

Care Standards

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

[2018] 3360.EY-SUS

Considered on the papers on
27th June 2018

Before
Tribunal Judge Mr T Jones
Specialist Member Ms M Harris
Specialist Member Ms W Stafford

Between

Ms Monika Bober

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

The Appellant appeals the decision of the Respondent made on 7th June 2018 to suspend the Appellant's registration from Voluntary Part of the Childcare Register until 18th July 2018 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

1. 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 an oral hearing.

2. In this case, we have sufficient evidence from both parties regarding the nature of 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. The Tribunal noted the directions earlier given for submission of documents by the parties.

Restricted reporting order

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.

3. This is a summary of events taken from information provided by the Respondent. It is not a full narrative of the documents the Respondent filed with the Tribunal and supplied to the Appellant. The Tribunal's role is not to make findings of fact it is tasked to carry out a risk assessment.
4. The Appellant is said to have shouted at the parent concerned in the presence of her children when she was withdrawing the children from the care setting following a financial dispute as between the parent and the Appellant. On 29th May 2018 towards the close of business that day the Respondent became aware of "serious concerns" relating to the Appellant allegedly physically and/or emotionally abusing children in the childcare setting. The Local Authority Designated Officer (LADO) took the view on 31st May 2018 that the allegations warranted further investigation. Meetings with the LADO and police took place. The police are said to be taking the complaint seriously and are conducting an investigation. A decision was made by the Respondent to suspend the Appellant's registration from 7th June 2018 following consultation with these agencies.
5. The police are the lead investigating agency and as such the Respondent has limited or no access to further information at this time, until the police conclude their role in this matter.
6. Ofsted have communicated further with the Appellant and noted the Appellant's earlier concerns for the children's welfare and to the effect they may have suffered neglect. The Appellant has told Ofsted she had sought to discuss this with the parent with primary care for the children. She did not attend to discuss matters with the Appellant. The Appellant has said she believed another childminder may have had similar experience but she does not know enough details as to who this might be to pass this onto Ofsted. The grounds of appeal suggest further details may be available. The Tribunal does not know if this information

has been passed onto Ofsted by the Appellant.

7. The Respondent has concerns as to the Appellant's knowledge of safeguarding procedures given the earlier concerns for the children's well being as expressed by the Appellant to Ofsted during their initial investigation.
8. The Respondent on the basis of the information they had believe the suspension is warranted given the concerns they are aware of, and in light of the ongoing police investigation.
9. The Respondent continues to closely liaise with the LADO and with the police as to the progress of their enquiries. The Respondent is aware of their duties and to keep the suspension under review.
10. The Respondent acknowledges the Appellant's approach has been co operative, but remains concerned that the allegation is serious and the police enquiries yet to be concluded. There is also the concern the Appellant has not grasped the importance of her role in respect of any safeguarding issues concerning the children. Ofsted are of the view the police enquiries are being progressed before they can consider any further enquiry as required themselves.
11. Whilst the Respondent has considered the Appellants appeal in this matter the Respondent reminds the Tribunal its role is not to make findings of fact. As the police are the lead agency the Respondent can do nothing to impede the police investigation and must restrict its own investigation at this time to compliance matters. Until a thorough investigation has been made the risk of harm to the required standard remains.
12. The Respondent resists the appeal. The Appellant denies any allegation of mentally or verbally abusing any child. The grounds of appeal suggest there will be an action brought for libel and that the allegations are absurd. The complaint has come about because of a financial dispute.

Legal framework

13. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. 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.
14. 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.”

15. “*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”.

16. 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.
17. 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.
18. 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.

Appellant’s submissions and evidence.

19. The Appellant has filed an appeal application form. We have considered it fully before reaching our decision.
20. We have summarised the Respondents case, but equally the Appellant should also be assured, we have also read in full her submissions. We are aware that she has been providing care since 2011 without prior incident. Other parents have approached Ofsted and spoken well of her.
21. The impact of the suspension is rightly highlighted. The Tribunal is aware this is not only in financial and reputational terms; to children being without out of child care in this setting and losing contact with friends, and parents potentially being forced to use up their holiday provision to care for their children.
22. She objects to any suspension continuing.

The Tribunal’s conclusions with reasons

23. 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.
24. We reminded ourselves of the threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts or determining the veracity of allegations in this case. When considering the threshold for an order to be made the Tribunal is aware of the police enquiries continuing. This suggests there are material concerns such they are obliged to investigate apparently serious allegations.
25. The Tribunal is aware these matters will be contested and it has not lost sight of the fact that the Appellant's approach has been to co-operate with the Respondent which is to her credit. There is, however, an underlying concern as to safeguarding issues on the part of the Appellant. The Appellant is said to be looking into/engaging with further education and training in this regard. The Respondent's investigation, other than as to is effectively on hold pending conclusion of the police enquiries. The Respondents officers are reliant on the assurances given by the police to look into this matter without delay. The Respondent confirms they are ever mindful of their duty to lift the suspension as soon as circumstances permit and they continue to liaise with the other agencies including the police in this regard.
26. Against the required standard, we accept the Respondent's submissions made in their reply to the appeal, that there are sufficient concerns to warrant the Tribunal continuing the suspension. We concluded that we are satisfied that there may be a risk of harm to a child placed in the Appellant's care at this time.
27. In reaching our decision, we also took into account a range of factors including the Appellant's submissions, the effects on children and parents who might use the services and the disputed nature of the allegations. We have taken full account of the Appellant's submissions and concerns as to the veracity of the allegations. However, in our view at this time, in terms of a risk assessment on the available information is that the nature of the allegations being investigated by the police led us to conclude that at this point in time the action taken is both necessary and proportionate.
28. We reminded ourselves that 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 the suspension is necessary and to conclude its enquiries as soon as possible.

29. In overview and for these reasons, we conclude therefore that at this time the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm.

Decision

30. The decision to suspend registration is confirmed and the appeal is dismissed.

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

Date Issued: 2 July 2018