

Care Standards

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

**Heard at IAC Piccadilly Manchester
On Wednesday 29th May 2013**

Before:

**Deputy Chamber President Judge John Aitken
Specialist Member Ms Maxine Harris
Specialist Member Mr Graham Harper**

Mrs J Brewer

Appellant

v

Ofsted

Respondent

[2013] 2044.EY- SUS

Decision

1. The time to prepare for the hearing of this matter is curtailed because of the circumstances. That is permissible under rule 5 of the Procedure Rules however I am particularly grateful to Mr Toole for his preparation of the case in a very short time indeed. We are satisfied he had an opportunity to present the case for Ofsted fully.

2. The appellant appeals to the tribunal against the respondent's decision dated 24th May 2013 to suspend her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 5th July 2013. There has been no previous suspension. The reasons for the suspension were not outlined in the notice or accompanying letter, they were however made clear at the hearing.

3. 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*, 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

4. The appellant was suspended because of four matters considered by Ofsted.

i). A failure to inform Ofsted of significant events or act upon them which it was considered impacted upon the safety of children. In particular in March 2008 a senior staff member's partner who was resident with her at the time was arrested for sexual intercourse with a child aged 14 and sentenced to 3 years imprisonment in September 2008.

ii). It appears that he was bailed with a condition to reside at his sisters address (also an employee of the Nursery) until sentenced to 3 years imprisonment in September 2008.

iii). The senior member of staff appears to have arranged babysitting outside of the nursery provision, but within the knowledge of the Appellant.

iv). In 2010 the offender was released from prison and at some point resumed residence with the senior member of staff. That may have come to the attention of the appellant as long ago as May 2012.

5. It is accepted that the appellant was aware of the offender's presence in the home of the staff member in early 2013, when it was apparent on a CRB check, and in February 2013 notified Ofsted of the position. She sought their advice, which was that the senior staff member must be dismissed as being disqualified from working with children. The appellant followed that advice and dismissed the staff member. The appellant in April 2013 applied for a waiver to allow her to re-employ the senior staff member. The appellant has further offered to suspend the offender's sister.

6. A decision was taken to suspend the registration of the appellant in May 2013 and she was notified accordingly.

The Law

7. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. This Act establishes two registers of childminders: the early years register and the general child care register. Section 69 (1) 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.

8. Under the ***Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008*** when deciding whether to suspend a childminder the test set out in regulation 9 is:

“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.”

9. The suspension shall be 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.

“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”.

10. 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.

11. 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.

Issues

12. As Mr Toole explained, Ofsted are concerned that the appellant does not appreciate the reasons why children need to be protected even from indirect access by an offender, they point to the knowledge in 2008, the application to waive the requirement in April 2013, and the filed documents which seek to make a distinction between the offender’s behaviour with a child of 14, and the under fives looked after in the Nursery. There is also some evidence that matters have at least in the past been only partly disclosed to Ofsted. The central issue for the suspension remains however is there an existing risk of harm to the children.

Conclusions

13. We understand the concern of Ofsted that it is proper to take steps to ensure that the children minded by the appellant are protected; we consider that attempting to draw a distinction between an offence against a 14 year old and the potential to commit offences against under fives is absurd as Ofsted suggests. However given the fact that there is no information or evidence of any harm coming to the children, and given the fact that the appellant dismissed the staff member to whom the concern relates, we do not consider that there is a risk at present, above that which theoretically exists in any setting.

14. The points raised may be relevant to cancellation, in the sense of the suitability of the appellant or her willingness or ability to follow proper procedures, or concealing matters but we intend to give no indication as to whether such a process should be instituted. They are in effect long term matters not matters which give an indication of risk requiring a suspension.

15. The appellant has volunteered to suspend the offender's sister, should that be a requirement of ensuring safety of the children; Mr Toole on behalf of Ofsted has indicated that they do not see that this would change matters appreciably, and we agree.

Decision

The appeal against interim suspension is allowed, the suspension shall cease to have effect.



Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Friday 31st May 2013