

Care Standards

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

[2015] 2522.EY-SUS

On the Papers on 20 October 2015

BEFORE

Tribunal Judge Stewart Hunter
Specialist Member Dr Howard Freeman
Specialist Member Mrs Susan Last

IN THE MATTER OF AN APPEAL
BETWEEN:

Mrs Jasmin Lorraine Bianchi

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.

Background

2. The Appellant appeals to the Tribunal against the Respondent's decision dated 6th October 2015 to suspend her registration as a childminder on the Childcare Register for six weeks from the 6th October 2015 to 16TH November 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 has been a registered childminder with the Respondent since November 1992. She lives with her husband and their son Jonathan Bianchi

(DOB 28.04.1977). Jonathan Bianchi is employed by the Appellant as her childminding assistant.

4. On the 5th October 2015 the Respondent was contacted by the Local Authority Designated Officer (“LADO”) who advised that a child who had been minded by the Appellant had made allegations of serious historic sexual abuse by Jonathan Bianchi.

5. The Respondent convened an urgent case review and a decision was taken to suspend the Appellant’s registration pending a police investigation into the allegations made and for the Respondent to investigate the Appellant’s ability to safeguard the children in her care.

6. The Appellant was initially advised of her suspension by telephone on the 6th October 2015. The Appellant refused to accept Notice of Suspension by e-mail and put down the telephone. The Notice was served by hand later the same day. The Appellant indicated it was her intention to carry on minding children and sought to resign her registration from the voluntary part of the Childcare Register to enable her to do this.

7. A Strategy Meeting was held on the 7th October 2015 attended by the LADO, the police, a representative from the child’s school and the police. It was confirmed by the police that they would be investigating the matter. The Appellant was informed of the outcome of the meeting. The response from the Appellant was that her son was completely innocent and she intended to continue to allow him to mind children as the allegation was not true.

8. On the 14th October 2015 the complainant who is now aged 16 was interviewed by the police. The complainant informed the police that Mr Jonathan Bianchi had touched her on her vaginal area on a number of occasions when she was aged between 6 and 12 years at a time when she was cared for by the Appellant. The complainant also stated that on one occasion Jonathan Bianchi had asked her to touch his penis when he removed his trousers and she had touched it. The police considered the complainant to be a credible witness.

9. The police arrested Mr Jonathan Bianchi at his home address on the evening of the 14th October 2015 for an offence of sexual touching. A search of the premises was carried out and computers and communication devices seized and taken away for forensic examination.

10. Mr Jonathan Bianchi was taken to the police station and interviewed, in the presence of his father as Appropriate Adult. The police considered it was necessary for their to be an Appropriate Adult present due to concerns about Mr Jonathan Bianchi suffering from dystonia. The allegations were put to Mr Bianchi who replied “no comment” to all questions.

11. The police bailed Mr Jonathan Bianchi to the 3rd March 2016 to enable enquiries to be made of other children minded by the Appellant, forensic analysis of the items seized and to obtain advice from the Crown Prosecution

Service. The conditions of Mr Jonathan Bianchi's bail are that he must not have unsupervised contact with any child under 18 and that he must not be present in the house of anyone childminding including his home address. In addition he must not contact the complainant or her family.

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.

Conclusions

18. We have taken into account that the Appellant has been a childminder for 23 years, However we note from the information provided by the Respondent that the Appellant has during that time had enforcement action taken against her on a number of occasions, relating to such matters as non-payment of fees, breaches of National Standards, not having a paediatric first

aid certificate and not recording accident and behaviour incidents in a confidential way.

19. What is particularly concerning is that in November 2014 the Appellant's registration was suspended following an allegation made by a child which in many ways had similarities to the present allegations. It is however right to say that the Appellant appealed against her suspension and it was subsequently withdrawn by the Respondent with no findings of fact.

20. In a statement lodged in support of her appeal to the Tribunal the Appellant states she is not the person alleged to have committed any wrongdoing within her workplace. She also states that she will ensure that her son Jonathan will not be at her property when she is minding children.

21. We have considerable concerns regarding the Appellant's response to the Notice of Suspension which was served on her. Whilst we understand the trauma of allegations being made against a family member, the Appellant has shown a lack of insight into the serious nature of the allegations being made and her responsibilities as a childminder. On being told of her suspension by one of the Respondent's officers the response of the Appellant was to put the telephone down. The Appellant subsequently showed an intention to provide childcare for which she did not need to be registered with the Respondent and that her son would continue to help her.

22. Whilst the Appellant now states her son would not be at the property when any childminding took place, she has provided no information as to how this would be achieved and guaranteed. Given the attitude displayed by the Appellant since she was suspended we have no confidence that this would happen.

23. We acknowledge that Mr Jonathan Bianchi has been granted bail with a condition that he must not be at in the house of anyone childminding including his home address, such a condition could always be varied in the future.

24. The allegation against Mr Jonathan Bianchi is particularly serious and is made by someone who at this stage the police believe to be a credible witness. It is also an important consideration that the alleged abuse is said to have taken place when the child concerned was being minded by the Appellant, who had responsibility for the child's care.

25. The police investigation is ongoing and as it is likely to involve an analysis of Mr Jonathan Bianchi's computer it may take some months. We do not consider the Appellant has shown an understanding of the risks to the children she minds in the context of the very serious allegation which has been made. In the circumstances we consider there may be a risk of harm to the children in the Appellant's care and accordingly her appeal against suspension fails.

Decision

The Appeal is dismissed. The notice of suspension is confirmed

**Tribunal Judge Stewart Hunter
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 23 October 2015