

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

**Considered on the Papers  
On: Friday 6<sup>th</sup> September 2013**

**B E F O R E:**

**Deputy Chamber President Judge John Aitken  
Mr Graham Harper  
Ms Linda Redford**

**Mrs R.**

**Appellant**

**-v-**

**OFSTED**

**Respondent**

**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 situation, the response and the level of risk present, from the papers. There appears to be no substantial factual dispute which might affect our decision 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 14<sup>th</sup> August 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 24<sup>th</sup> 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, in this case so as to protect their private lives.

4. The appellant has been a registered childminder for several years, there have been no specific problems with how she has looked after children in her care, but an inspection in March 2013 described her as inadequate and suggested improvements.

5. In 2006 the appellant's husband JR was convicted of very serious drugs and firearms offences, he was in possession of heroin and cocaine, had the keys to a cannabis farm and 4 handguns. The level of severity is clear from the fact he received 12 years imprisonment. We are not in possession of any other information about the appellant's husband's record, but the appellant does describe him as having made only one mistake.

6. JR was released on licence in October 2012, and upon being notified of this Ofsted made it plain that they did not consider it appropriate for JR to be living at the premises where childminding was taking place. They also imposed a condition that JR should not be present whilst the appellant was providing childcare. The appellant arranged for her husband to live in a flat and only visit her when she was not childminding. That arrangement worked well until June 2013. JR is apparently doing well on licence, he has not returned to Heroin use to which he was addicted, but does require a suboxone prescription, which we understand to be a prescription heroin substitute. He has occasional work as a handyman.

7. In June 2013 the appellant informed Ofsted that she was moving but confirmed that her husband would not be moving in. At an inspection on 9<sup>th</sup> August 2013 the appellant confirmed that her husband was now living with her at the place where children were looked after. Ofsted consider that this amounts to a situation that causes a risk of harm to children, and are proceeding to consider cancellation of the appellant's registration.

## **The Law**

8. 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.

9. 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.”*

10. 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”.*

11. 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.

12. 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 husband’s history of very serious offending and his character make his residence at the minding address a risk to children, they are also concerned that the appellant has not informed them of this significant change to the household.

14. The appellant considers that her husband is reformed, is now well behaved and is not present when minded children are in the home and therefore does not represent a risk. She points to her own well adjusted children as evidence that he is not a risk, and also suggests there has been confusion about whether her husband was given permission to move back to the home as long as he was not present during childminding.

## **Conclusions**

15. We understand the appellant and her husband are attempting to manage a very difficult situation following his release from prison. We do not underestimate

just how difficult it must be to manage on a very low income with a split household and how much more pressure it must place upon both the appellant and her husband simply to be in separate places much of the time when they may need each other for support. We acknowledge that the appellant's husband is making great efforts to steer clear of drugs and to work to support his family, and that his wife has become self employed and is justifiably proud of what she has achieved in not only looking after her own children but in running a business. It is a long and difficult process for the appellant's husband to re-enter society fully. We note the support he is receiving from his probation officer who clearly regards him as progressing very well indeed.

16. The appellant and her husband do however need to understand that this Tribunal is concerned with the safety of children, and must make decisions which may not be helpful to individuals or families in applying the law. There are sometimes competing interests such as rehabilitation and family life to be placed against risk to minded children and whilst the Tribunal takes a proportionate approach, if there is risk it must be avoided as far as is reasonable.

17. The risk to the children that the appellant's husband poses is not a straightforward one, as JR has indicated he has never committed an offence directly against a child, although of course the supply of drugs does not help children on a wider basis. He is plainly however still struggling with addiction, doing well, but still requires the assistance of suboxone. The presence of someone struggling like that in a household does pose risks to children, as does someone of JR's criminal behaviour, it is at present confined to the past, but JR has not yet finished his sentence he is serving the last half of it in the community on licence but he is still subject to restriction and indeed recall. These matters indicate that only in most controlled circumstances could there be someone of JR's character in the household of someone who was childminding.

18. We do not exclude the possibility that the appellant could continue childminding, and that would depend upon a careful consideration of the full circumstances, but on the information presently available we do consider that there exists a risk to children if the appellant's husband is in the household, and if the appellant cannot be relied upon to notify Ofsted of significant changes. The appellant herself perhaps expressed it best when she was asked by the Ofsted Inspector Cheryl Walker in October 2012 whether she had notified the parents of the minded children of her husband's history. One knew, but the others she had feared would be frightened off. Again in August 2013 she indicated she had not disclosed her husband's past to most of the parents.

19. We consider that the suspension should continue. We have not decided that her registration should be cancelled, there is much more which would have to be known before that could be considered, it is in any event a matter for Ofsted and if they do decide upon cancellation the appellant has a right to appeal to this

Tribunal.

20. We are not considering the long term position, we have to decide whether a risk exists such that the appellant's childminding should be suspended until 24<sup>th</sup> September 2013. We consider that there is such a risk for the reasons given.

### **Decision**

The appeal against interim suspension is dismissed, the suspension remains in effect.

**Judge John Aitken**  
**Deputy Chamber President**  
**Health Education and Social Care Chamber**  
**Monday 9<sup>th</sup> September 2013**