

Care Standards

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

[2018] 3384.EY-SUS

Considered on the papers on
Tuesday, 10 July 2018

BEFORE
Tribunal Judge Melanie Lewis
Specialist Member Ms Lorna Jacobs
Specialist Member Ms Denise Rabbetts

BETWEEN:

Mr Usman Rahim
(Grays Tuition Centre)

Appellant

-v-

Ofsted

Respondent

DECISION

1. The matter was listed for consideration on the papers. Both parties have consented as required under Rule 23 Tribunal Procedure (First tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ('the Procedure Rules 2008'). We are satisfied that we can consider the matter without a hearing. We have a good picture of the background, the allegations made and the risk.

2. The Tribunal also makes a restricted reporting order under Rule 14(1) (a) and (b) of the Tribunal Procedure (First-tier Tribunal) (Health Education and Social Care Chamber Rules 2008 ('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.

The Appeal

3. The Appellant appeals against the suspension dated 15 June 2018 which lasts until 26 July 2018. The concerns were not set out in any detail the

Suspension letter save that *'on 7 June 2018, we received information which raise concerns about your ongoing suitability to remain registered and your ability to safeguard children in your care'*. The concerns are amplified in the subsequent papers.

4. The Appellant is one of five trustees of a charity called the Essex Islamic Academy operated from the Masjid Umar Mosque. In March 2018 Mr Umar Haque who worked at the Mosque where he taught children, was convicted of serious offences relating to terrorism and sentenced to life imprisonment with a minimum term of 25 years. Ofsted learnt that information on 7 June 2018.

5. The Appellant's brother, Mr Hahzad Rahmin was a standby tutor at the Mosque. The registration of his company Essex Learning Centre Limited is also subject to suspension and a separate appeal.

6. The Appellant was registered in May 2012 as an individual providing tuition across a range of educational subjects in a non-domestic setting. He was therefore on the voluntary part of the General Child register, although there were certain benefits for him being registered with Ofsted. This suspension does not prevent him operating, but if he does that, he does so without Ofsted registration and the benefits that flow from it, in particular parents claiming tax credits.

Background:

7. At an unannounced inspection by Ofsted on 7 June 2017, the setting was judged compliant in all areas.

8. At an unannounced inspection on 30 May 2018 the outcomes were not met and three actions was set, namely: –

- i) ensure robust safeguarding policies and procedures were in place. Specific reference having whistleblowing procedures in place.
- ii) ensure effective systems to ensure that any person caring for, or in regular contact with children obtained in advance Disclosure and Barring Service check
- iii) ensure all necessary measures were taken to minimise health and safety risks. The toilets were not in a hygienic state.

Appellant's submissions and documentation:

9. The grounds of appeal are set out in a letter dated 25 June 2018 prepared by Mr Rahim. He states that all the action points were met by 14 June 2018. However, on 15 June one of the directors was contacted and told that the registration with Upstate had been suspended.

10. The Appellant states that he was not an active trustee at the Mosque and had no personal knowledge or contact with the two men convicted and the issue was quickly resolved by the police. All of the trustees had fully complied

with investigations by the local police, attended meetings with the MP and the police were to take no further action. The Charity Commission was working with the charity to make sure that it was complying with all safeguarding issues in the future.

13. Documentation was attached to show that the tutors had now been vetted and their DBS checked. Since inspection on 30 May 2018, an extra paediatric first aider was on the premises so that was a total of three at all times and two temporary staff for emergencies. There was now a whistleblowing policy, for which a copy was attached. One of the directors had also done a course on managing allegations in the children's workforce delivered by the LADO. All tutors were taking an introduction to safeguarding children's courses on line.

Response and key issues relied on to justify suspension

14. The case for Ofsted is set out in a response dated 3 July 2018 and witness statements from Daniela Adams Early Years Regulatory Inspector dated 5 July 2018 and Cheryl Langley dated 4 July 2018 a Senior Officer and the decision-maker.

15. Ofsted described their concerns as 'very significant'. In particular despite being a trustee at the Mosque, where extremely serious offences were committed by an employee, the Appellant was still failing to carry out appropriate checks on his staff at his Ofsted registered childcare setting only two months after the conviction of Mr Haque and another man with a connection to the Mosque.

16. They identified the primary risk as children being at risk of emotional harm because of radicalisation. The Charity Commissioner had placed an external independent manager to oversee the functions of the Mosque with a prohibition on offering educational provision. The Appellant only notified Ofsted of the investigations in May 2018, so after the investigation had started and the conviction. The Appellant had not notified the Charity Commissioner and other agencies that he was registered with Ofsted.

17. Ofsted had liaised with the Charity Commissioner and the police and had evidence that children as young as six have been significantly traumatised by being exposed to videos of extreme violence. The Appellant appeared not understand his responsibilities to follow safeguarding procedures.

The Law

18. The test for suspension is that the Chief Inspector has grounds to conclude that continued provision of child care by the registered person to any child may expose such child to a risk of harm. That is set out in Regulation 9 of the Child Care (Early Years and General Child Care Registers), Provisions Regulations 2008.

19. 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, for example impairment suffered from seeing or hearing the ill treatment of another.

20. The burden of proof is on the Respondent to show that 'there is reasonable cause to believe' is established. The standard lies somewhere between the balance of probabilities and 'reasonable cause to suspect'. Belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information believes that a child might be at risk. We must look at whether the condition is both necessary and proportionate.

Consideration

21. We have balanced a number of factors. Ofsted has moved to investigate this case in a timely matter and promptly liaised with the Police and the Charity Commissioners who have provided them with a Statement of Reasons pursuant to section 86 of the Charities Act 2011 giving reasons why an interim manager was appointed at the Mosque. The Trustees due diligence of prospective staff working with children was criticised.

22. Ofsted also promptly carried out an unannounced inspection of the Appellants premises, where he attended and they were able to ask him a number of questions, recorded on the interview template. His recorded answers show that he himself recognised that he was not compliant with what are minimum requirements.

23. There is an ongoing investigation which is active. This should include an in-depth interview with the Appellant. The Response refers to further concerns at the tuition centre of other personnel involved with the setting, which Ofsted was unaware of, who have not been vetted. This needs to be investigated.

24. It appears that the tuition centre is one of the Appellants economic activities. The Inspectors saw that it was used by 80+ children per week who appeared engaged in learning but the centre may still operate while suspended, although parents will not be able to claim a tax credit.

Conclusion

25. We have looked at the strength of the evidence around the Appellant but we are not making any findings at this stage. The Appellant has put his case in a manner that responds to the immediate concerns around lack of compliance. Before the suspension notice was issued, he was taking action to bring the setting into compliance by the due date of 14 June 2018 but this does not address the larger issues about his understanding and appreciation of keeping children safe. In particular, despite the very serious issues that arose at the Mosque and the trustees being criticised by the Charity Commissioners

for failing to make proper checks on staff, he did not make sure that his own setting was compliant with what are minimum requirements.

26. 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.

27. The Tribunal is aware these matters may well be contested or the parties reach a resolution. At this point we find a reasonably held underlying concern as to safeguarding issues on the part of the Appellant.

28. Essentially for the reasons set out in the Response, we find the burden of proof has been discharged. The risk is of a child suffering emotional harm because of radicalisation. Also by his failure to notify Ofsted of the investigations at the Mosque or notify the Charity Commissioners and other agencies that he was registered with Ofsted combined by this lack of compliance the Appellant has not demonstrated he understand the risks to children and the need to safeguard them. 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. At this point suspension is both proportionate and necessary.

29. 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

The appeal against the interim suspension is dismissed. The suspension continues.

**Tribunal Judge Melanie Lewis
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 13 July 2018