

Care Standards

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

Considered on the papers on 3 December 2015

BEFORE
Tribunal Judge Meleri Tudur
Specialist Member Denise Rabbetts
Specialist Member Susan Last

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

LG

Appellant

v

Ofsted

Respondent

[2015] 2542.EY-SUS

DECISION

Restricted reporting order

1. 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.

2. The Appellant appeals to the Tribunal against the Respondent's decision to suspend her registration as a childminder on the Childcare Register for six weeks from the 11 November 2015 pursuant to section 69 of the Childcare Act 2006 ('2006 Act') and the Childcare (Early Years and General Childcare Registers) Common Provisions) Regulations 2008 ('2008 Regulations').

3. The Appellant is a registered childminder since November 2006. On the 30 September 2015, the Appellant notified the Respondent of a safeguarding issue in relation to child in her care and possible allegations made of inappropriate sexual contact by her son, S.

4. The Appellant had previously been the subject of a suspension of her registration in November 2014, following a separate allegation of inappropriate touching by her son, S but dating back about four years. The Appellant was sent an Initial Warning Letter for failing to notify Ofsted of allegations of abuse and the suspension was lifted.

5. The Appellant was suspended on the 30 September 2015 following her notification of the disclosure by a child in her care of alleged inappropriate sexual contact by her son S.

6. The Respondent appealed against the suspension, but the Tribunal upheld the Respondent's decision.

7. The Respondent reviewed its position at the end of the six week suspension and on the 10 November 2015 issued a second notice of suspension following a further allegation of inappropriate sexualised behaviour which is under investigation.

8. The Appellant has received an incident log from the police which details concerns raised by the Appellant with the police about her son S following disclosure by his cousin that he had been inappropriately touched and S's penis placed in his mouth.

9. During the course of the September 2015 suspension, a section 47 report has been prepared by the social worker, Gabrielle Rowland dated 29 October 2015 in which the recommendation was made for further investigation and assessment of the family. It was noted that the Appellant was found to minimise professionals concern around S's alleged inappropriate behaviour and the social worker and the police found that when the joint visit was undertaken, S appeared guarded and presented as if he had been "prepped" in what he was to say to the police and social worker. The report further raised issues about the mental health of other members of the Appellant's family and suggested that her husband was subject of another section 47 report in respect of another child in another family.

10. The Assistant Local Authority Designated Officer, Phillip Larmond prepared his own s47 report which was completed and shared with the Respondent on the 4 November 2015, concluding that the allegation of inappropriate sexual contact with child D was "unsubstantiated."

Legal framework

11. The statutory framework for the registration of childminders 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.

12. 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."

13. "*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".

14. 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.

15. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so, 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.

16. 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.

Evidence

17. In the course of the current suspension, a comprehensive witness statement was prepared by Ms Jennifer Gee as the Early Childhood Regulatory Inspector allocated to the case in September 2015. The statement contained detailed information about the progress of the investigation and set out hearsay evidence received in conversations with the Local Authority Designated Officer.

18. The statement identified concerns about the Appellant's delay in following safeguarding procedures in a timely and appropriate way, the Appellant having failed to report the disclosure to statutory agencies herself and having told the child's mother to notify social services of the allegation of abuse on the 30 September 2015 had then waited a full two days to act on the safeguarding

concern herself. A further concern was the Appellant's own comments because she reported that she had told the parent that she 100 per cent knew it didn't happen and her concern appeared to be more focused on "covering herself and her son". It was the conclusion of Ms Gee that the information provided raised significant concerns about the Appellant's ability to safeguard children by responding appropriately to signs of abuse, responding appropriately to allegations and following reporting procedures about concerns in an appropriate and timely way. She concluded that despite action take by Ofsted in 2014 and subsequent training, the Appellant appears to be showing a pattern of behaviour which is of concern. Although capable of describing orally what she should do, she is unable to put it into practice and does not adequately safeguard children.

19. The statement continues to record issues relating to the behaviour of the Appellant's daughter who was described as being "groomed online" in the summer of 2014. Issues were identified by NSPCC of the daughter's self-harming and the Appellant's husband being diagnosed with depression. The statement confirms that the Appellant sought advice from social care and took preventative measures then. The Respondent seeks to explore issues arising about the daughter's mental health and identify whether a further medical assessment is necessary and to interview the Appellant's husband about his depression. Concerns were raised about the alleged inappropriate sexual behaviour of both the Appellant's daughter and son, and a referral will be made to Pyramid Partnership and a further child and family assessment undertaken.

20. Ms Gee expressed concerns about the responses of the Appellant during her interview because she appeared fully aware that the disclosures reported to her were likely to have related to her son S, but she allowed the parent of the child who made the disclosure to investigate the circumstances and said that she would investigate matters too. This appeared to be a pattern of behaviour that persisted despite the action taken by Ofsted to ensure the Appellant improved her understanding of safeguarding.

21. In interview, the Appellant expressed her opinion that her son could not have carried out the alleged abuse, and stated that she believes that the child D who made the disclosure was lying. She also stated that she had been wrong to take her son to the police station in 2011 because the child E who then made the allegations was also lying. She identified concerns in interview about Child D's recent violent conduct and physical concerns about his feet yet did not mention the concerns to anyone. She maintained that her son was never alone with the children whom she minded, yet the accident book recorded an incident in April 2015 when a minded child suffered distress and cried as a result of her son squeezing him too hard. She also mentioned a time when minded children had watched a DVD in her son's bedroom although she maintained that she had been present throughout.

22. The Respondent opposed the appeal on the grounds that further investigations were necessary in respect of each of the members of the Appellant's family to ascertain their suitability, the outcome of other services' investigations and the result of the child and family assessment.

23. The Appellant had prepared for the appeal a document setting out the large number of inaccuracies that she found in the Respondent's evidence. The document, in tabular form set out the page and paragraph references of the relevant document, the details as set out in the Respondent's document and the details as submitted by the Appellant. Some of the errors are acknowledged by the Respondent, such as the inaccurate information provided by the LADO about the Appellant's husband being the subject of a second s 47 report regarding a different family at a different address. It was subsequently clarified that this information was inaccurate and did not relate to the Appellant's husband at all. There was an issue about the date of the call as recorded by the Ofsted telephone team which recorded the disclosure as having been made on the 20 September whereas the Appellant had consistently identified the date as the 27 September. The Appellant also produced copies of receipts showing the dates on which one of the children who had made allegations previously had been minded by her.

24. The transcript of the Appellant's interview by Ms Gee records the Appellant's description of the events of the 27 September when she was told by Child D's mother that her son, S had placed his penis in the child's mouth. She stated: "My reaction was shocked, that it couldn't have happened because S is never here with D, S's at school, she agreed with me, she comes in the house in the morning as S goes out of the door and she is always here in the evening when S comes home from school, some days I am not sure if he is home, he will come in and go straight upstairs every night.". The Appellant went on to confirm her incorrect assumption that she had 14 days to report the disclosure to Ofsted and that she had allowed the mother to make her own investigation on that basis. When it was put to the Appellant that the mother appeared concerned about S, she responded "...but S didn't do anything." She acknowledged that she should have reported the incident straight away and she confirmed that she wasn't concerned about the disclosure at the time because "...I physically knew it wasn't possible, because they are not here together, my first instinct was that as D goes out S comes in and I couldn't see how it was physically possible.". She concluded by telling the inspector "The only thing I have done wrong is not report, my son has not done this, he can't have, he is not here.....It didn't happen, it just didn't happen." When challenged about her understanding of safeguarding, the Appellant responded: "There is no evidence that it was my son; D has not repeated it anyway. I have been searching the internet, it is well publicised that 3 years old do tell lies they get their parents' attention to get themselves out of trouble or to get a reaction from their parents." Later in the interview, the Appellant continued to maintain that her son had not done

anything, that the alleged events had not happened and that social services were telling lies, the stories are changing and her son “..didn’t do that.”

Tribunal’s conclusions with reasons

25. The Tribunal has considered the evidence presented and the document provided by the Appellant which was very helpful in identifying the areas of dispute between the parties in the evidence. We conclude that there are errors in the LADO evidence and it may be that the accounts of the alleged incidents have become distorted in the telling, however we are satisfied that there are three separate allegations of inappropriate sexual behaviour made against the Appellant’s son, S which are sufficiently similar yet not associated with each other and which raise concerns about his behaviour with minded children and raise the possibility of the risk of harm to them.

26 The Appellant has explained that she did not immediately report the disclosure made to her on the 27 September 2015 until the 30 September 2015 because the parent wanted to make further enquiries before taking the matter further. The Appellant should have been aware of her duty, not only to safeguard the children in her care and to report the incident as soon as reasonably possible but also to report an allegation which she was aware related to a member of her own household’s conduct towards a minded child.

27. We have concluded that there are three issues which lead to the conclusion that children in the Appellant’s care may be at risk of harm unless she is suspended. The first is that despite receiving the warning letter in December 2014 and being required to improve her understanding of child safeguarding processes, the Appellant waited three days before reporting alleged potential abuse of a child to Ofsted. The requirement places an obligation to undertake safeguarding procedures whether or not the allegations involve the setting or the child minder’s own family, consequently the expectation would be that after her experience last year, the Appellant would respond quickly to any safeguarding issues raised with her and would not collude with the parent to delay reporting pending some further enquiries by the parent.

28. Secondly, the Appellant’s interview displays a clear denial of any possible wrongdoing by her son, rather than an objective assessment of the risks if the allegations were true and acknowledgement that the allegations may at the very least warrant further investigation. Her denial of the possibility that S could have had access the Child D at home is stark, and her priority is to defend her own son’s actions despite the fact that there is recorded an incident where her son had caused distress to another child as recently as April 2015 by squeezing him too hard. She does not contemplate the possibility that there might be truth in the present allegation and does not acknowledge her own responsibility as a child care professional to deal appropriately not only with the allegation and disclosure and to report that to the Respondent, but also to consider the possibility that there could be an issue about the conduct of her son which

requires attention and support. There is no recognition of the fact that her own family, including her son S may need further assessment and may need support and help to minimise or eliminate inappropriate behaviours and to identify and reduce any risk to the children in her care.

29. Finally, there are issues about co-operation and working with the professionals to identify issues and to resolve them. The Appellant is seeking to explain why the alleged incident hasn't happened rather than showing insight into the potential risks and the need for further investigation and assessment to conclude whether an issue has been identified.

30. We are satisfied that the information provided in the case is sufficient to satisfy the Tribunal of the relevant test.

31. There are further investigations to be concluded about the two other family members who have suffered from mental health issues. We conclude that all of these grounds together provide grounds for a reasonable belief that the continued provision of childcare by the Appellant may expose a child to risk of harm and supports the continuation of the suspension.

32. We are satisfied on the evidence presented that unless the suspension continues, the low threshold that there may be a risk of harm to the children in the Appellant's care is met in this case and the appeal against the suspension fails.

Decision

Appeal dismissed.

The notice of suspension is confirmed.

**Judge Meleri Tudur
Deputy Chamber President
Care Standards & Primary Health Lists
First-tier Tribunal (Health Education, Social Care)**

Date Issued: 8 December 2015