall car was registered in her mother's name under the Motor Mobility scheme. When Mrs Hattersley was told of the decision she became very angry.

15. Mrs June Rice carried out the inspection on 17 November 2014. In her Statement she says that the Appellant told her that the owner of the second vehicle used to transport children was no longer her assistant and that she had changed her car insurance, which was not the car that had been in issue. She thought she had seen the insurance documents but in oral evidence said she could not recall seeing any. She had not checked back on the tool kit used for the previous inspection. She formed a view that the Appellant was positive and professional and committed to improving her practice.

16. Mrs Denise Akers is not part of Ofsted. She is the Centre Manager for the Children's Centre. On 12 January 2015 she set up the arrangement whereby the two extra children were in Mrs Hattersley's care as their parents were attending a course. However it was the parents who then made contact with Mrs Hattersley to confirm that they wanted to use her services and the times. Four parents contacted Mrs. Hattersley and two decided not to use her services. The minded children were aged two years and three years and both small in size. Mrs Akers arranged for the payment via a voucher scheme for four weeks at a time but accepted that sometimes parents did not give childminders the necessary forms to sign. Mrs Hattersley's explanation as to how the pick up time was not clear, was that the parents had not given her the form. Mrs Akers produced the signing out sheet showing that the parents had left the centre at 11.35am to go to Mrs Hattersley's home. She did say

parents sometimes left early so that seemed to us to leave the door open on Mrs Hattersley thinking they would be at her house by 11.30am.

17. The two parents concerned gave a statement to Ofsted but did not wish to attend to give evidence for fear of reprisals. They believed that they had an arrangement whereby they left the Centre after the session finished and walked up to Mrs Hattersley's home which should take about 10 minutes. When they got there 'Steve', who introduced himself as the decorator, said she had gone to collect her granddaughter at 11.45 am. We clarified this was a regular pick up. By phone she agreed to meet them at a nearby chip shop. He also mentioned that she had stopped for petrol. Both parents said that on arrival at the fish shop she was driving the white Vauxhall and that there were three children in the car including theirs and that they were only restrained by lap belts.

18. The concern about the safety of that was raised by Ms Beverley Redshaw. She works at the Children's Centre but also took part in the course. As she is a car owner she agreed to drive one of the parents with their child to hospital that afternoon, which is why she took both parents up to Mrs Hattersley's home. Other than that she had no involvement in the arrangement and no knowledge of Mrs Hattersley. When they got to the shop she stayed in the car, but was about a bus shelter's distance away. She could see three children in the back of a white car and no high back car seats. Two children were taken into the shop. Mrs Redshaw agreed that she could not be sure there was no booster seats in the car but one of the parents had said that they were just restrained by lap belts and she was so concerned that she reported this to Mrs Akers who in turn contacted Ofsted. In their short handwritten statements both parents said there were no seats, just lap belts.

19. Mrs Tracie Dodd was at the relevant time a regulatory inspector. The concern led to Mrs Hattersley being suspended on 22 January 2015 pending an investigation. That suspension was lifted on 6 March 2015. The test for suspension is that a child is or may be exposed to risk of harm and for any necessary steps to be taken to eliminate or reduce that harm and in her answers Mrs Hattersley showed that she understood the reasons for insurances and safety seats.

20. In the first interview Mrs Dodd focussed more on the lack of records. It was clear that Mrs Hattersley had taken got some pro forma record sheets but not for the two minded children in question. All she had were the parents' phone numbers. Her manner was not helpful. Overall Mrs Dodd had a lack of clarity from the records as to how many children were minded and had been in the past. There was a reference to 34 children on Facebook, but we clarified that was historic. We further clarified that there was no clear recommendation as to how long records should be kept.

21. Of note is that on the second interview and in the interview on 4 March 2015 up until she was confronted with the CCTV footage Mrs Hattersley was adamant that she had been driving the mini bus. We clarified that Mrs Dodd had local knowledge and identified that there was only one likely petrol

station. She was able to easily view the footage on presentation of her ID but established that the timing was not accurate and about 20 minutes out but believed it showed the Appellant there between 11.50 to 12.10 pm in a white car and that she looked into the back when she went off to pay.

22. Mrs Dodd had also seen Mr Stephen Pickering at the premises in paint splattered overalls on 23 January 2015. Mrs Hattersley repeated what she had told the Inspector the previous November, namely that they were in a relationship at that time but that he only came at weekends. At this time he was helping her with decorating but she maintained that was only after the children had left.

23. Mrs Diane Plewinska was the main decision maker. She put equal weight on a range of factors. A deception had been maintained for some time and there was clear risk to children of using an uninsured vehicle without any of sufficient restraint. She had concerns about her aggressive stance when questioned and the lack of reflective insight. Ms Larner had felt very threatened when she visited on 8 September 2015 and it would be very unusual to send two inspectors to visit. She saw no basis for a productive future relationship with the role of Ofsted as the regulator recognised. Whilst Ofsted did not have an advisory role she felt that Welfare Requirement Notices made clear what not only had to be done, but that it should be maintained.

24. Mrs. Julie Larner stepped into the role previously held by Mrs Dodd and after the decision to defend the appeal had been made. She had a monitoring role. She made an unannounced visit on 12 August 2015 and issued a Notice to Improve in respect of missing records for the older children. The NTI was met when she went again on 8 September 2015 but not the welfare requirement to record emergency telephone numbers. Mrs Hattersley accepted she had not been able to put her hand on all her records as she said she was in a state and anxious. She denied swearing and said the whole experience had been very intimidating, causing her to make a complaint. She did not challenge that she had thrown papers across the table. Her explanation of the front door being unlocked was that she was expecting a visitor. We saw photographs of the garden area and confirmed that high areas with a drop had been fenced but the concern was in relation to piles of broken toys and potentially dangerous items around.

25. Miss Ellis Houslby was Mrs Hattersley's assistant for two years until July 2015. Her statement is not full and the detail emerged in her oral evidence. She did a regular pick up run at 11.45 am for one child about 10 minutes walk away. In contrast to her statement, she said the decorator had been there for two or three days, not just that day. She said the arrangement was that the parents must pick up the children at 11.30 am and when they did not, she helped Mrs Hattersley put booster seats into the white car. When cross examined she could not say why she had not used the mini bus, which was fitted out with seats but then said not with high back seats. Whilst she said that she understood her obligations she did nothing to stop Mrs Hattersley using the car even though she knew she had been warned about driving it

without additional insurance to transport minded children. On her return from the pick up she had seen Mrs Hattersley's grandchild in the seat behind the passenger seat whereas Mrs Redshaw had thought she was in the middle, but revised that as children looked 'unisex' in winter clothes.

26. Mrs Hattersley accepts she should not have used the private car and stated that whilst paper work was not her strength, she had sought to comply with requirements.

27. Miss Houslby had responded to Mrs Hattersley's post on FaceBook with threats that whoever had spoken out 'would get what is coming to them'. She agreed that such comments (and there were a number of them) might be seen as threatening.

28. Mrs Hattersley admitted in her statement she had used the car, not the mini bus, but in response to a question from the Tribunal agreed that she would have continued to lie had she not been caught on CCTV. She then said for the first time that she had put high back seats in the car and that Ms Houslby was wrong to say otherwise. She said she had set off to get her granddaughter at 11.40am. She challenged how anyone could have, which contrasted with what she said when interviewed under caution on 4 March 2015. There she has said she had picked up two children. She then said she had left these two at home with Ms Houslby which did not fit with the account Ms Houslby had given of having gone to her pick up alone and returning with one child. She denied those children had been left with Mr. Pickering.

Conclusions with Reasons

30. In reaching our conclusions we have had regard to all the evidence both written and oral and the closing submissions on behalf of Ofsted and the response by Mrs Hattersley.

31. We must look at the whole history, what has happened since Ofsted made its decision, and decide the matter afresh. We are not simply reviewing Ofsted's decision to cancel registration and whether it was a reasonable one.

32. Ofsted must make out its case on a balance of probabilities. Overall we find that each witness gave their evidence in a straightforward way that was backed up by a paper trail and tool kit where appropriate. We do have some doubts as to how Mrs Rice could have graded the service 'good' in November 2014 when she did not record seeing the insurance documents. Whilst we appreciate that inspectors are guided to talk to childminders and not just look at the papers, this would seem a reasonable step. It would have alerted Ofsted that the issue was still live if there was no appropriate insurance document and if there was, then it would be protection for the child minder who could show she was now compliant.

33. Only because of the CCTV footage did Mrs Hattersley admit she had been driving the Vauxhall Insignia on 21 January 2015. Before that she was prepared to say that stories had been made up about her. We wish to

specifically mention the evidence given by Ms Redshaw, who was clearly very nervous about giving evidence, due to the threats that has been made on Facebook. The protection of children relies on those who see things they have concerns about to come forward and she did so. We find that she had no motive in giving evidence other than stating what she saw, which we accept as an accurate account. Where she was not sure or had reflected she said so. It supports the evidence of Ms Akers and the statements given by each parent.

34. This contrasts with the account given by Mrs Hattersley and her witness Ms Ellis Houslby which rather than clarify matters added other layers of confusion. We reach our conclusions on those facts which she admits and we conclude that taken together strongly weighs against her continuing registration.

35. The key issue that we have to be determined is whether the Appellant is suitable to be a childminder. We have looked at a range of issues but at all times have put in the forefront the impact on children.

36. We find that Mrs Hattersley displayed behaviours which impacted on the children in her care, resulting from poor or significantly poor practice.

37. First she failed to ensure the children's safety using a vehicle that did not have appropriate insurance, using a booster seat when the children's age and size she accepted meant they needed to be sat in an upright five point harness seat and allowing unvetted guests to stay or visit the property and come into contact with minded children.

38. It is of great concern that Mrs Hattersley only admitted she had driven the uninsured car after she was caught on CCTV footage. The evidence including her interview under caution on 4 March 2015 shows a cunning and protracted attempt to deceive. The evidence from Ms Houslby suggests using the Vauxhall car was not a lone event on 21 January 2015. Mrs Hattersley tried to dress this up an emergency, but that does not stand up when her mini bus was available, appropriately insured and had the right seats. She has failed to at any time express remorse or reflect on what the impact on the children could have been if there had been an accident.

39. She was also aware that if a friend was there at the same time as minded children they needed to be vetted. Whilst it is fair to record that the Inspector only knew Mr Pickering originally as she went up to him with a cup of tea, the evidence in January 2015 all points to the fact that he had been there a few days and was helping her out with decorating.

40. Secondly, Mrs Hattersley failed to implement and carry through basic procedures. Her records, we accept were not adequate. She failed to ensure safe surroundings including a lock on the garden gate and clearing the garden of at least two plies of unwanted items. Her records re assessment and development were very thin.

41. More accurate record keeping would not have prevented the first key issue but it would have meant that she had adequate records of each child their weight and height so that she could be clear what car seat they needed. If she had insisted on getting a form from each parent before she minded their child on 21 January 2015, the error on them would have become clear. It was not a last minute thing as we accept Ms Akers first made contact at least a week before.

42. Whilst in her own words, Mrs Hattersley was not good with records, at a very minimum she needed to have records to identify medical issues including allergies and individual characteristics of each child. This again was an issue that Ofsted raised and which she failed to address

43. Her basic checks were slack, including not keeping the front door locked and not promptly attending to issues of security such as the garden gate which was still secured by a dog collar weeks after Ofsted had pointed it out. Whilst some parents texted their support for Mrs Hattersley, two parents referred by Ms Akers were not confident she would supervise their children and did not want to use her services.

44. Thirdly, caring for other people's children requires an individual to be trustworthy. Mrs Hattersley has manifestly failed to act in a trustworthy and honest way with Ofsted. She has seen herself as a victim, both in what she put out on social media and in what she told parents when she had to explain that she was suspended. She admitted that had she not been caught on CCTV she would have maintained that which she knew to be a lie.

45. At all points she has criticised others. At no point did she suggest that she had reflected on where she had gone wrong and developed any insight into what she might have done differently and what lessons she had learnt.

46. In reaching our decision that the cancellation should be upheld, we have weighed proportionality. We have kept in mind at all times that childminding is Mrs Hattersley's way of earning a living and has been for over 6 years. A number of parents spoke positively of her care but that was not with full knowledge of the facts.

47. In considering whether the sanction imposed by Ofsted is proportionate, we have had regard to the duration of the concerns and the failure of Mrs Hattersley to demonstrate insight into their significance. Neither party suggested conditions nor could we see any that could realistically be imposed. Trust had been lost and we can see no basis for positive working relationship in the future whereby Mrs Hattersley accepts the role of Ofsted as the regulator.

48. This case shows the need for Inspectors to ask to see copies of documents such as insurance documents where there has been an admitted breach. It also shows the benefit of inspectors with local knowledge. Mrs. Dodd knew the area and knew which petrol station would have been the stop

point. It was only because she made that investigation and picked up on a comment about going for petrol, that this lie was laid open.

Decision

We dismiss the appeal. The decision to cancel the registration of Mrs Hattersley on the Early Years and Child Care register is confirmed.

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

Date Issued: 30 November 2015