



Care Standards

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

[2017] 3044.EY-SUS

Considered on the papers on
Friday 30th June 2017

Before
Tribunal Judge T Jones
Specialist Member H Reid
Specialist Member W Stafford

Between

Mrs Sharon Margaret Dominey

Appellant

-v-

The Office for Standards in Education, Children's Services and Skills
(Ofsted)

Respondent

DECISION

The Appeal

The Appellant appeals the decision of the Respondent made on 13th June 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 24th 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

1. 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.
2. 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 27th June 2017. The Appellant who now has the benefit of legal representation submitted some further documentation on 29th June 2017. The Tribunal considered it could fairly admit and taken account of the same.

Restricted reporting order

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

1. 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.
2. On 6th June 2017 the Respondent became aware of "serious concerns" as to the Appellant and her husband (who also works at the care place setting) allegedly physically and or emotionally abusing children at the care place setting. The Local Authority Designated Officer (LADO) was notified. It appears further information (written material concerning the allegations) was received on 9th June 2017 such that the Respondent was about to make an urgent visit. Meetings with the LADO and police took place. A decision was made by the Respondent to suspend the Appellant's registration from 13th June 2017 following consultation with these agencies
3. The police became involved and are the lead investigating agency and as such the Respondent has limited or no access to further information at this time, until the police conclude their role in this matter.
4. The police have supplied a brief witness statement from a Detective Inspector confirming that enquiries continue and both the Appellant and her husband are considered as suspects for offences of child cruelty and neglect. Whilst the investigation will be conducted expeditiously some witnesses are very young children who will need specialist

support, and as such it is important to protect potentially vulnerable witnesses and further disclosure could compromise the police investigation.

5. The Respondent on the basis of the information they had believe the suspension is warranted given the concerns they are aware of and in light of the ongoing police investigation.
6. The Respondent continues to closely liaise with the LADO and with the police as to the progress of their enquiries. The Respondent is aware of their duties and to keep the suspension under review.
7. The Respondent immediately acknowledges the Appellant approach has been co operative.
8. Whilst the Respondent has considered the Appellants appeal in this matter the Respondent reminds the Tribunal its role is not to make findings of fact. As the police are the lead agency the Respondent can do nothing to impede the police investigation and must restrict its own investigation at this time to compliance matters. Until a thorough investigation has been made the risk of harm to the required standard remains. The Respondent resists the appeal.

Legal framework

1. 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.
2. 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.”

3. “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”.

4. 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.
5. 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.

6. 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.

Appellant's submissions and evidence

1. The Appellant has filed an appeal application form. It was received on 20th June 2017 by the Tribunal. She asks that the suspension be removed with immediate effect.
2. We have summarised the Respondents case, but equally the Appellant should also be assured, we have also read in full her submissions. They include the most recent information supplied yesterday, as well as the earlier information and testimonials she has supplied. They are from a present and former employee, a local head teacher and many parents holding the Appellant and the care placement in the highest regard, expressing surprise that any allegation would be made out.
3. The Appellant points to the children in her care being her absolute priority. She reminds the Tribunal of considerable achievements over the past 15 years and the outcome of earlier excellent inspections by the Respondent (2009 and 2014). In the later inspection she quotes: "her knowledge and understanding of safeguarding, the practices she has to keep children safe, are excellent".
4. The impact of the suspension is rightly highlighted. This is not only in financial and reputational terms but the Appellant also points to children being pulled out of child care and losing contact with friends, parents being forced to use up their holiday provision to care for their children.
5. The Appellant refers to one of the referees a former employee, having gone to Pengreen University and to be about to graduate in "Working with Children and Families in Early Years Hours Degree". She left in March 2017 to develop further experience. In light of this and to ensure a smooth and positive transition for the new employee another employee was taken on in February 2017. She has been dismissed for gross misconduct at or about the time these allegations were made. A table concerning the Appellant's concerns about this employee and the events leading up to her dismissal have been tabulated and documented by the Appellant.
6. She objects to any suspension continuing.

The Tribunal's conclusions with reasons

1. 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.
2. We reminded ourselves of the 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. When considering the threshold for an order to be made the Tribunal is aware of the police inspector's statement. This suggests there are material concerns such they are obliged to investigate apparently serious allegations.
3. The Tribunal is aware these matters will be contested and it has not lost sight of the fact that the Appellant's approach has been to co-operate fully with the Respondent which is to her credit. The Respondent's investigation, other than as to compliance is effectively on hold. The Respondents officer's are reliant on the assurances given by the police to look into this matter without delay. The Respondent confirms they are ever mindful of their duty to lift the suspension as soon as circumstances permit and they continue to liaise with the other agencies including the police in this regard.
4. Against the required standard, we accept the Respondents submissions made in their reply to the appeal, that there are sufficient concerns to warrant the Tribunal continuing the suspension. We concluded that we are satisfied that there may be a risk of harm to a child placed in the Appellant's care at this time.
5. In reaching our decision, we also took into account a range of factors including the Appellant's submissions, the effects on children and parents who might use the services and the disputed nature of the allegations. We have taken full account of the Appellant's prior inspections, and have seen and read all the glowing testimonials, not only from a head teacher, parents, but also members of staff, past and present. In terms of proportionality the Tribunal has taken account of the financial and reputational consequences of suspension in reaching its decision. However, in our view at this time, the nature of the allegations being investigated by the police led us to conclude that at this point in time the action taken is both necessary and proportionate.
6. 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.

7. In overview and for these reasons, we conclude therefore that at this time the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm.

Decision

8. 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: 04 July 2017