

Care Standards

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

[2015] 2436.EY-SUS

BEFORE

Judge Melanie Plimmer
Specialist Member Michele Tynan
Specialist Member Graham Harper

BETWEEN

UG

Appellant

-v-

OFSTED

Respondent

DECISION

Considered on the papers on 8 June 2015

The appeal

1. The appellant has appealed against the respondent's decision dated 12 May 2015 to suspend her registration as a child minder for six weeks until 23 June 2015.

Restricted reporting order

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 appellant, any child minded by the appellant, or any member of the families of these individuals, so as to protect their private lives.

Background facts

3. The Appellant is registered to provide childminding from her home address in London. She has provided us with evidence from supportive parents. The respondent considers that the appellant has

been driving a car without insurance and licence and has been deliberately dishonest about this. The appellant completely denies this.

Procedural history

4. The appellant has requested a paper hearing without objection from the respondent. We are satisfied that this is an appropriate case to be determined on the papers. Both parties have submitted detailed information, which we have considered in full.

The legal framework

5. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the 2006 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. 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.
7. "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 must either confirm the decision to suspend or direct that it shall cease to have effect. The burden of proof is on the respondent. The standard of proof is whether there is 'reasonable cause to believe'. 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.

Tribunal's conclusions with reasons

9. As noted above, this Tribunal stands in the shoes of the Chief Inspector, and considers whether, in light of the information available to the Chief Inspector, he or she had reasonable cause to believe that a child might be exposed to harm. The Tribunal must itself determine the reasonableness of the Chief Inspector's reasons for believing there is a risk of harm. It is not for the Tribunal to take a view on the truth of the allegations prior to the completion of the investigation. We must focus

on whether the test for suspension is met and whether this is a proportionate step in all the circumstances.

10. We have decided that the respondent has discharged the relevant test and there is reasonable cause to believe that a child might be exposed to a risk of harm.
11. The allegations against the appellant are of considerable concern. It is alleged that she drove a car without having a drivers' licence or insurance on two occasions, with children in the car, and has repeatedly been dishonest about this.
12. On 11 March the appellant accepts that she was found by police hiding in a bush with her seven year old daughter, near to an abandoned vehicle with her possessions in it. She claims that her ex-husband was driving and that he had run off. She also claimed that she was sitting in the backseat with her daughter. Her ex-husband has provided a short letter accepting this. The respondent relies upon three police statements in which the police provide cogent reasons to support their view that the appellant was driving the vehicle: her daughter said that her mum was driving and she had not seen her father that day; on the front passenger seat there was a ladies wig, mobile phone and ladies handbag; there were a set of keys belonging to the appellant in the ignition; there were two children's seats in the rear seat making it difficult for an adult to sit there.
13. The police information is detailed and comprehensive. By contrast, the appellant's account is confused and far-fetched. We are very concerned that she has not been honest to Ofsted, the police or us.
14. We note that the appellant's daughter also told a social worker that her mother was driving and not her father. The claimant completely denies ever using a car to drive minded children. We have been provided with a witness statement from a parent of two children minded by the appellant, O. In it she states that she saw the appellant with the children in a car park on 5 March and although she did not actually see her driving it was clear to her from all the circumstances that she had driven the car. In his letter the appellant's ex-husband states that it was he who had driven on that day and the appellant walked home with the children whilst he brought the shopping home by car. He states that when he arrived by car the appellant was already struggling with shopping that required a trolley. This is inconsistent with the much clearer and more detailed chronology provided by O. This states that the relevant car arrived at the car park at the same time as her, she then spoke to the appellant and the children before they headed into Iceland to do the shopping. We take into account that this parent has raised a number of concerns regarding the appellant but this was not a primary concern and conveyed very much as a side issue when the complaint was first made on 13 May 2015. The significance of this information only becomes apparent when it is considered together with

the incident on 11 March and the fact that the appellant does not have a full drivers licence. When all the circumstances are viewed in the round we are satisfied that the parent has made a genuine complaint and provided credible evidence to support it.

15. After meeting Ofsted on 27 March in order to discuss the incident on 11 March the appellant sent out a text that day at 12.56 to parents that read '*Dear parents Pls be aware that in all our outing activities we had always used public transport such as the bus. I had always at all times ensured the safety of your children. However if you have an queries regard this by do let me know*'. This is a very curious text to send out shortly after the appellant's meeting with Ofsted and gives the clear impression that the appellant was 'covering her back'.
16. Having considered all the evidence we are satisfied that there is reasonable cause to believe that the appellant has been deceptive and dishonest regarding her driving and in her dealings with the police and Ofsted regarding the driving incidents described above. Such deception and dishonesty in itself provides us with reasonable cause to believe that minded children will be at risk of harm from the appellant.
17. The appellant's suspension has an inevitable serious impact upon her livelihood. She is a single mother very dependent on this income. We have considered whether there might be other less intrusive ways in which children might be protected during the investigation, such as by prohibiting the use of any outings. The real significant issue here is a breach of trust and lack of integrity and we are not satisfied that the appellant will comply with relevant conditions in an honest and straightforward manner. We are satisfied that the respondent has been conducting investigations as expeditiously as possible in all the circumstances.
18. We are satisfied that there is reason to believe on the evidence currently available to us that the continued provision of childcare by the appellant to any child may expose such a child to a risk of harm, and in all the circumstances of this case, the decision to suspend was, and continues to be a proportionate one.

Order

19. The appeal against suspension is dismissed.

**Judge Melanie Plimmer
Lead Judge, Care Standards and Primary Health Lists
First-tier Tribunal (Health, Education and Social Care)**

Date Issued: 9 June 2015