

In the First-Tier Tribunal (Health, Education and Social Care)
Heard at Birmingham Tribunal Hearing Centre
On Wednesday 21st August 2013

Before

Deputy Chamber President Judge John Aitken
Specialist Member Dr Surindar Kumar
Specialist Member Ms Judith Wade

Mrs Gillian Masterson

Appellant

V.

Ofsted

Respondent

Decision

1. On the 10th July 2013 Ofsted took the decision to suspend Mrs Masterson's registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 21st August 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, the difficulties include
 - a. Concerns regarding care practices were raised by members of the public, no evidence of them was before us.

- b. On 3rd July an unannounced visit was carried out, but the inspector felt that the appellant and her daughter were aggressive and the inspection was terminated after 20 minutes to enable the appellant time to collect children.
 - c. A visit the following day, 4 July, was abandoned after 8 minutes when the appellant was again aggressive to the inspector.
 - d. Children were upset at the shouting which went on during the visits on 3 and 4 July 2013.
4. A decision was taken to suspend the registration of the appellant on 10th July 2013 and she was notified accordingly, service of that notice passed off peacefully although the appellant was considered to have made insensitive comments about the children at this time.

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. 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 unsafe because of difficulties which have arisen in inspecting the appellant and a breakdown in communication between her and the inspector. 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. In this document she blamed the inspector for the breakdown in communication.
12. We heard from the Inspector Ms Jandu and Ms Will from the compliance and enforcement team. Ms Jandu explained that the appellant was aggressive and threatening, as was her daughter on the first occasion, and she could not inspect in any meaningful manner under such circumstances, in part because it was upsetting the children. Ms Will explained the decision process and further accepted that there was no aggressiveness exhibited when 2 different inspectors attended to serve the suspension notice. We also heard from the appellant, who accepted that she had raised her voice first, that her daughter had behaved very badly indeed, and this had caused a rift in the family. She was however adamant that she understood that Ofsted had a right and a duty to inspect without notice if appropriate and that she would always co operate in future. She pointed to her previous good record, and the fact that her mother in law as being dangerously ill (she has subsequently died) as the reason why she coped very badly with the inspection process in early July.

Conclusions

13. We prefer the inspector's account generally, noting that the Appellant accepts her daughter has behaved inappropriately and that she accepts

that she raised her voice first. We do not find that any child was harmed on these occasions, nor do we consider that the Appellant would do so deliberately, We do observe that sustained behaviour of this type could cause harm.

14. We accept on the occasion of the visits of 3 and 4 July that she was under particular personal strain at that time. Having seen Mrs Masterson today, and having been through this process, we believe that she is unlikely to behave in such a way again particularly in the short term. We are fortified in this belief because of the way she approached the two inspectors who served the suspension notice. However we should point out that if Mrs Masterson were to behave in this way again, that is with any shouting or aggression towards an inspector, there are likely to be very serious consequences.
15. Whilst we see that non cooperation might cause a situation of risk of harm to arise we do not think that likely on these facts at present, particularly given the appellant's indication that she behaved badly and her apology for doing so. Of course we make no comment on the wider situation and whether cancellation is appropriate or not.

Decision

The appeal against interim suspension is allowed.

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Thursday, 22 August 2013