

Care Standards

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

[2016] 2771.EY-MoU

Heard on 17 & 18 August 2016 at Pocock Street London SE1 0BW

Before

Mr H Khan (Tribunal Judge)
Ms H Reid (Specialist Member)
Mr M Flynn (Specialist Member)

Seasons of Joy Children's Home

Appellant

-v-

Ofsted

Respondent

Decision

The Appeal

1. Seasons of Joy Children's Home Ltd ("the Appellant") appeals to the Tribunal against Ofsted's decision dated 4 July 2016 to restrict accommodation at their setting "Seasons of Joy" for a period of six weeks commencing from 7 July 2016 until 18 August 2016.

Restricted reporting order

2. 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.

Attendance

3. Mr Tim Akers (Counsel) represented the Appellant. The Appellants witnesses were Mr Rudy Pinnock, employed by the

Appellant as a support worker and Mr Gisanrin, who was the Home Manager.

4. Mr Duncan Toole (Solicitor) represented the Respondent. The Respondent's witnesses were Ms Tina Baker, Team Manager at Lambeth Family Support and Child Protection Team, Ms Paulette White, Team Manager in the Looked After Children's Service with London Borough of Newham, Mr Patrick Sullivan, Social Care and Regulatory Inspection Manager and Ms Carolyn Adcock, Senior Inspector, Social Care, London region.

Late Evidence

5. The Tribunal was asked to admit additional evidence by the Appellant. This included various emails between the Appellants staff and other Local Authorities, extracts from the Appellants log books and certificates of training completed by the Appellants staff. The Respondent did not object to the admission of this evidence.
6. The Respondent also submitted late evidence at the start of the hearing which consisted of details of a monitoring visit to the Appellant, monthly reports relating to young persons in the Appellants care for June & July 2016 and the Appellants Behavioural Management and Risk Assessment. The Appellant did not object to the admission of this evidence.
7. Mr Akers also made an application before the start of the second day of the hearing for one of the directors, Mr Patrick Mwanaka, to give oral evidence on what Mr Akers described as four issues. These were about (a) ownership of the home (b) the director's qualifications (c) the Appellants plans going forward and (d) the Appellants attitude towards cannabis use at the home.
8. This application was opposed by Mr Toole on the grounds and he had not been given any prior notice of the application, there was no accompanying witness statement and he did not think it was fair on the Respondent to allow oral evidence in the absence of a witness statement at this late stage.
9. In considering any late evidence, the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008.
10. We admitted the late evidence that was agreed between the parties as it was relevant to the issues in dispute. However, we refused the Appellants application to call an additional witness on the grounds that there was no dispute around ownership and the director's qualifications. Furthermore, the evidence about the

Appellant's plans going forward as well as its attitude towards cannabis use could be given by the Appellants manager, Mr Gisanrin. Furthermore, there was no accompanying witness statement nor was there an explanation provided as to why one had not been produced prior to the hearing.

11. As there were a number of individual items that we were asked to admit and their admission was agreed, we do not propose to particularise each and every item but we shall refer to them specifically where relevant.

Events leading up to the issue of the Notice

12. The Appellant has been a registered social care provider since 27 September 2011. It was incorporated on 15 September 2010. It operates one children's home at present although there was an indication at the hearing that there were future plans to increase this.
13. It has two directors, Patrick Mwanaka and Spiwe Mwanaka. The responsible individual is Spiwe Mwanaka. The setting does not currently have a Registered Manager.
14. Since registration, the Appellant has never received an inspection judgement of "good" or above. According to the Respondent, the setting received full inspections on 11 February 2014 (adequate), 19 January 2015 (inadequate), 5 March 2015 (adequate) and 20 July 2015 (requires improvement - although leadership and management was judged to be inadequate). There was an interim inspection on 8 February 2016 where it was deemed that "inadequate progress" was being made. There was also full inspection on 6 and 7 July 2016, where the setting was found to be "inadequate". The Tribunal was informed that steps are also being taken to cancel the setting.
15. The current notice restricting accommodation was issued under section 22B of the Care Standards Act 2000 and was served on 4 July 2016. The notice imposed a restriction from 7 July 2016 until 18 August 2016. There have also been two previous notices restricting accommodation in place, which were effective between 10 April - 22nd May 2016 and between 22 May - 3 July 2016, albeit that they were in place for different reasons.
16. The Respondent submitted that it served the current notice restricting accommodation for four reasons as set out below;
 - (a) Allowing contact with a young persons (YP) father in breach of his bail conditions.

- (b) Failing to consult the placing authority regarding decisions, including staff taking a YP to a family party.
- (c) Failing to safeguard a YP by allowing a non-resident into the home who then offered cannabis to a YP who was a regular cannabis user.
- (d) The Respondent not considering that children are appropriately safeguarded due to the issues which have arisen as well as the poor inspection history. The Respondent has taken steps to cancel the setting but does not believe that children will be appropriately safeguarded if the setting is able to accept new admissions until cancellation takes effect.

17. The appeal was received by the Tribunal on 4 August 2016. Directions were given for the filing and serving of the evidence on 5 August 2016. The matter was heard on 17 and 18 August 2016. The parties had requested a decision to be provided at the conclusion of the hearing on the 18 August 2016 due to the fact that the notice expired on that day. We made our decision and communicated this to the parties but had agreed with the parties that given the urgency of the matter, detailed reasons would in these circumstances, follow within a few days.

The Legal Framework

18. Both Mr Akers and Mr Toole agreed the legal framework which applied in this case was as it was set out in the bundle in section D. We have therefore adopted that in our decision.
19. Section 22B of the Care Standards Act 2000 provides a power for the registration authority (Ofsted) to serve a notice on a person who is registered in respect of an establishment, imposing the requirement under subsection (2), which states;
- (2) The requirement is to ensure that no child is accommodated at the establishment unless the child –
- (a) was accommodated there when the notice was served; and
 - (b) has continued to be accommodated there since the notice was served.
20. Section 22B (8)(a) specifies that the section applies to ‘children’s homes’.
21. Section 21(1) (c) of the Care Standards Act 2000 specifies that an appeal against the decision to restrict accommodation shall lie to the Tribunal.

22. There is no statutory test to be applied when considering the threshold for restricting accommodation. However, paragraph 200 of the Ofsted Social Care Compliance Handbook states the following:-

'We only serve a notice restricting accommodation where we reasonably believe that a child, young person or adult may be at risk of harm if we allow further admissions and do not restrict accommodation. We take into account the individual circumstances of each case when deciding whether restricting accommodation is the appropriate action to take.'

23. On appeal, the Tribunal steps into the shoes of the Inspector and the question becomes; does the Tribunal reasonably believe that the restriction of accommodation is necessary and proportionate based on reasoning provided?

24. If the Tribunal adopts the threshold applied by the Respondent when considering a restriction of accommodation, the Tribunal will need to consider 'as at the date of the decision, does the Tribunal reasonably believe that a child, young person or adult may be at risk of harm if further admissions are allowed and the accommodation is not restricted'.

25. The burden of proof is on the Respondent. The standard of proof lies between the balance of probabilities and a reasonable case to answer. 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, young person or adult might be at risk.

Evidence

26. We took into account all the evidence that was presented in the bundle and at the hearing. We heard lengthy evidence about the various issues including those which did not directly relate to the issues that the Tribunal needed to determine. We have summarised in the evidence insofar as it relates to the relevant issues before the Tribunal. We wish to make it clear that that what is set out below is not a reflection of everything that was said at the hearing.

27. The Respondent in their response to the appeal provided some context to the issues involving IS. IS is a child aged 13. She was admitted to the setting as a new placement at the end of March 2016. It was alleged that an incident occurred between her and her father (DS) and he was arrested in February 2016. DS was placed on police bail for an allegation of section 18 grievous bodily harm whereby it was alleged that he had fractured IS' arm

during the assault. It is now clear that the bail conditions were imposed from 15 February 2016. These were :

- i) Not to contact IS either directly or indirectly.
- ii) Not to go to a particular address (unrelated to these proceedings).

28. Ms Tina Baker gave evidence about the placement of child IS. IS had been placed with the Appellants as a temporary placement whilst the local authority sought a therapeutic residential placement that would be able to respond holistically to IS' emotional, psychological and educational needs.

29. She gave evidence that on 4 April 2016 there was a review child protection case conference for IS. The Appellant's manager, Mr Gisanrin had attended the conference. She submitted that in both the child protection conference report and the child protection chair's summary, reference was made to bail conditions for DS. A copy of both documents were sent by e-mail to Mr Gisanrin on 8 April 2016.

30. Ms Baker was clear that from her perspective, the bail conditions prevented any form of contact between IS and her father. However, she accepted that there could have been confusion in the information shared in discussion between the social worker, Ms Shepherd and Mr Gisanrin as to what type of contact could take place. She accepted that the social worker, Ms Shepherd at the very least agreed for a telephone contact to take place between IS and her father.

31. However, she submitted that a responsible care home should make their own enquiries as to the nature of the bail conditions. She set out that Mr Gisanrin was aware of the nature of the allegation and therefore should have sought clarification as to the exact nature of the bail conditions.

32. Ms Baker confirmed that the Local Authority was looking to move IS. They had anticipated a placement being available for 15 August 2016 but as yet this had not materialised.

33. Ms Paulette White explained that WT (aged 14) was placed with the Appellant on 4 November 2015. WT was an extremely challenging and volatile young man who would have challenged any placement. He had around 108 accounts of assault including being involved in a serious hostage incident involving young children.

34. She explained that the Appellant had many strengths including some very committed staff as well as a culturally sensitive approach to dealing with WT. Furthermore, progress had been

made from when WT had been admitted to when he had left the Appellants setting.

35. However, she was concerned that staff were allowing WT to do as he pleased, meaning no boundaries were being imposed. WT was able to overpower staff and take the unit's mobile telephone from staff and keep it for a number of days. This resulted in neither the local authority nor the YOT team being able to make contact other than by email. Furthermore, staff had been observed to be taking smoking breaks in the garden in view of WT as well as allowing WT to smoke cigarettes alongside them.
36. Ms White described meeting on 17 November 2015 which was attended by Mr Gisanrin and he informed them after the event that he had taken WT to his five-year-old daughter's birthday party on 14 November 2015 without a risk assessment or permission from the social worker. Ms White produced minutes of a professionals meeting which stated that she informed him that he should not have been taken WT to a staff party as WT had just been placed with them. It was also made clear to Mr Gisanrin at the meeting that this was inappropriate and unacceptable and that they did not want a repeat of this. Ms White made it clear that even if there was a risk assessment in place, the placing authority would not have authorised it.
37. Ms White was also concerned about the Appellants inability to produce regular reports. In her view, regardless of the difficulties posed by WT's challenging behaviour, his needs were not being met and there did not seem to be any coherent plan to address his to addresses his dietary needs (obesity issues) or his enuresis.
38. Mr Patrick Sullivan gave evidence about his involvement with the Appellant. He submitted that during the course of the full inspection on the 6-7 July 2016, the case file of IS was reviewed and there was information on file which included the original referral from the placing authority as well as the placement information record and minutes of child protection case conference held on 4 April 2016 attended by Mr Gisanrin.
39. Furthermore, Mr Sullivan submitted that the daily logs kept by the home were also reviewed during the course of inspection. In an 11 day period between 12 June 2016 to 22 June 2016 staff recorded three incidents of IS smoking cannabis in and around the building. On 18 June 2016, IS was smoking cannabis in the front garden and staff asked her to use a back garden instead as she should not be smoking cannabis at the front of the house.
40. He confirmed that he was present at the property on 22 June 2016 when a child in his nightwear had visited the premises and had been allowed into the home. His colleague Mr Barnaby

Dowell had heard him shout up to the window and ask IS if she wanted any “zoot”, which was another term for cannabis. However, he made it clear that he himself had not personally heard this.

41. He referred to their inspection report which highlighted concerns they had about the unauthorised contact between IS and her father as well as the inconsistent boundaries and routines. Furthermore, YP went missing and were at risk of sexual exploitation and drug misuse. In addition, they had also raised concerns about general recordkeeping.
42. Ms Adcock gave evidence which summarised the background to the notice being served.
43. There was a statement from DC Fraser dated 10 August 2016. This was agreed and therefore there was no need for DC Fraser to attend the hearing.
44. There was also a witness statement from Mr Barnaby Dowell. Mr Dowell was a Social Care Regulator Inspector but was on pre-planned annual leave when the hearing date was fixed. The Appellant had been offered the opportunity to allow Mr Dowell to attend but had declined it.
45. Mr Dowell expressed concern after his monitoring visit on 22 June 2016 about the contact which had taken place between IS and her father. Mr Gisanrin had told him that contact had gone well. He had also raised concerns about the lack of engagement in education and persistent unchallenged use of cannabis.
46. He also described the incident on 22 June 2016 whereby a young person in his nightwear had called up to IS bedroom and had said “do you want to smoke zoot”. Furthermore, the young person had been allowed into the home.
47. Mr Pinnock gave evidence on behalf of the Appellant. In his evidence he accepted that it was not appropriate to take WT to a birthday party without notifying and seeking the permission of the placing authority. He informed the Tribunal that he had built up a close relationship with WT and had treated him like a brother.
48. He accepted that the young person visited IS on 22 June 2016 but claimed that he was refused entry to the home. However, he accepted that he may have got his times wrong and the YP have visited closer to 12 noon rather than 10:30am as set out in his statement.
49. We then heard extensively from Mr Gisanrin. Mr Gisanrin accepted that contact between IS and her father took place at the

home on 12 June, 4 July and 17 July. At the last contact, IS' father gave her a mobile phone.

50. Mr Gisanrin corrected his witness statement and accepted that he knew about the incident in February involving IS and her father and was aware of the bail conditions as he was sent them by email on 8 April 2016.
51. He blamed the placing authority for creating a climate of confusion in relation to the IS contact issue. The social worker had sent mixed messages about whether contact could take place and if so the type of contact. Any contact that did take place at the home was supervised.
52. He also assumed that as the social worker had arranged for IS and her father to be present together on 23 May 2016 at another address (which did not happen as IS absconded) had given IS father the address of the home, the bail conditions had changed. He demonstrated a good understanding of the reasons for having bail conditions and of the potential for witness interference.
53. He accepted that he had taken WT to his daughter's fifth birthday party held at a local community hall on 14 November 2016. He thought this would develop a deeper level of trust between WT and the home staff. He acknowledged that it was wrong to take WT to the party without notifying and seeking the approval of the placing authority. However, they had undertaken a risk assessment and the party passed without incident. A video showing WT had been made at the party and photograph stills had been produced showing WT at the party.
54. He also described a similar incident involving RG in October 2015. RG had been placed with the Appellant from July to October 2015. He confirmed that he was aware that there were serious sexual allegations made against RG in respect of alleged incidents which took place in July and September 2015 involving other children.
55. He confirmed that RG had been taken to a staff member's teenage son's birthday party. Whilst RG's mother's permission had been sought, the placing authority had not been notified nor had its permission been sought. RG had later made allegations that he had stayed at Mr Gisanrin's house and there had been a potential incident involving indecent exposure. Mr Gisanrin denied the allegations and confirmed that no further action had been taken in relation to these allegations.
56. This particular incident had led to a revision of the Homes Professional Practice Policy to specifically prohibit residents attending staff member's family events or functions.

57. Mr Gisanrin confirmed that the Appellant had a strong policy against the use of cannabis and would endeavour to ensure that it was not used although he would rather know what a YP was doing rather than the YP undertake such activity secretly. He now thought that his comments to the Inspectors about IS regular cannabis use were due to him mistakenly confusing a rolled up tobacco cigarette with cannabis. This may explain the over reporting of the cannabis use.
58. He could not explain the discrepancies in the records such as the monthly reports not containing details of IS contact with her father or why some reports such as the one he alleges were submitted to the professionals meeting on 17 November 2016 contained details of events which post dated the date on which the report were produced.
59. Furthermore, when asked by Mr Toole as to whether he regretted what had happened over the last few months, he replied that the only thing he regretted was admitting IS to the home.
60. Mr Gisanrin also confirmed that he was shortly to stand down and that a new manager had been appointed and he was in the process of a handover.

The Tribunal's Conclusions with Reasons

61. We concluded that a child, young person or adult maybe at risk of harm if further admissions are allowed and the accommodation is not restricted. Our reasons are set out below.
62. We did not find Mr Gisanrin's evidence to be credible. Our reasons included the fact that he gave contradictory evidence and only changed his evidence when faced with documentary evidence contradicting what he was saying. For example, he was adamant that a monthly report was sent in prior to the placing authority meeting in November 2015. Yet entries post dated the date of the report and these could not be explained by Mr Gisanrin.
63. Furthermore, he placed great reliance on the logbook of the Appellant and the monthly reports which were being submitted to the placing authorities. However, he did not satisfactorily explain why the monthly reports were missing key information such as IS contact with her father and dismissed the logbook entries made by staff where this contradicted his version of events. Mr Gisanrin was also evasive in the replies he gave to the questions that were put to him by the Respondent's legal representative.

64. We were also concerned that despite sitting through the evidence and accepting that he should not have taken WT and RG to staff celebrations without the permission and approval of the placing authority, he personally did not see what had occurred as being wrong. His only regret was admitting IS to the home.
65. Mr Pinnock's version of events also contradicted Mr Gisanrin particularly around the timing of the young person arriving on 22 June 2016. We therefore preferred the evidence of the Respondent as it was clear, consistent and supported by evidence.
66. We concluded that the Appellant allowed contact with a young person's father in breach of bail conditions. We were concerned that IS was allowed to have contact with her father who it was alleged had assaulted her and was subject to police bail. The Appellant was from the 4th April following Mr Gisanrin's attendance at the CP conference aware of the nature of the allegations against the father and was aware that there were bail conditions in placing preventing contact between IS and her father.
67. We agreed with the Respondent that the Local Authority had sent mixed messages up until at least 23 May 2016 about the nature of the bail conditions and we also agreed that it wasn't correct for the social worker to say that contact of any kind with the father could take place. It seemed that no one knew what the bail conditions were, or if they did they did, it was not communicated clearly.
68. However, we concluded that the Appellant should have taken proactive steps to ascertain the nature and extent of the bail conditions, particularly after the 23 May 2016 when it was clear that there was confusion about the bail conditions. In our view it was not sufficient to say that the Appellant relied on what the social worker had told them and had allowed contact on the assumption that bail conditions had been varied. In our view, a responsible children's home would have recognised the serious nature of the allegations and of the need to satisfy themselves of the exact terms of the bail conditions.
69. The situation was also compounded by the fact that despite being told by the Respondents Inspectors on 22 June 2016 about concerns relating to contact, further contact at the home took place on the 4 July 2016. Concerns were again raised at the feedback meeting by the Respondents Inspectors on 7 July but once again contact was permitted on the 17 July 2016, when a phone was given to IS by her father.

70. This demonstrated a complete lack of judgement and in our view placed a child at the risk of harm. As well as placing IS at the risk of further physical harm there was a heightened risk of witness interference. Mr Gisanrin recognised the dangers of a further assault and of witness interference yet seemed to base all the later contact on incorrect assumptions about the bail conditions being varied.
71. We concluded that there was a failure to consult the placing authority regarding decisions, including staff taking young people to staff celebrations.
72. This was accepted in relation to WT and RG. We concluded that taking WT to Mr Gisanrin's daughter's 5th birthday party demonstrated a complete lack of judgement. WT had only been at the home for around 10 days when this decision was made. Whilst the Appellant was not aware of all the 108 accounts of assault or the hostage situation, nevertheless, he was aware that WT had a history of assault and his behaviour was volatile as well as violent. Mr Pinnock, Mr Gisanrin and Mr Akers all conceded it simply wrong to take a child without the notification and consent of the placing authority. Furthermore, there were other young children attending the party and the Appellant failed to appreciate that it was simply not enough to say that a risk assessment had been undertaken or that WT's previous violent behaviour had not involved children.
73. We found it particularly concerning that this was not the first occasion that the Appellant's staff had taken service users to private social events. In October 2015, service user RG, who had allegations of a serious sexual nature involving young children made against him, was taken to a children's birthday party. Once again this was done without consulting or seeking the permission of the placing authority. The result was that RG had made serious sexual allegations involving family members of staff which was investigated by the police but no further action was taken.
74. We were asked by Mr Akers not to treat the RG incident as a main issue, however, given its proximity to the WT issue, we consider this to be part of the bigger picture. We concluded that irrespective of the Appellant's staff's intentions, taking a YP with complex difficulties to private staff celebrations without notifying and obtaining the consent of the placing authority is simply not acceptable. It potentially put the YP, other young children who attended the party and other adults at risk of harm.
75. We were reassured that the Appellants staff now recognised that the approach in the WT and RG matters was wrong but dismayed that Mr Gisanrin believed that this was only wrong because the other "*professionals*" had considered it was wrong.

This approach was symptomatic of the level of judgement at this setting.

76. We concluded that there was the failure to safeguard a YP by allowing a non-resident into the home who then offered cannabis to a YP who is a regular user. We preferred the Respondent's version of events of 22 June 2016. The Respondent's version was consistent and supported by the Appellant's own logbook. Mr Pinnock's evidence was at odds with the logbook entry and we noted that the Appellant's own logbook entry made reference to the young person attending with a cannabis cigarette although we were told by Mr Gisanrin that this entry read Cannabis/cigarette. Given our observations on Mr Gisanrin's credibility, we prefer the evidence of the Respondent's Inspectors who had observed the logbook.
77. We view the incidents above as particularly serious and given our conclusions reached in respect of them, we find that they would constitute sufficient grounds to serve the notice restricting accommodation.
78. We also concluded that we did not believe that children are appropriately safeguarded. The records were not clearly kept. There are a multitude of systems all of whom record the same or similar information. However, the information does not match up. For example, the monthly reports did not match up with the logs. Important information was missed such as the contact between IS and her father. The omission of such significant information was contradictory to what Mr Gisanrin told us in that he believed they authorised such contact. Monthly reports would have alerted the LA to contact issues earlier if it was not omitted. Furthermore, we heard about other example such as the monthly report dated 16 November which contained entries of events which occurred later. This raised serious concerns raised about the Appellants records keeping and as a result we concluded that there was inadequate record keeping.
79. We also concluded there was a lack of boundaries between a young person and the home staff. This was demonstrated through WT doing as he pleased by sleeping in the lounge area rather than the bedroom. We find that he was allowed to smoke with the Appellant's staff and it should not matter, as the Appellant alleged, that these were agency staff. IS was allowed to smoke cannabis including being told to smoke it in the garden as a neighbours had complained. She was also allowed not to attend education lessons she had with her tutor. Furthermore there is evidence that IS only took her prescribed medication on isolated occasions and she was not given a healthy balanced diet".

80. We concluded therefore that a child, young person or adult may be at risk of harm if further admissions are allowed and accommodation is not restricted. We also concluded that the restriction of accommodation is necessary and proportionate for the reasons set out in this decision.

Decision

81. The Appeal is dismissed and the Respondents notice dated 4 July 2016 served pursuant to Section 22B of the Care Standards Act 2000 is confirmed.

**Judge H Khan
Lead Judge Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 18 August 2016