

Care Standards

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

Heard at Peterborough Magistrates Court
On Tuesday 16th July 2013

Before

Deputy Chamber President Judge John Aitken
Specialist Member John Hutchinson
Specialist Member Brian Cairns

Ms Deborah Brookes

Appellant

v

Ofsted

Respondent

[2013] 2054.EY- SUS

Decision

1. The appellant appeals to the tribunal against the respondent's decision dated 14 June 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 26th July 2013.
2. 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

3. The appellant was suspended because in the view of Ofsted there was a risk of minded children coming to harm. No further details were given at the time of service of the notice. They have become clear with the service of further documents. Including an inspection report compiled from what Ofsted claim is the incomplete inspection of 2nd May 2013. The difficulties include;
 - a. Complaints of a relatively minor nature were received from some parents regarding care practices.
 - b. On 2nd May 2013, an inspection was carried out, but the inspector who felt that the appellant was obstructive and required her to leave before the inspection was completed. Telephone calls from the inspector to the appellant later in the evening were rejected by the appellant. Seven areas within the subsequent report are relied upon as evidence of problems requiring attention.
 - c. An unannounced visit on 23rd May 2013 was abandoned when the appellant refused to admit the inspector.
 - d. Attempts at meetings since then had proved fruitless.
4. A decision was taken to suspend the registration of the appellant on 14th June 2013 and she was notified accordingly.

The Law

5. 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.
6. 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.”

7. A suspension is for a period of six weeks which may be extended if investigations are not complete. 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”.

8. 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.
9. 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

10. Ofsted are concerned that the appellant’s provision of childcare may be inadequate and unsafe (listed at page 129 of the papers). They are also concerned about difficulties which have arisen in inspecting the appellant and a breakdown in communication with her. The central issue for the suspension remains however is there a risk of harm to the children she minds?
11. The appellant in her notice of appeal indicates that she is willing to work with Ofsted and considers the suspension disproportionate.
12. Ofsted have completed as far as possible an inspection document from an inspection which was commenced on 2nd May 2013 (No discussion about this inspection has ever taken place as would normally happen) and have identified 7 areas where they consider improvements should take place, but have not been able to engage the appellant in this process. There have been issues which have been raised by some users of the appellant’s service and it is necessary for Ofsted to properly investigate those matters. The appellant has however become withdrawn from Ofsted following the process of inspection on 2nd May 2013. It is this failure to engage which Ofsted identifies as being the cause of risk because it simply cannot judge what the position is without engagement, and this

itself is sufficient to lead to risk.

13. The appellant whilst acknowledging that she had not been active in contacting Ofsted, in particular had not contacted them when offered an appointment at a few days notice on 10th June which she was unable to keep. She maintained however that Ofsted had not been honest in their dealings with her, but that she remained willing to work with them and would comply with any inspection regime.

Conclusions

14. We do not consider that it is necessary for an assessment of risk to definitively establish what has occurred between the appellant and the respondent, each has a different view on who was unreasonable. We are clear however that the appellant has not assisted the inspection process by not making herself available nor contacting Ofsted with any degree of flexibility, if at all. An example is the attempt by Ofsted to arrange a meeting on 10th June 2013. A letter was sent out on 5th June 2013, the appellant was unable to attend, but did not extend Ofsted the courtesy of telling them this, relying upon the wording of the letter which she read as requiring a response only if she could attend. Attempts by Ofsted to arrange meetings on 4th and 8th July 2013 following the appeal being lodged were similarly unsuccessful.
15. We saw for ourselves some of the difficulty with which the appellant presents when she was invited to give her telephone number to Ofsted to ensure they could arrange a meeting, only to be told that she did not know the number that she was using, did not physically have the phone in her possession and it was her number for a limited period in any event, and suggesting that the Tribunal administration would have it. All of which may be correct, but does not aid the process of communication which is essential for proper inspection. Nonetheless the appellant indicates she is willing to assist. We note that the parties have arranged a meeting on 22nd July 2013 at 11am at which time it is hoped that the appellant will commence the process of engagement with Ofsted, and that once engagement has begun the risk to children can be assessed and Ofsted able to satisfy themselves of the position.
16. We consider that there is a real danger that if a childminder does not engage with Ofsted in the inspection regime a risk does exist arising simply from the non engagement, because it may conceal other matters. That risk is present whether or not it can be crystallised at present as a particular type of risk to children, it may be non specific but it is in our judgement nonetheless real.

Decision

The appeal against interim suspension is dismissed.

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Friday 19th July 2013