

## Care Standards

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

Heard on 19 May 2017 on the papers

**BEFORE**  
**Mrs M Tudur (Judge)**  
**Ms M Tynan (Specialist Member)**  
**Ms P McLoughlin (Specialist Member)**

[2017] 3008.EY-SUS

**Dorota Malgorzata Czermer**

**Appellant**

**-v-**

**Ofsted**

**Respondent**

### **AMENDED DECISION**

1. This matter was listed for consideration on the papers. That is permissible under Rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended) ('2008 Rules') however, not only must both parties consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case, we have concluded that we have sufficient evidence regarding the allegations made and the conclusions reached after investigations, and there appears to be no substantial factual dispute which might affect our decision. In the circumstances, we consider that we can properly make a decision on the papers without a hearing.
2. The appellant appeals to the Tribunal pursuant to Regulation 12 of the Childcare (Early Years and General Childcare Registers)(Common Provisions) Regulations 2008 (the 2008 Regulations) against the Respondent's decision dated 25 April 2017 to suspend her registration as a childminder on the General Childcare Register for six weeks to 5 June 2017 pursuant to section 69 of the Childcare Act 2006 and Regulation 8 of the 2008 Regulations.

### **Events leading to the issue of the notice of statutory suspension**

3. The appellant became a registered childminder on the 5 July 2011. On 4 April 2017, the Respondent received a concern from a parent which alleged that the children in the Appellant's care were being left unsupervised in a car, were being left with other adults, were left unsupervised for long periods of time at the registered premises and that a six year old child had been force fed.
4. A second concern was received, on the 13 April 2017 that a child had been left with another adult, unsupervised by the Appellant. When the parent queried the position, she was told that the child had been left because of an emergency dental appointment. The parent further reported that the Appellant had required payment in cash and had failed to provide invoices or a contract. When a contract was produced, minded children were left alone unsupervised out of sight and hearing of the Appellant for about 30 – 45 minutes whilst arrangements were made to sign the contract.
5. On the 25 April 2017, Ann Flynn an Ofsted Early Years inspector visited the premises to investigate the concerns. A record of the visit was produced and photographs were taken. On the visit, she found that the Early Years Foundation Stage (EYFS) requirements were not being met in relation to various important areas.
6. The provider was caring for four children in the Early Years age group whilst the requirements state a maximum of three children in that age group can be cared for at any one time.
7. Ms Flynn further found that the Appellant was not meeting requirements in relation to safety and risk assessments as required and numerous hazards were identified on the visit which in the inspector's view severely compromised the safety of children.
8. EYFS requirements were not being met in respect of child supervision because the Appellant confirmed that minded children were left in the care of an unchecked adult and children were not adequately supervised during the inspector's visit.
9. The EYFS requirements were not met in relation to documentation with the provider unable to find the children's register of attendance and registration details.
10. Finally, the Appellant confirmed during the course of the visit that she had spoon fed a six year old in her care and accepted that this "probably " amounted to force feeding.

### **Legal framework**

11. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. 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.

12. 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.”*
13. *“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”.*
14. 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.
15. 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.
16. 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**

17. The witness statement of Ann Flynn signed on the 12 May 2017 set out the circumstances leading to the decision and appended copies of the expressions of concerns, a copy of the evidence report compiled on the 27 April 2017 following the visit to the registered premises on the 25 April 2017, photographs taken at the premises, a copy of the Welfare Requirements Notice sent to the Appellant on the 10 May 2017. In her statement, Ms Flynn confirms in her statement that there is a local authority investigation ongoing, although the date on which it commenced is unclear, however, the investigation will take about two weeks and will assist in informing the Respondent of the necessary steps to take in respect of the Appellant.

18. The witness statement of Kathryn Anne Bell signed on the 12 May 2017 sets out the decision making process leading to the decision to suspend the registration and confirmed that she had reviewed the grounds for the purposes of the appeal and remained concerned that the appellant is not recognising risk to children and that there are grounds to believe that a child in her care will or may be exposed to a risk of harm and appended to her statement a copy of the case review notes dated 25 April 2017.
19. In her grounds of appeal dated 7 May 2017, the Appellant confirmed that she had provided support to the child in eating soup, but that the child had willingly accepted spoonfuls into her mouth and that it was not forced. She further confirmed that she had left a child with an unchecked adult, acknowledging that "...this is against the rules" but that she had left the child in the care of the adult because of a "dental emergency". The appellant confirmed that she does not have locks on the kitchen drawers or cupboards but stated that this was not seen as an issue at the last Ofsted inspection in the summer of 2016. She confirmed that she was caring for four children in the Early Years' age range, but justified this on the basis that one of the children was her own and that she was waiting for the father of her own child to collect her.
20. On the basis of the Appellant's own comments in the grounds of appeal, we conclude that there are sufficient grounds for the Respondent to conclude that the lower threshold that children cared for by the Appellant are or may be exposed to a risk of harm is met. We noted particularly that the Appellant was over numbers on the date of the visit and that a child was left with an unchecked adult whilst the Appellant went elsewhere. The evidence of the inspector that the Appellant's paperwork was missing has not been the subject of comment by her, but if that is correct then time will be required to identify the extent to which the Appellant's justification of the position can be accurate.
21. We conclude that these two grounds alone are sufficient to meet the statutory criteria and bearing in mind the three Judge panel decision in *Ofsted v GM & WM* [2009] UKUT 89 (AAC) where it was confirmed that consideration should be given to the purpose of the suspension. The position in the current case is that the Appellant's suitability is in question and will be considered in the light of the outcome of the investigation. Having noted her admissions, which identified concerns which warranted action to be taken, we conclude that until the investigations of the local authority are concluded, and the Respondent has had an opportunity to provide evidence to support her justification of her actions, the suspension should remain.

## Decision

The appeal is dismissed and the notice of suspension is confirmed.

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

**Date Issued: 23 May 2017**  
**Amended under Rule 44 date issued: 30 May 2017**