

Care Standards

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

[2016] 2707.EY-SUS

Considered on the Papers on 17 June 2016

Before
Mr Habib Khan (Judge)
Dr Howard Freeman (Specialist Member)
Ms Michele Tynan (Specialist Member)

PS

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. The Appellant appeals to the Tribunal against the Respondent's decision dated 25 May 2016 to suspend her registration as a childminder on the Childcare Register for six weeks to 6 July 2016 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').

Paper Determination

2. 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. In this case, we have sufficient evidence regarding 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. The Appellant was first registered as a childminder on 25 June 2003.
5. On 3 December 2015, the Respondent received from the Local Authority, information that two children, siblings aged nine years and six years respectively (Child A and Child B), had disclosed to a teacher incidents of physical chastisement, including being hit by the Appellant on several occasions. The teacher had also been informed that the Appellant's two teenage children had dragged the children across the floor with the Appellant's encouragement and an allegation that the Appellant had hit her own child across the head with a broken chair.
6. As a result, on 4 December 2015, the Appellant received a notice of suspension which suspended her registration from 4 December 2015 until the 15 January 2016. The Appellant did not appeal that suspension. On 17 December 2015, the Respondent, after reviewing the matter lifted the suspension of the registration.
7. On 5 May 2016, the Respondent was alerted to concerns from the Local Authority Designated Officer (LADO) that the allegations of physical harm to the children which were made against the Appellant, had been reviewed and were substantiated. On the 24th May 2016, the Respondent made the decision to suspend the registration of the Appellant.
8. The Respondent claims that the decision to suspend the registration had been made on the basis that the children may be exposed to the risk of harm. The decision was taken to allow for all matters to be considered and to request further information from other agencies.
9. The Respondent had based its decision to lift the suspension in December 2015 on "*information from other agencies that the Police and LADO were taking no further action.*" However, the Respondent acknowledges that confirmation from the agencies should have been requested prior to the lifting of the initial suspension and the closing of its case in early 2016.

Legal framework

10. 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 person's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.
11. 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.”
12. “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”.
13. 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.
14. 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.
15. 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

16. We took into account all the evidence that was presented in the bundle (consisting of 256 pages). We have summarised some of the evidence.
17. The Appellant's case was that there were procedural errors, bias, discrimination, time lapses and unfairness in the decision. She believes that Child A who made the allegations was not a credible witness and referred to comments quoted by his mother that “...*the child had a tendency to embellish the truth*”. She cannot not understand why the Respondent has chosen to believe Child A.

18. The Respondent was concerned that the LADO has reviewed the matter and that this has come up five months after the Police had decided not to take any action against her and after the Respondent had lifted its suspension. She does not think the decision was reasonable and she claims that she has undertaken the relevant training recommended by the Respondent.
19. The Respondent's position is set out in the detailed statement of Ms Gee, an Early Senior Years Officer. She confirmed that the reasons for the suspension followed information received from other agencies that the children were at risk of harm. This includes the fact that the Appellant was again caring for Child A, who had made the allegations and that social care been contacted by the child's school as they were concerned that the child's behaviour had deteriorated and changed significantly since being back in the Appellant's care. Furthermore, there was evidence in the bundle and referred to in Ms Gee's statement confirming that there have been significant developments in this matter including Child A's mother accepting a caution on 3 February 2016 for an Assault in relation to Child A and Child B.
20. Furthermore, the reason for the suspension was that the Respondent was in the process of obtaining further information from the Police, namely, the recording of the PACE interviews and the suspect interview with the Appellant, so that they can consider the original and complete accounts, rather than working on the basis of case summaries. This additional information is required so that they can fully explore it with the Appellant before they make a decision on her overall suitability. The Police investigation against the Appellant had not proceeded as Child A's mother refused to support Child A at court. The Respondent is also considering a prosecution for corporal punishment pursuant to the relevant regulations.

The Tribunal's conclusions with reasons

21. 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.
22. We conclude that whilst we note the Appellant's concerns about the delay between the first suspension and the second one, there is an appropriate explanation for that. The Respondent had based its decision on what it believed at the time, which was that the other agencies such as the Police and the LA had closed their investigations.
23. The new information provided to the Respondent by both the LADO and the Police, leads us to conclude that we are satisfied that there may be a risk of harm to a child placed in her care.

24. The Appellant has admitted a degree of physical chastisement of her own children by pulling their ears and the only reason she stopped this was that they grew too tall. We shared the Respondent's concerns about the Appellant's view that such a method is an appropriate way of disciplining a child and the risk of harm such practice presents to any child.
25. We noted the Appellant was challenging the credibility of Child A by relying on the comments made by his mother about her son. However, it was Child A's mother who accepted a police caution in February in respect of allegations made against her, based on Child A's testimony of events. Furthermore, given the length of time that the Appellant has been working with Child A, it is somewhat concerning that the Appellant did not spot the signs of physical abuse from his mother, or if she did, she did not notify the statutory authorities.
26. Furthermore, we conclude that it is troubling that the Appellant is again caring for Child A, whose behaviour it is alleged has changed significantly since being back in the Appellant's care. The change in his behaviour has caused the LA sufficient concern that they have made a new referral to children's social care services with a recommendation that the current Children and Family Assessment be treated as a child protection investigation. In our view, this on its own, would demonstrate that there is a risk of harm to children placed in the Applicants care.
27. Finally, we conclude that there is a possibility that evidence sufficient to support enforcement action against the Appellant may emerge from the investigation. The Appellant has also made an admission about her conduct, albeit towards her own children, and it is appropriate that such matters are allowed to be investigated properly.
28. We conclude therefore the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm.

Decision

29. The Appeal is dismissed and the suspension is confirmed.

Judge Habib Khan
Lead Judge Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 21 June 2016