

Care Standards

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

Considered on the papers on Tuesday, 20 June 2017

[2017] 3034.EY-SUS

Before
Tribunal Judge T Jones
Specialist Member Mr M Cann
Specialist Member Mrs D Rabbetts

BETWEEN:

Maureen Ferguson

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. The Appellant appeals the decision of the Respondent made on 24th May 2017 to suspend the Appellant's registration from the Early Years Register, the Compulsory Part of the Childcare Register and Voluntary Part of the Childcare Register until 5th July 2017 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').

Paper Determination

2. The appeal was listed for consideration on the papers, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('2008 Rules'). Both parties must consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing.

3. In this case, we have sufficient evidence from both parties regarding the nature of the allegations made and the conclusions reached. In the circumstances, we consider that we can properly make a decision on the papers without a hearing. The Tribunal noted the directions earlier given for submission of documents by the parties no later than noon on 15th June 2017.

Restricted reporting order

4. 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 up to the issue of the notice of statutory suspension

5. This is a summary of events taken from information provided by the Respondent. It is not a full narrative of the documents the Respondent filed with the Tribunal and supplied to the Appellant.
6. The Respondent received details of an allegation made to police by a member of the public that the Appellant had on 23rd May 2017 handled a child in her care roughly and may have slapped the child whilst in her vehicle in a supermarket car park. It was alleged the child was seen to have reddening to his face and was crying when police officers spoke to the Appellant. The Appellant was arrested and interviewed by the police.
7. It was said that the Appellant had tried initially (but repeatedly) to pass off all three children in the vehicle as her children when she was being first being spoken to by police officers concerning the complaint.
8. The police liaised with the local authority and in due course a decision was made by the police (on or about 5th June 2017) that there was insufficient evidence to prosecute as a witness to the alleged events was unwilling to give evidence in court. There are said to be concerns as to the Appellants probity in telling police officers the children were hers; and her attitude towards disciplining children when she is under stress. She told the officers a child had been told on earlier occasions not to touch the cars gear stick and this had caused the car to jerk forward. It was said that she spoke curtly and was aggressive towards the police officers saying they were wasting her time; she was the parent, and she had somewhere else to be.
9. The Respondent submits there is a different burden and standard of proof in any proceedings they may bring. This is the civil standard and not to the higher standard of proof applied in criminal proceedings. The Respondents investigation continues in that witnesses are to be spoken to by the Respondent. More information is awaited from the

police though the Respondent has received at least one police officer's statement.

10. On 5th June 2017 the Respondent received information in relation to another child. This was from a parent who had used the Appellants services from September 2016 up until the time of the incident in the car park. This child was not present on that occasion but the parent became aware of the concerns and police being involved. A written complaint has been received by the Respondent on 6th June 2017 or thereabouts.
11. It is alleged this parent decided to withdraw her child from the Appellants care and provided a written summary of concerns as to her child. He suffers from cerebral palsy has trouble feeding but is usually keen to eat. After having involuntarily spat food over the Appellant's unidentified assistant whilst he was being fed by her on or about 1st March 2017; this child's mother received a number of texts from the Appellant saying her son was declining to be fed, food had to be put in the bin and is alleged to have said how the child's mother should be disciplining her child and she should be ashamed. The Appellant then allegedly began to refuse to change the child when he had soiled himself, the parent would collect him in this condition.

Legal framework

12. 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 person's 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 in relation to regulation 9 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 has filed an appeal application form. It was received on 8th June 2017 by the Tribunal. In summary, the Appellant cannot understand why the Respondent has not lifted the suspension when the police are taking no action. She is suffering financial loss as a result of the continued suspension.
19. Along with the form she also supplied a copy of the notice of suspension, an account of what happened on 23rd May 2017 in the form of her own written statement with photographs of the car seats.
20. We have summarised the Respondents case, but the Appellant should also be assured, we have read in full her representations and detailed statement concerning both matters.
21. In respect of the alleged incident in the car she states that all had not gone to plan in terms of timings on the day in question. She had lost some time in her routine because of a meeting earlier in the day.
22. One of the children had seemingly reached over and engaged the car in gear. When the Appellant started the car it shot forward. The Appellant describes herself as a loud speaking person and she had already told the child not to do this before. She accepted he became tearful and cried when told off. She believes her actions in touching the child seat where the children were have been misconstrued and said this has more to do with her ensuring a seatbelt was engaged than any suggestion she struck any child. The photographs show arm rests on the booster chairs which may obscure seatbelt securing points from view.
23. The police blocked her car in and spoke to her. There was a discussion as to whether one child's face appeared red. The Appellants view is that it was not. She accepted it was very wrong to say she was the children's mother to police officers. She states she is a person of integrity and diligence; she is remorseful about this but they were delaying her so much.

24. The police arranged for the children to be collected by parents. She made arrangements for her own child due home later that day. At the police station she gave her version of events. She got home at 10pm that day exhausted and she couldn't believe all this had happened. She believed things had been blown out of proportion.
25. After this she has lost her clients. She has applied for state benefits; income support is mentioned by her. She explains the impact this has on her finances as a single parent.
26. She concludes in this matter saying the matter is a mountain made from a molehill and has been blown out of proportion.
27. As to the remaining matter, this was put to her by an official from the Respondent on 6th June 2017. The written complaint has been sent to the Appellant as part of the papers circulated for this paper hearing. The Appellant poses a number of questions in terms of this matter: If there were concerns why they were not made earlier? Why are they made only now?
28. She objects to any suspension continuing.

The Tribunal's conclusions with reasons

29. The standard required to justify a suspension is not a high one. During the short period of the suspension, it is for the Respondent to investigate matters to determine if there is a case for longer-term enforcement action, or whether the outcome of the investigation is that there is no longer reasonable cause to believe children may be harmed.
30. We reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts or determining the veracity of allegations in this case which would require a full hearing.
31. There are sufficient concerns to warrant the Tribunal continuing the suspension, some of which have been acknowledged by the Appellant though they are said to be mountains made out of molehills. The Appellant has said it was wrong to seek to mislead the police as to being the parent of the children; the police would just delay her. One police officer was concerned as to the children's safety and has claimed he needed to take action to protect them and other children the Appellant may yet be caring for that day. The second complaint has some similarities to the first in terms of it being alleged she said the child needed discipline. There is an overview that the Appellant is busy, too busy at times, and her comments justifying her actions towards the police who were simply making enquiries may be said to add weight to these allegations.

32. In overview we concluded that we were satisfied that there may be a risk of harm to a child placed in the Appellant's care. Our reasons for doing so included the nature of these allegations, along with concern that it is alleged the Appellant has made representations to the parent of the second child that he ought to be disciplined and she as a parent should be ashamed. .
33. In reaching our decision, we also took into account a range of factors including the Appellant's circumstances, the parents who might use the services and the disputed nature of the allegations. We have taken full account of the Appellant's comments as to the financial consequences of suspension for her and her own child. However, in our view, the nature of the allegations led us to conclude that at this point the action taken is both necessary and proportionate.
34. We reminded ourselves that 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 the suspension is necessary and to conclude its enquiries as soon as possible.
35. We conclude therefore that the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm.

Decision

The decision to suspend registration is confirmed and the appeal is dismissed.

**Tribunal Judge T Jones
Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 22 June 2017