

Care Standards

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

[2018] 3452. EY-W-SUS

**Heard at: Llanelli County Court
5 October 2018**

Before

**Tribunal Judge Timothy Thorne
Specialist Member Ms. Heather Reid
Specialist Member Ms. Sallie Prewett**

Ms. P. R.

Appellant

-v-

Care Inspectorate Wales

Respondent

DECISION

1. 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 ('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.
2. For the purposes of this decision (which will be published on a public website) the Panel has anonymised the Appellant in order to protect the identity of her own children, whose history it has been necessary to set out in some detail in order to explain our decision.

Background

3. The Appellant is a child minder, registered by the Welsh Ministers under Part 2 of the Children and Families (Wales) Measure 2010. She is registered to care for up to 7 children under the age of 12 years. She appeals against the decision of the Respondent taken on 10th September 2018 to refuse to lift the suspension of her registration as a child minder.

4. On 25th June 2018, the Appellant contacted Care Inspectorate Wales (CIW) to request the voluntary suspension of her registration following allegations of mistreatment concerning a minded child.
5. On 17th July 2018, a multi-agency strategy meeting was held where concerns were raised about the Appellant's parenting of her own children. On the same day, a CIW Securing Improvement and Enforcement Panel was held to discuss those concerns and a decision was taken to impose a suspension of the Appellant's registration pending further investigations. On 20th July 2018, a notice of suspension was served upon the Appellant. The notice provided for the suspension of the Appellant's registration to remain in place until 31st August 2018.
6. On 6th August 2018, Ceredigion County Council held an initial child protection conference in respect of the Appellant's two children. A decision was made to place the children's names on the child protection register under the category of emotional abuse. On 13th August 2018, CIW determined that further information was required from Ceredigion social services and that the Appellant's suspension should remain in force.
7. On 27th August 2018, the Appellant wrote to CIW requesting that her suspension be lifted. On 10th September 2018, a notice of decision to refuse to lift the Appellant's suspension was served on her. On the following day, the Appellant lodged an appeal with the Tribunal.
8. The current suspension notice was issued on 31st August 2018 and remains in place until 12th October 2018. On 27th September 2018, having completed its investigation, CIW issued a notice of intention to cancel the Appellant's registration as a child minder.

Late Evidence

9. The panel accepted as late evidence the aforementioned notice of intention to cancel the Appellant's registration. This had been served already on the Appellant and therefore she suffered no prejudice by its late admission into evidence before the Tribunal.

The Hearing

10. The appeal was heard on 5th October 2018 at Llanelli County Court. The Respondent was represented by Mr. Edwards. The Appellant represented herself.
11. The panel heard sworn oral evidence first from **Anne Louise Morgan** who is a senior manager with CIW. She adopted the contents of her witness statement dated 18/09/18, which can be found at C5 of the bundle. She outlined the reasons why CIW had made the decision to suspend the Appellant's registration. This was based on the information received from Ceredigion County Council concerning the decision they made to place the Appellant's children's names on the child protection register under the category of emotional abuse. In addition, CIW were also concerned about the

Appellant's negative attitude towards her daughter and parenting style when they met her to discuss the suspension.

12. She also told the panel that she had received an email dated 4th October 2018 containing an update from the senior social worker indicating that the Core Assessment for the Appellant's daughter would be completed on 16th October 2018. It was also expected that the Social Worker's report would be ready by that date. Moreover, the Review Child Protection Conference would be held on 26th October 2018. It was anticipated that a recommendation would be made to keep the names of the Appellant's children on the child protection register. She also explained that CIW were planning to have a meeting on 8th October 2018 to review the situation in the light of all new material.
13. She also explained why the CIW had taken the recent decision to issue a notice of intention to cancel the Appellant's registration as a child minder. She said that the Appellant was in the process of making representations to CIW against that notice and that they would be considered by an independent person within CIW. She also explained that if CIW took the decision to issue a notice to cancel the Appellant's registration she would then have the opportunity to appeal that decision to the Tribunal. This process could take many months. The view of CIW was that continued suspension of the Appellant's registration pending the outcome of this process was necessary to protect children from the risk of harm. It was necessary so that the process could be followed and decisions made about eliminating or reducing such risk. The Appellant declined the opportunity to ask the witness questions.
14. The panel then heard sworn oral **evidence from the Appellant**. She referred to her witness statement dated 24th September 2018 at page D1 of the bundle. She explained that she lived with her partner and two children in rented accommodation. Her partner worked as a carpenter. She had stopped providing child minding services in June 2018 (after working in that capacity for 6 years) and now had no income. When she was working she minded seven children including her own two.
15. She explained why she wanted the suspension to be lifted. She did not plan to start providing child minding services until January 2019. However, whilst she was still under suspension she was unable to proceed with and complete her Level 3 Child Care Course. She had completed about half of the course and had a further 6 months to do. She had told the providers of the course about her suspension and they were happy to allow her to re-start and finish if and when the suspension was lifted. She wanted to be able to re-commence the course as soon as possible because she had been told by other child minders that it would become a requirement to have this qualification if one wanted to provide child minding services after 2020.
16. In cross-examination it was pointed out to her that CIW were unaware of such a requirement. In any event she agreed that if any subsequent appeal by her against any notice to cancel her registration was successful she would still have time to complete the course before the supposed deadline in 2020. Therefore the continued suspension would not prejudice her in that regard.

17. She also told the panel that although she had been served with all the evidence in the bundle she had not read it as it upset her and that in any event she was innocent and intended to appeal any cancellation of her registration.
18. She said that she had ordered CCTV cameras to be installed in her house so that she could keep her daughter under covert surveillance in order to prove that her daughter suffered from ADHD and ASD in order “to save my business.” She said she had not told her daughter about this and did not think this was a problem. She thought that the covert surveillance would show that her daughter “is being emotionally abusive towards me.” She saw nothing wrong in secretly filming her 9-year old daughter.
19. In addition she said that her daughter was very mature and knew she had ADHD or Autism as she had recommended that her daughter undertake an online course on the subject. She saw nothing wrong in allowing her 9-year old daughter to do so. She later explained, “She told me she has ADHD. She is not stupid. She knows because I told her about Autism and ADHD.”
20. She also explained that “the social workers are blackmailing me to say that my children must remain on the register or she won’t get the help she needs. I won’t be blackmailed by social services.” She later said that she was planning to sue them.
21. She was asked if she believed that she had done anything wrong or had any responsibility for the present position. She replied, “the worst thing I did was go to TAF. They are blackmailing me. The worst thing I did was to seek help.” She was adamant that it was she who made the referral to TAF despite evidence that referrals had been made by Dr Skeets and her daughter’s primary school. The appellant had signed the school’s referral form to indicate her agreement.
22. She admitted that the allegations made against her were serious but added “my children are not at risk of harm from me. They are lucky” She was asked whether in the circumstances she could understand why it was right to suspend her. She answered: “yes but it’s making me out to be guilty before I am tried.”
23. She blamed her daughter for the problems. She explained, “she is getting older now, so she is going to lie more now. I’m innocent.” She later added that her daughter, “doesn’t know the seriousness of what she has done.” She referred to an incident where her daughter had lied in order to get her arrested. She explained that she had told her daughter about the appeal hearing and asked her to produce a note for the Tribunal. She showed a copy to the panel. It was supposedly written by her daughter and was wholly about her dislike for having to learn Welsh at school.
24. She was also asked whether she had ever threatened to place her daughter into care. She agreed that she had but said that it was only a joke. Her daughter liked the television character Tracy Beaker and it was in that context that such

conversations had taken place. The appellant did not agree that it was inappropriate to threaten her daughter with foster care.

25. She also referred to her own medical condition and that of her children. She herself suffered from a goitre which she said was the result of stress caused by her daughter. She was not, however, on any medication.
26. The panel then heard **submissions**. Mr. Edwards relied on his skeleton argument and submitted that the legal test had been met and that the appeal should be dismissed. The Appellant disagreed and repeated that she was innocent.

The Legal Framework

27. The test for suspension is set out in **Regulation 40 of the Childminding and Day Care (Wales) Regulations 2010**, which states:-

Power to suspend registration

40.—(1) The Welsh Ministers may, in accordance with regulations 41, 42, 43, 44 and 46(8), suspend the registration of any person acting as a child minder or providing day care for children if—

(a) they have reasonable cause to believe that the continued provision of such care by that person exposes, or may expose, one or more of the children cared for by that person to the risk of harm; and

(b) the purpose of the suspension is for one or both of the purposes set out in paragraph (2).

(2) The purposes of the suspension are—

(a) to allow time for the circumstances giving rise to the belief of the Welsh Ministers to be investigated; and

(b) to allow time for steps to be taken to reduce or eliminate the risk of harm.

28. Harm is defined in Regulation 13 as having the same definition as in Section 31 (9) of the Children Act 1989, i.e.: *“Ill treatment or the impairment of health or development, for example impairment suffered from seeing or hearing the ill treatment of another.”*

29. The burden of proof is on the Respondent to show that the “reasonable cause to believe’ is established. The standard lies somewhere between the balance of probabilities and ‘reasonable cause to suspect’. Belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information believes that a child might be at risk. The panel must also consider whether the suspension is both necessary and proportionate. The panel reminds itself of the lower threshold for upholding the suspension and also that at this stage the panel is not required to make findings of facts.

30. The Upper Tribunal (UT) considered similar legislation in England in the case of **Ofsted v GM & WM [2009] UKUT 89 (AAC)**. The UT laid down the following guide lines:

- *on an appeal the First-tier Tribunal stands in the shoes of [the Respondent]m and must consider whether grounds for suspension exist at the date of the hearing (paragraph 10)*
- [The relevant regulation] sets a low threshold – that there “may” be a “risk” – but the fact that the threshold has been passed does not necessarily mean that the power of suspension.....must be exercised (paragraph 22);*
- it is difficult to see on what grounds a suspension can be justified other than for the purpose of investigating a belief that there may be a risk or to allow time for a risk to be reduced or eliminated (paragraph 23);*
- a suspension imposed on the grounds that there is an outstanding investigation can be justified only as long as there is a reasonable prospect of the investigation showing that further steps to reduce or eliminate a risk might be necessary*

Conclusions

31. For reasons given below the panel concludes that the Respondent has proved to the requisite standard that the threshold for suspending registration was met on 31st August 2018 (when the Respondent suspended the Appellant’s registration) and that this threshold continues to be met now. There are 2 elements to this test and each will be dealt with in turn below.

Test 1 - Is there reasonable cause to believe that the continued provision of such care by the Appellant exposes, or may expose, one or more of the children cared for by that person to the risk of harm?

32. There is no dispute that the Appellant’s own children have been placed on the child protection register under the category of emotional abuse. The panel infers from this fact that there is reasonable cause to believe that minded children would also be at risk of emotional harm from the Appellant because of the risk that she does not have the necessary caring skills, lacks insight and could potentially have negative interactions with such children because of a lack of understanding of their emotional needs. Moreover, there is reasonable cause to believe that such children would be at risk of emotional harm from witnessing the negative interactions between the Appellant and her own children as they are all minded together.

33. In addition the panel were concerned by the Appellant’s own oral evidence which exhibited a very negative attitude towards her daughter and a worrying lack of insight into her own responsibilities as a mother and carer. In particular it is worrying that she considers it appropriate to keep her daughter under covert surveillance and talk to her about the possibility that she has autism or ADHD. In addition it is worrying that she has told her daughter that she may be placed into care and made a request to her that she writes a note in relation to the Tribunal

proceedings. It is also of concern that she considers that social services are blackmailing her. The appellant does not appear willing to work with other agencies and has consistently refused.

34. In the light of all the aforementioned factors, the panel therefore concludes that there is reasonable cause to believe that the continued provision of care by the Appellant exposes, or may expose, a child or children cared for by the appellant to the risk of harm.

Test 2 – Is the purpose of the suspension to allow time for steps to be taken to reduce or eliminate the risk of harm?

35. One purpose of suspension was to enable CIW to investigate the circumstances which gave rise to its concerns. CIW's investigation is now complete and CIW has notified the Appellant of its intention to cancel her registration. Therefore Regulation 40(2)(a) no longer applies as a valid purpose for suspension.
36. However, the panel is satisfied that there is reasonable cause to believe that the continued suspension remains necessary in order to allow time for steps to be taken to reduce or eliminate the aforementioned risk of harm. The panel is satisfied that at this stage there is reasonable cause to believe that CIW's consideration of cancellation of the Appellant's registration (and considering her representations and any subsequent appeal process) is the only way to eliminate (or reduce) harm to minded children.
37. The panel accepts that the continued suspension of the Appellant's registration pending the outcome of this process is necessary to protect children. It is necessary so that the representation and any subsequent appeal process can be followed and decisions made about eliminating or reducing such risk. The panel is therefore satisfied that Regulation 40(2)(b) applies as a valid purpose for suspension.

Proportionality

38. In coming to this decision the panel has balanced a range of factors including the fact that child minding constitutes the Appellant's livelihood, that parents who used her services may have depended on it to allow them to work and that she has a positive record, but nonetheless the panel concludes that continued suspension is proportionate and necessary.
39. In addition, the panel takes into account that if any subsequent appeal by her against any notice to cancel her registration was successful, the Appellant would still have time to complete the Level 3 Child Care Course before the supposed deadline in 2020.
40. Of course it is open to the appellant to appeal against the notice of intention to cancel her registration as a child minder. However this is not a matter that the present panel can consider at this stage.

Decision

The appeal against the interim suspension is dismissed.
The suspension continues.

Timothy Thorne
Care Standards Tribunal Judge

Date: 10 October 2018