

Care Standards

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

Heard in Birmingham on;
28th & 29th April 2014

Before;

Judge Gillian Irving QC
Mr Richard Beeden – Specialist Member
Mr John Hutchinson – Specialist Member

M P

Appellant

V

Ofsted

Respondent

[2013] 2107.EY

DECISION

REPRESENTATION:

MP – Unrepresented

OFSTED – Mr Gordon Reed, Sterberg Reed Solicitors

PREAMBLE

1. For reasons which shall be self-evident from the history that appears herein, we have identified the Appellant and others referred to in this judgement by initials only.
2. On the 20th November 2013, Judge John Aitken made a restricted reporting order pursuant to Rule 14 (1) (a) and (b) of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) rules, 2008. That order continues and no document filed within these proceedings shall be disclosed or published if it is likely to lead members of the public to identify any person 'named' in this decision.
3. **Summary**
This appeal hearing was adjourned at the end of day one of what was listed as a three day hearing with directions as to the further evidence the Respondent,

Ofsted, was to produce. On the second day of the adjourned hearing listed as a 5 day Appeal hearing, the Respondent, sought permission pursuant to Rule (17) (1) and (2) to withdraw its opposition to the Appeal against the Cancellation of Registration. Such an application was made orally at the hearing and was acceded to following confirmation from the Respondent that no conditions or restrictions were to be imposed upon the Appellant's Certificate of Registration.

4. However, having heard evidence over 2 days and having considered not only the statements filed, but the 'source' materials emanating from two Local Authority Social Service departments and Warwickshire Constabulary, we considered it appropriate to provide:
 - a. Reasons for our decision to permit withdrawal and;
 - b. Our observations and concerns surrounding the investigation of the allegations and disclosure of documents within these proceedings to the Appellant.

5. **Backcloth**

5.1 MP has been a registered childminder for approximately 14 years, ie since 5th July 1999. She has been married for 28 years to the same person and has two grown up children of her own, one of whom is SP. He is now 22 years of age. She also has a grandchild 'H'.

5.2 Prior to September 2011 there were no recorded complaints about her conduct as a childminder. The inspections which had taken place, although not justifying the label 'excellent', were satisfactory and uneventful. Within our bundles of documents there were multiple references from parents of children she looked after and had looked after. All spoke of her childminding skills in glowing terms.

5.3 In August 2011, the parents of a young girl JTM saw a message to her on her Facebook page which appeared to have been sent late one evening by SP. She was at the time only 13 years old and he was 18 years of age. The message was of an intimate nature and would no doubt disturb any parent reading it. In brief, it indicated that he wished to touch her and wanted her to touch him. Her father attended the home of MP to inform her and her husband of what had happened and also informed the Police.

JTM had previously been looked after by MP in her capacity as a child minder and her two younger siblings were, at that time, cared for by her. SP was also registered as MP's assistant at that time. SP, when spoken to by the Police and others, admitted that he and JTM were friends on Facebook, but he denied he had sent the message and claimed his account had been hacked. In accordance with usual practice, the Police informed the local Social Services department in Warwickshire who in turn informed the Respondents.

A meeting took place on 24th August 2011 between a Mr Thomson, Social Worker from Warwickshire; Jenny Harding, on behalf of the Respondent, MP & SP. SP maintained he had not sent the message and is reported to have been visibly upset and angry during the discussion.

- 5.4 The Police spoke to SP, but took no further action. As far as the mother of JTM was concerned, in a telephone conversation on 25th August 2011 with Social Services, she expressed the view that this was an isolated incident that was a result of SP drinking and making a silly mistake.
- 5.5 Certainly having viewed the previous and subsequent entries, there was no evidence to suggest that this was a course of conduct which had gradually progressed or been planned in any way. There was no evidence to suggest that SP was or intended “to groom” JTM – a label which appears to have been applied by others without merit or understanding on what we had before us. For the avoidance of doubt, we proceeded in our decision making on the basis that SP was responsible for this singular message despite his ongoing denials.
- 5.6 The Respondent in September 2011, in response to events, imposed a condition upon MP’s registration, requiring her to fully supervise her son whenever childcare was provided. She did not object to the condition which remained in place until 29th April 2014, i.e. the date the Respondent withdrew its opposition to this appeal. Whether she would have agreed to that course had she had the benefit of independent legal advice, one can only speculate.
- 5.7 Whilst “investigations” were ongoing and mindful that the Respondent was very dependent on the information shared with it, the course it then adopted was understandable. It is extremely important to the proper and efficient working practice of the Respondent for it to be able to rely on the accuracy of information shared within. It must be entitled to start from the premise that information is collected and evaluated in accordance with good practice by other agencies and of equal importance, recorded accurately before being shared with it and being asked to respond. Unfortunately, what this Appeal highlighted on more than one occasion was that this was not so.
- 5.8 For example, within the materials we directed be provided by the Social Services Departments, unfounded allegations were recorded and reported as fact and what were singular events became plural. There appears in the documents, an allegation made to the effect that SP was sending similar inappropriate text messages to underage girls. Those girls were identified and interviewed by the Police. We have a summary of the discussions before us and which relate to JL and ZL. They were clear that no such communications had been received and expressed no complaint. No texts/messages of the like referred to have ever been disclosed or appear to exist.

- 5.9 Similarly, it is recorded that SP was as a consequence of such behaviour, asked by two youth service groups with whom he was involved, not to attend again. Such is inaccurate on the materials before us.
- 5.10 Perhaps most worrying however, relates to the minutes of the pre-birth child protection conference dated 23rd October 2012 held in relation to the Appellants then unborn grandchild, H, which records that the Respondent attached a condition in 2011 to the Appellant's Registration to the effect that SP could not live in his mother's home or have any contact with any children in her care. Both assertions were completely wrong and the consequence of the failure to record and interpret matters accurately has gone beyond the issue of cancellation of the Appellants registration as a childminder and led to a direct interference with her and SP's right to a family life, namely contact to the grandchild H.

That issue of course, is not for us, but for the Family Court, however, it was clear from the evidence, written and oral of Doreen Robinson, then employed by Worcestershire County Council (where H lives) that an inaccurate factual matrix had been deployed in terms of the risk assessment she had performed.

- 5.11 In May and June 2012, the Appellant contacted the Police for advice and spoke to Officer Wheeler. Having fallen out with their son's girlfriend (and mother to be of H), there had been an incident on 30/5 and she (MP) was eager to ensure that there would be no other incidents in front of the children she was caring for. Advice was provided and there was nothing before us to suggest other than that advice was followed. Indeed, following a referral by Warwickshire Social Service in June 2012, the Respondent arranged an unannounced visit and was satisfied that the Appellant had a clear understanding of the need to safeguard child minded children in her care and a plan as to how she would do so. No further action was considered necessary and Warwickshire were informed accordingly.

6 The Allegations made by TL and the Decision to Cancel Registration

- 6.1 On 21st September 2012, TL then 15 years old walked into school and alleged that whilst he had been a child in the care of MP he had been anally raped and indecently assaulted by SP. The allegations related to incidents which he asserted occurred several years earlier when he was 5 or 6 years old in MP's home whilst MP was present in the house.
- 6.2 It was this allegation and the Appellants alleged unwillingness to accept that it may be "credible" which ultimately led to her being served with a notice to cancel her registration on the 6th day of June 2013. Despite her written objection, the decision to cancel was upheld and she was informed by letter dated 16th September 2013. It is worth recording the following from that letter.

“The fact that you fail to accept that there could be any truth to the allegations outlined above, leads us to believe that you do not sufficiently understand the principles of safeguarding children and subsequently cannot protect minded children in the event of any allegations of further safeguarding concerns. This means children are at significant risk of harm.

We are not satisfied that you can work co-operatively with other agencies to meet the needs of children”

“Worcester Children’s Services confirmed that you were not considered as suitable to supervise visits between your son and your grandchild whilst subject to a child protection plan, which raises further concerns about your on-going suitability.

On 26th February 2013 Children’s services informed OFSTED that they had not allowed you to supervise contact between your son and your grandchild because of your failure to acknowledge the allegations made against your son. They were concerned that because of this it may lead you to leave your grandchild unsupervised with you son. Children’s services also say that you do not show a sufficient understanding of or accept the reasons why they were working with your son and that this directly impacts on your suitability.

This again leads us to believe that you do not sufficiently understand the principles of safeguarding children and subsequently cannot protect minded children in the event of any allegations of further safeguarding concerns. This means children are at a significant risk of harm.”

“We are not satisfied that your family relationships and home environment are conducive to childminding.

Due to the many concerns above, it is considered that you are no longer suitable to be a registered childminder. Minded children are not sufficiently safeguarded and their welfare is not appropriately maintained.”

- 7 It was not and is not the role of the Respondent to investigate those allegations and understandably it very much took its lead from those seized with doing so. Nevertheless, it is incumbent upon the Respondent to conduct a thorough evaluation of the evidence and to acquire all of the relevant and source evidence before it reaches any decision to cancel registration. That did not happen in this case.

In any case involving an allegation of sexual abuse by a child, it is vitally important to follow step-by-step the evidence trail from the moment the allegation emerges. Who said what and when by and to the child and in what context is fundamental to an overall analysis. Was the ABE Guidance

followed? Are there inconsistencies which go to the heart of the credibility of the complainant?

- 8 The Appeal began by the Respondent asking us to find that the allegations made by TL were “credible” / “plausible”. We made it clear from the beginning that in our view that meant was it more likely than not he was telling the truth. In the event, that decision was not necessary, but on the evidence provided, the following was clear:
- a. TL’s mother did not corroborate his assertion that he had disclosed the abuse to her several years earlier.
 - b. His accounts were inconsistent.
 - c. His demeanour and responses were wholly out of keeping with that which he described.
 - d. His account of what happened in the bedroom with SP was not corroborated by Child B who he claimed was present.
 - e. The initial handling of the complaint by school was unsatisfactory in terms of the questioning which took place and the lack of recording.
 - f. There was no statement from TL’s father to whom he allegedly complained to on the 20th September 2012.

The Police Officer assisting with the investigation opined that in her many years experience she was very troubled by TL’s responses during interview.

9. In addition to ensuring acquisition of all relevant material before making a decision on cancellation, it is also vitally important that the Respondent makes full and accurate disclosure of all materials held by it, whether or not it assists its case. This is a fundamental duty owed to the Appellant and the Tribunal Panel.

We were presented with documents purporting to be transcripts of the interviews conducted with TL. It was easily apparent when we watched the DVDs that the documents were not a true or accurate account of those interviews. Every word, every hesitation, every mumble needs to be there. Context is everything. The documents provided to us were misleading. There exists very experienced firms of transcribers well versed in what is required and in future they should be used in Appeals such as this.

Also the Respondent had in its possession, documents which cast doubt on the credibility of the Complainant. They had not been disclosed to us or the Appellant. Only on the morning of day two did they come to light. That must not happen again. Everything the Respondent has relevant to the issues MUST be disclosed and disclosed in timely fashion.

10. The Appellant in this matter was unrepresented and faced an enormous and unsatisfactory challenge to represent herself in this Appeal. But more worryingly, SP against whom these allegations were made had no voice or right to be represented at all. Findings could be made and published which could affect his life forever without a word being heard from him or on his behalf.

In the Family Court he would have been joined as an Intervener and would have had the benefit of public funding. Currently, there is no facility within the Rules of this Tribunal to enable this. To us that is clearly unjust and unfair and consideration must be given to remedying such a process.

11. We have no doubt on the evidence before us that withdrawal of the opposition to the Appeal was the right decision. The Appellant had done everything that was required of her and we could not envisage, even if the allegations made by TL were found “credible”, that we would not but uphold her appeal and set the cancellation aside.

Judge Gillian Irving QC
Tribunal Judge
Health Education and Social Care Chamber

Date Issued: 4th June 2014