

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

[2013] 2112.EY-SUS

HP - Appellant

v

OFSTED - Respondent

B E F O R E:

**Judge Hugh Brayne
Mrs Stafford
Mr Beeden**

Heard on the 31st October 2013 on the papers.

The appeal

1. The appellant appeals against the respondent's decision dated 18th October 2013 to suspend her registration as a child minder for six weeks until 28th November 2013.

The legal framework

2. 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.
3. 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.

4. 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.
5. “ 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”.
6. 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 the respondent’s decision the respondent reasonably believed that the continued provision of child care by the registered person to any child may expose such a child to a risk of harm.
7. 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.

The hearing

8. The appellant asked for a determination on the papers. The respondent agreed to proceed without a hearing. We applied Rule 23 Tribunal Procedure (First-tier Tribunal)(Health, Education and Social Care) Rules 2008 and proceeded to make a decision without a hearing. The panel, by means of a conference call, considered all of the evidence and submissions referred to below, and determined the appeal, on 31st October 2013.
9. The tribunal had a bundle of papers including the decision to suspend, the appeal, the response to the appeal, witness statements from the respondent, with exhibits, and letters from parents of children minded by the appellant
10. 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 appellant, any child minded by the appellant, or any member of the families of these individuals, so as to protect their private lives.

The background

11. The appellant was registered with the respondent in 2006 on the Early Years Register and the compulsory and voluntary parts of the register. The respondent has inspected her provision in April 2010 and December 2012 and determined provision to be good.

12. The appellant operates her childminding business from her home address. The precise conditions of her registration are not known and are not relevant to this appeal.

Events leading to the issue of the notice of statutory suspension.

13. The respondent's case is set out in the response, and is based on the evidence of witnesses MW and EW, both members of Ofsted's Compliance, Investigation and Enforcement team, and NJ, an alcohol liaison nurse at an NHS Hospital, and relevant exhibits. This is summarised in paragraphs 16 to 18 below.
14. Witness NJ works in a substance misuse team, and has a role of supporting staff and patients when there are unplanned admissions, assisting in supporting patients with alcohol or drug misuse, and sign-posting patients to community support after discharge. She says, based on medical notes, HP was admitted to hospital on Friday 11 October 2013 suffering with abdominal pains, nausea and vomiting. She was demonstrating symptoms of alcohol withdrawal, but initially denied abuse. The witness does not know how much HP told staff she was drinking. She met HP the following Monday morning and "got the feeling that [HP] was distressed and had not realised that alcohol was having such a big impact on her health. [HP] admitted to having had a problem with alcohol during/following the breakdown of a previous relationship, this was either five or eight years ago. She admitted to drinking heavily, but had then reduced her intake."
15. Witness NJ goes on to say that a few days later, on the ward, HP "said she had cut down on her drinking over the previous months, prior to being admitted to hospital...When I saw [HP] on 14 October she said she had been drinking about two glasses of wine per evening, after 18.00. She also admitted to drinking half a bottle of wine over the weekend...I did not push [HP] on the amount of alcohol she consumes, as by this point she had agreed and was willing to engage with community support and she had been referred to ... a community alcohol advisory service."
16. Witness NJ confirms that as far as she is aware the detox has gone well, and that HP has been willing to accept help. She comments that when she first met HP she appeared quite undernourished.
17. Witnesses EW and MW together give reasons for the suspension decision. These are not repeated here, as we will ourselves consider whether suspension is justified. The witnesses took into account supportive letters provided by parents of a number of children childminded by HP, and also took account of previous allegations which had not led to any sanction. In 2008 HP had been investigated for concerns from a parent that she smelt strongly of alcohol in the mornings and was over the alcohol limit when transporting children: In 2009 concerns had been reported that she was drunk when taking children to school and driving with children while under the influence of alcohol. These had been

investigated and HP had denied drinking excessively or drinking while in charge of children. A further concern had been raised in June 2009 about her drinking, and she had said she had a glass of wine with her supper. None of these incidents, although investigated at the time, led to any action by Ofsted. They closed the case.

18. Witness MW explains in her statement the further investigations the respondent has set in train. HP has signed a medical consent form enabling the respondent to contact HP's doctors, see medical records, and undertake medical checks. Available tests include liver enzyme tests and sample hair strand alcohol tests, which will reveal levels of alcohol consumption over a past period, such as six months.

The appellant's case

19. HP gives a number of reasons in her notice of appeal why the Tribunal should not continue the suspension. She says she was admitted to hospital with abdominal pain and fever and thought she had gallstones and a urine infection, as advised by her doctor. Tests, showed a high liver count. She was treated with drugs and admitted to hospital, where she stayed for a week and was discharged earlier than expected, as the liver count had reduced.
20. She said she has never consumed alcohol until her working day finished at 7 pm and if she does have a drink, the last drink is at 10 pm at the latest. She said she has never driven under the influence of alcohol, and in any event that would be a police matter. She said "I cannot state enough that I would never consume or be under the influence of alcohol whilst working with other people's precious children". The suspension would remove her source of income and could mean the loss of her home, as well as having a profound impact on her children. She referred to two references from parents (now supplemented to a total of five).
21. These references are very positive, and none indicate concerns with the quality of HP's care for their children. None make reference to the reasons for the suspension, and one specifically states that the writer is unaware of these.

Tribunal's conclusions with reasons

22. There is no recent evidence of any parental concerns, and no evidence of harm to any children. Three Ofsted inspections have found the quality of childminding to be good. This includes reference to HP's understanding of her responsibilities in respect to child safety.
23. HP has, in her appeal, denied current alcohol abuse. She says she does not drink before 7 pm (or 6 pm according to what the liaison nurse says she told her). On weekdays she says she has no more than one or two drinks in the evening, and stops by 10 pm. She does not herself refer to the detox programme she has, according to other evidence, agreed to

undertake, nor to any discussions on admission to hospital about alcohol. Her evidence to the Tribunal is that she was admitted for possible gall stones. Without reference to the medical notes, it is not possible to determine whether recent alcohol use did or did not play a part in the need for this hospital admission.

24. The respondent's concerns are that HP's history includes past reports of concerns over alcohol abuse, including a report from a parent. The respondent refers to the fact that HP does not appear to have told the parents the reason for her suspension, and their positive references have to be viewed in that light.
25. Further investigation will clarify some of the uncertainties in this case, including the extent of HP's drinking over the past months and the events which led to the admission to hospital. It is possible that the evidence will lead to there being no concerns with recent alcohol use, but it is also possible the enquiries will lead to the opposite conclusion.
26. However concern as to alcohol intake or even alcohol abuse does not necessarily translate into concern for risk to children. Over a number of years during which HP has minded children, no harm has been evidenced and no investigations have led to the conclusion that there may be a risk of harm sufficient to warrant suspension or other action. No parents in their supportive letters appear concerned that they have not been told the reasons for the suspension. It is not unreasonable to presume that, since 2009, if HP had been under the influence of alcohol while looking after children, some signs or concerns would have become apparent to parents. In light of this history, we have to ask ourselves if there is a potential for risk during the time the actual extent of HP's drinking is investigated. The possibility that she may not have revealed the true extent of her drinking does not in itself lead to a concern that at any time in the recent past she has been under the influence of alcohol while minding children.
27. We do not know what led to the recent hospital admission. We are not medical experts and do not know if a high liver count can arise for reasons unconnected with alcohol abuse. We do know, however, that on admission the records reported by witness NJ indicate that there was concern from professionals who would be able to reach informed conclusions that alcohol abuse was a possible concern. We know from witness NJ's evidence that HP did discuss alcohol issues with her in a manner which has not been acknowledged in the appeal.
28. The fact of admission in circumstances where recent alcohol abuse may have played a part makes this occasion different and potentially more serious than the previous reporting of concerns about alcohol. We know, though not from HP herself, that she accepted support from a community based organisation dealing with alcohol abuse. In her appeal she has not acknowledged this. This makes it difficult to know whether, if there is a problem, she is at present willing to consider whether it impacts, or might impact, on her ability to look after children.

29. We have concluded that there are matters which the respondent is obliged to investigate. While there is no current evidence of harm or a drop in standards of child minding because of alcohol, a person who may have recently abused alcohol, who may have been admitted to hospital for that reason, and who is currently looking after children, may, in our view, be at risk of exposing children she looks after to risk of harm. We are not required to be any more certain than that. We hope that the concerns prove to be unfounded and that HP can continue to provide childminding services to parents who clearly value her work.

Order

30. The appeal is dismissed.

Mr Brayne, First Tier Tribunal Judge

Mrs Stafford, Tribunal Member

Mr Beeden, Tribunal Member

31 October 2013