

Care Standards

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

IN THE MATTER OF AN APPEAL BETWEEN:

[2015] 2514.EY-SUS

Mrs Jane Mayne

Appellant

-v-

Ofsted

Respondent

DECISION

Restricted reporting order

1. The Tribunal makes a restricted reporting order under Rule 14(1)(a) and (b) of the 2008 Rules, 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.

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

2. The Appellant appeals to the Tribunal against the Respondent's decision dated 23rd September 2015 to suspend her registration as a childminder on the Childcare Register for six weeks from the 23 September 2015 pursuant to section 69 of the Childcare Act 2006 ('2006 Act') and the Childcare (Early Years and General Childcare Registers) Common Provisions) Regulations 2008 ('2008 Regulations').
3. The Appellant is a registered childminder since June 2010. On 26 June 2014, Ofsted received an anonymous notification regarding alleged criminal charges brought by the police against the Appellant's son, Nathan Mayne and husband David Mayne.

4. The Regulatory Inspectors contacted the Appellant in June, July September and December 2014 and were told that the court hearing had been delayed or cancelled.
5. On the 23 September 2015, following a referral from a member of the public regarding the convictions of David and Nathan Mayne, a strategy meeting was held between the Regulatory Inspector, the Local Authority Designated Officer ('LADO') Early Years Advisor and a representative from Thames Valley Police. The Police confirmed that David Mayne had pleaded guilty to a public order offence and had received a 6 month conditional discharge. Nathan Mayne had pleaded guilty to three public order offences and an assault and had received a 12 month conditional discharge. A restraining order was also made in respect of Nathan Mayne preventing him from attending 32 Bathurst Road or from approaching Nathalie Wicks or Rebecca Firman.
6. When contacted by phone, the Appellant confirmed that there were no convictions in respect of her husband and son and all they had to do was not to speak to the lady next door and pay court fees and keep their noses clear for six months and a year.
7. An urgent case review on the 23 September 2015 concluded in a decision to suspend registration because children in the Appellant's care may be at risk of harm. Ofsted needed to ascertain the full details from the police before then speaking to members of the household to assess suitability.
8. Having obtained a case summary from the police, Ofsted are particularly concerned about the nature of the language used during the incident which presents serious concerns about the suitability of Nathan Mayne in particular.
9. The police confirmed that David Mayne pleaded guilty to a section 5 Public Order Act offence of using threatening, abusive or insulting words or behaviour within the hearing or sight of a person who was likely to be caused harassment alarm or distress.
10. Nathan Mayne pleaded guilty to an assault on Ben Richards, a section 4A Public Order Act offence of using threatening abusive or insulting words or behaviour with intent to cause Nathalie Wicks harassment, alarm or distress and two section 4 Public Order Act offences of using threatening abusive or insulting words or behaviour with intent to cause Ben Richards to believe that immediate unlawful violence would be used against him.
11. The circumstances of the incident requires further investigation by Ofsted who have already made a disclosure application of the full police file. On the basis of the gravity of the situation, the fact that there may be an ongoing neighbourhood dispute, the Appellant's

failure to be honest about the incident, the convictions and the possibility that she has not been told the full details by her husband and son, it was concluded that the Appellant's registration should be suspended.

Legal framework

12. The statutory framework for the registration of childminders is provided under the 2006 Act. Section 69(1) of the 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.
13. When deciding whether to suspend a childminder, the test is set out in regulation 9 of the 2008 Regulations as follows:
"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."
14. "*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".
15. The suspension is 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.
16. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so, 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.
17. 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.

Evidence

18. The Appellant submitted in her grounds of appeal a description of the events during the incident on the 5 June 2015 although she wasn't present at the time. She described the last 18 months as "hell" with sleepless nights and a lot of tears. She stated that the family had learnt a lot about the law and that the same thing will never happen again.

19. In the report of the appellant's interview with the Regulatory Inspector in June 2014, it was confirmed that a warning letter would be sent to the Appellant for non notification of the serious incident and it was recorded that the Appellant was informed of the need to keep Ofsted informed of any further updates and of the outcome of the trial when Ofsted would decide on any further required action.
20. The notes of the LADO Strategy meeting held on the 23 September 2015 identified that Nathan Mayne is known to the police for the current incident, driving offences in 2013 and 2004 and 2009 for public order offences. Reference was made to concerns about his mental health, his substance misuse issues and a pattern of his being verbally abusive and confrontational.
21. On the 2 October 2015, the Regulatory Inspector visited the Appellant at home and reported inappropriate behaviour by the Appellant towards her.
22. In an email dated 7 October from the Appellant to the Ofsted inspector she stated that what had happened had made her very stressed and ill, and she was going to see her doctor. She asked Ofsted not to contact her again.
23. We bear in mind that the appellant has been childminding since 2010 and until June 2014 appears to have an unblemished record. We must consider whether there is sufficient evidence to justify a reasonable belief that a child may come to harm at this stage.
24. We find that the circumstances in which the Appellant finds herself, although not of her own making, has the potential to have an impact on the children that she minds. The circumstances leading to the incident in May 2014 suggest an ongoing dispute with a neighbour and the fact that the court was persuaded on the evidence presented to it to issue a two year restraining order on Nathan Mayne is evidence of considerable acrimony.
25. Whilst the Appellant states that nothing has changed in 18 months, and that Ofsted appear to have been slow to take any action in relation to the situation, until the Respondent had clarity about the events leading to the convictions, the decision was made on the basis of the information available to them at the time.
26. We noted that despite being sent a warning letter for failing to notify a serious event in May 2014, and being informed of the need to keep Ofsted informed of developments in respect of the trial, the Appellant was not proactive in doing so, and although she provided information in response to Ofsted enquiries she did not appear to take on board the importance of sharing information with them.

27. The information that was shared at the strategy meeting held on the 23 September 2015 highlighted the number of issues to be clarified in respect of Nathan Mayne, and the Appellant's own conduct towards Ofsted. The mention of health concerns and the Appellant's refusal to co-operate with the regulator to enable the Respondent to conclude the enquiries and discuss the position with the family leads the tribunal to the conclusion that we consider that the Respondent has displaced the burden and the appropriate test is met.
28. Whether and what further action is required cannot be decided until the enquiries are complete and we are satisfied that until the position is clarified there may be a risk of harm to the children in the Appellant's care and the appeal against the suspension fails.

Decision

Appeal dismissed.

The notice of suspension is confirmed.

**Judge Meleri Tudur
Deputy Chamber President
Care Standards & Primary Health Lists
First-tier Tribunal (Health Education, Social Care)**

Date Issued: 19 October 2015