

Care Standards

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

Considered on the Papers on 1 April 2019

Before

**Clive Dow (Judge)
Denise Rabbetts (Specialist Member)
Caroline Joffe (Specialist Member)**

[2018] 3654.EY-SUS

LB

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. The Appellant appeals to the Tribunal against the Respondent's decision dated 4 March 2019 to suspend her registration as a childminder on the Childcare Register for six weeks 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 has been registered as a Childminder with Ofsted since 24 January 2014.

5. On 4 March 2019, the Appellant was told by Ofsted that a child in her care had made allegations to teachers involving physical and emotional harm by the Appellant and her husband, a registered childminding assistant. The Appellant was told that her registration was suspended with immediate effect. A notice of suspension was duly issued which suspended her registration from 4 March 2019 until 14 April 2019.

6. Ofsted do not disclose details of the allegations made because of a risk of prejudicing ongoing investigations by police and the Local Authority. However, on the Appellant's own account, it is apparent that an incident occurred on 27 February 2019 at the Appellant's home where she carries out her child minding business. The Appellant says a child, a girl with autism aged 8 years old, was told off for failing to say thank you for a meal. The Appellant denies touching the child's arm. Following an allegation made to school staff, the school contacted the Local Authority Designated Officer (LADO) on 1 March 2019 and Ofsted received notification from the Local Authority the same day.

7. The Respondent claims that the decision to suspend the registration was made on the basis that children cared for by the Appellant 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.

Legal framework

8. The statutory framework for the registration of childminders is provided under the 2006 Act. Section 69(1) of the 2006 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.

9. 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.”

10. “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.”

11. 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.

12. 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.

13. 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

14. We took into account all the evidence that was presented in the bundle (consisting of 65 pages). We have summarised some of the evidence.

15. The Appellant claims to have run a very good setting for 5 years. Ofsted inspections record that her setting was found to require improvement in 2014 and 2016 but was 'good' when inspected in August 2017. We do not know why the setting required improvement in 2014 or 2016. The Appellant cares for a number of children with additional needs including ASD and Down's syndrome.

16. The Appellant's case is that an incident occurred on 27 February whereby the child failed to say thank you for a meal and was told off. While it is not explicit in the grounds of appeal, it can be inferred that the Appellant views the telling off as reasonable chastisement and anyway she denies any physical harm was done or even that the child was touched on the arm. The Appellant believes that the child who made the allegations is not a credible witness and is apt to lie. She describes the child as having behaved in a slightly manic way in the week of the incident and that on the day of the incident she warned the child's mother that the child might 'come down', by which she meant the child could become moody, depressed and difficult to manage, as had been the Appellant's previous experience of the child.

17. The Appellant further sets out details of other children looked after and includes six references from other parents who each state their satisfaction with the setting, the Appellant and her husband.

18. Ofsted have not disclosed to the Tribunal the full circumstances of the allegation because, they say, to do so would risk prejudicing a joint investigation by police and Children's Social Care (CSC). Ofsted further state that they are unable to commence their own investigation until the police/CSC investigation has concluded. However, the response to the appeal states that at a multi-agency meeting on 7 March 2019, Ofsted received additional information that corroborated the allegation made against the Appellant.

19. A brief witness statement from a police officer confirms that an investigation is ongoing following an allegation of abuse by a child after bruising was found on them. The police officer goes on to say that *'other concerns have come to light that it was not isolated to just this alleged incident.'*

20. In a statement by the Early Years Senior Officer (EYSO) Ofsted London region, Jennifer Gee, she confirms that although the mother of the child or children making the allegation has removed them from the Appellant's care, the police investigation is ongoing and the Local Authority continue to investigate a risk of harm to the Appellant's own children. Ofsted remain of the view that in all the circumstances a risk of harm to other children cared for by the Appellant continues to exist.

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. We reminded ourselves of the lower threshold for confirming the suspension and that at this stage we are not finding facts.

22. We concluded that we were satisfied that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm. Our reasons for doing so are set out below.

23. There is at present an ongoing criminal investigation into the allegation of abuse or assault on a young child by the Appellant or her husband. There is no dispute that a serious allegation has been made. The allegation has been made by a vulnerable witness, a child with additional needs, and apparently only after they were found with bruising on them. We also take careful note of Ofsted's submission that they have received additional corroborating information and the police evidence that other concerns have come to light since the allegation was made.

24. We took into account the very favourable references from parents of other children cared for by the Appellant. We also took into account the Appellant's concerns regarding the approach Ofsted, the LA and the Police have taken, in particular in that no agency had yet sought to discuss the allegations directly with the Appellant. We do not know why the police investigation has not made further progress. However, we were not presented with any evidence, bar the Appellant's bare assertions that the child was apt to lie, which supported a view that the investigations were somehow either ill-founded or inappropriate in any way.

25. It was clear to us that where, as in this case, there is a suspicion of an assault on a young child, the LADO, the police and the Respondent are all undertaking their investigations into this matter. These bodies are involved because each has a different role. It was clear from the evidence of Laura Brewer and Jennifer Gee that the Respondent is unable to complete its enquiries in order to avoid compromising the police investigation. Nevertheless, it was clear that there was coordination between these agencies.

26. We acknowledge the Appellant's concerns about the impact that this has had on her business since the suspension was imposed. We also acknowledge the impact it has had on those that attend the setting. However, we found that the Respondent has taken a considered approach to imposing the suspension and has kept it under review.

27. The 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.

Decision

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

Judge Clive Dow
First-tier Tribunal (Health Education and Social Care)
Date Issued: 04 April 2019