First-tier Tribunal Health, Education and Social Care Chamber Care Standards

Considered on the Papers
On: Monday 2nd September 2013

B E F O R E:

Deputy Chamber President Judge John Aitken
Mrs Margaret Diamond
Dr Keith White

SF

Appellant

-v-

OFSTED

Respondent

[2013] 2084.EY- SUS

Decision

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Procedure Rules. However, not only must both parties consent, which they have but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have a good picture of the allegations made, the response and the level of risk present, from the papers. There appears to be no substantial factual dispute which might affect our decision (although of course we will not decide the facts of the main allegations rather whether such an allegation has been made and matters which arise from that relating to risk) and we consider that we can properly make a decision on the papers without a hearing.

2. The appellant appeals to the tribunal against the respondent's decision dated 13th August 2013 to suspend the her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 23rd September 2013.

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, or the appellant in this case so as to protect their private lives.

4. The appellant has been a registered childminder since February 1993.

5. There is a previous suspension, involving the appellant's son, who in December 2006, aged about 11 was said to have taken a minded child to his room and shown him images depicting sexual acts involving animals and humans urinating on each other and invited him to join the appellant's son in bed. However on conclusion of an investigation the appellant was allowed to continue childminding, we are prepared without more evidence to accept the appellant's explanation that what was shown was in fact an age inappropriate 15 rated video, particularly since we are told by the respondent that any other allegation has been withdrawn by the complainant at the time. There does not seem to be any reasonable basis upon which these allegations could be established

6. A further allegation is made of inappropriate sexual contact in 2006, but again no action was taken, it is several years ago, there has been an investigation and there does not seem to be a foundation upon which the allegation could be established.

7. The facts of the present incident are that the appellant's son who is now 17 has been arrested and interviewed in connection with possession of indecent images, they include images of children. There is presently no evidence that they were taken by the appellant and no evidence that they are images of the minded children, we have been told that in fact the Police have recently disclosed that they do not consider that the appellant has taken images of minded children. We consider that at present there is a basis for Ofsted fearing that there are indecent images of children on the appellant's son's computer, it is troubling indeed that they are of young children, however without more we do not think it is presently reasonable to infer that there is a serious risk that the appellant's son has created images of minded children.

8. We consider that such an allegation is so serious that it does of itself indicate that children may be at risk of harm if the appellant's son was on the same premises at the same time as minded children. Had there been any evidence of creating images of minded children we would have considered the position to be even more serious, and should there be any such evidence we would expect that it would indicate a greater risk of harm.

The Law

9. 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.

10. 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."*

11. 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*".

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.

Issues

13. Ofsted are concerned that the appellant's son has had several allegations made against him, the most recent being the indecent images of children. They do not consider that the appellant's offer to exclude her son from the premises

during childminding is viable.

14. The appellant points out that the previous allegations have been investigated to no real conclusion adverse to her son. In respect of the present allegations she has a number of places to which her son can go during the period when he is not at school and she is childminding, and that it is entirely practical for her to continue and for the minded children never to see her son, much less to be at risk from him. Ofsted seek a delay in dealing with this matter to enable them to check the validity of such proposals. We are not prepared to do that: the appellant's domestic arrangements are peripheral to this matter. Ofsted are entitled to submit that the proposals are impractical and supplied late, and we will bear that in mind, but we do not consider that this is a matter which requires an adjournment of this emergency procedure. .

Conclusions

15 We consider that in the circumstances of this case the latest allegations are serious. We note that the appellant has minded children for 20 years and is able to produce a number of references form the parents of children whom she minds, and has minded over that period. We consider that excluding the appellant's son from the premises during child minding hours is viable for the short term of a suspension of this nature, and it will no doubt be uppermost in the appellant's mind that were she to allow her son into the premises whilst minded children were present there would no doubt be a further suspension application on the basis of a failure to exclude him.

16 We have not considered where the appellant's son should be when excluded from the childminding home, the appellant has put forward a number of alternatives, all or some of which may be suitable, we do not consider it is for this Tribunal to impose bail conditions or to specify where he should go, simply to consider the risk to minded children. We consider that in the circumstances, it would be sufficient to ensure that minded children were safe if the appellant excludes her son in the terms she suggests, that is that he is not at the premises between 7am and 7pm on any day in which minded children are present. Any breach of this proposal would of course be a good indicator that the appellant was unable to provide a safe environment for minded children.

17. Whilst we understand the concerns of Ofsted in this case. Overall we consider that the proposal of the appellant is sufficient to ensure that children minded by the appellant would not be at risk over the period we are considering.

Decision

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

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Monday 2nd September 2013