

Care Standards

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

[2018] 3373.EY-W

Judge G K Sinclair
Specialist member C Joffe
Specialist member D Rabbetts

Ms Julia JONES

Appellant

-and-

THE WELSH MINISTERS

Respondent

DECISION FOLLOWING A PAPER DETERMINATION

The appeal

1. The appellant childminder appeals against the decision of the Welsh Ministers (acting through Care Inspectorate Wales (“CIW”)), originally dated 21st June 2018, to cancel her registration as a childminder. Unusually, for a cancellation appeal, the appellant was content that it be dealt with on the basis of the parties’ written evidence and submissions only.
2. Another unusual factor is that on the same day as she sought to appeal the Notice of Cancellation (25th June 2018) the appellant submitted some late written representations objecting to the original Notice of Intention dated 22nd May 2018. By order dated 6th June 2018 Judge Habib Khan granted a stay so that the respondent could properly consider the appellant’s representations. Following the preparation of a detailed report rejecting the objection and upholding the Notice of Intention the respondent then issued a further Notice of Cancellation dated 25th July 2018, and the appeal proceeds against that Notice instead or as well.
3. Please note that as certain children are named in documents filed in connection with this appeal the tribunal makes a restricted reporting order under rules 14(1)(a) & (b) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any children concerned in this case either directly or through the identification of their parents.

Background

4. On 16th January 2006 the appellant was registered as a childminder for a maximum of ten children under the age of twelve. In 2015 she was suspended when, following a tip-off and an unannounced inspection, it was discovered that she had a new domestic partner living on the premises. Not only had she not notified the Welsh Ministers of this change of circumstances but, despite knowing that he had a criminal record, she had failed to apply for an up-to-date DBS check.
5. In 2016 and 2017 there were various other issues in relation to lack of safeguarding, and in 2016 four non-compliance notices were issued in relation to fire safety, an unguarded pond in the garden to which minded children had access, and a failure to keep adequate records.
6. In March 2017 the appellant failed to notify the Welsh Ministers that her new domestic partner GH (although he was not then living at the premises) had been arrested for engaging in conversation of a sexual nature on social media with a person he believed (wrongly) to be only fourteen years of age. It was alleged that he had asked for intimate photos of her and attempted to meet with her. His female correspondent was in fact aged twenty six, and she reported him to the police.
7. On 2nd August 2017 the appellant allowed GH to move in to live with her on the premises. Despite regulations requiring her to do so [see below], the appellant failed to notify the Welsh Ministers of this change in circumstances and did not apply for a DBS certificate until 28th September, eight weeks later. When this was eventually received by her on 31st January 2018 she waited a further five weeks before sending it to CIW. This was despite the police contacting her in December 2017 and informing her that amongst the information disclosed by the Chief Constable were :
 - a. A caution for battery in 2014
 - b. That he had been arrested on suspicion of rape in 2015.¹
8. When both GH and the appellant were separately interviewed by officers of CIW in April 2018 he indicated that she was already aware of the content of his DBS certificate, while she affected an air of unconcern. She did not believe that anything in it identified any risks with regard to her being a childminder, and the delay in sending the certificate to CIW was simply because she “had not got round to it”. She also admitted that she had been minding some children while suspended, but that this was for less than two hours and so was permitted. She intended to continue.
9. Following service of a Notice of Intention to Cancel on 22nd May 2018 the appellant waited until after the 28 days before submitting a written objection on 25th June 2018. This was referred to a senior CIW officer at a different office for review. The objection was dismissed, with Ms Gahan deciding [at D99] that :

Having considered all the available evidence I have concluded that I

¹It should be stressed that neither the alleged rape nor the sexting with a “fourteen-year-old” resulted in any charge being laid, let alone a conviction

cannot be satisfied that you have sufficient competence and skills to run your child minding business in compliance with Regulation 9(1)(b), or that you have acted with sufficient integrity and good character in line with Regulation 6(3) and Paragraph 2 of Part 1 of Schedule 1.

10. The appellant appeals on the basis that she is a good childminder, that she has covered all safeguarding issues, that the children were never at risk and she would never place them at risk. As her partner GH had not been charged and the Chief Constable had not sought to make any recommendations about his activities she did not see there to be a safeguarding issue, so she carried on as normal.
11. In the period leading up to the tribunal meeting to reach this determination there was a series of case management hearings. Due to the distances involved these are always dealt with by telephone, yet on two occasions (3rd September and 26th October 2018) the appellant declined to attend by calling in.

Applicable legal provisions

12. As this is a Welsh case the issues of childminding and day care for children are devolved issues and the relevant legislation is therefore the Children and Families (Wales) Measure 2010. Childminding is governed by Part 2. Cancellation is dealt with in section 31, and certain procedural safeguards are set out in section 36. That latter provision requires the Welsh Ministers, if minded (inter alia) to cancel a childminder's registration, first to give notice to the registered person of that intention, of their reasons why, and of the person's rights under the section. These rights are to notify the Welsh Ministers of his or her intention to object to the proposal, which can be given orally or in writing.
13. Having issued the Notice of Intention, no decision can proceed until at least 28 days have elapsed and, if notice to object has been given, opportunity is given for that objection to be made. When a Notice of Decision is issued cancellation cannot take effect until the expiry of the time within which an appeal may be brought (under section 37), or if such an appeal is brought, the time when the appeal is determined and the cancellation is confirmed.
14. The grounds for cancellation appear in section 31, which provides (inter alia) that:
 - (1) The Welsh Ministers must cancel the registration of a person registered under this Part if it appears to them that the person has become disqualified from registration under section 38.
 - (2) The Welsh Ministers may cancel the registration of a person registered under this Part if it appears to them that any of the following apply—
 - (a) the requirements for registration that apply in relation to the person's registration under section 25² or 27 have ceased, or will cease, to be satisfied;
 - (b) ...

²By section 25 these may include requirements relating to the applicant, the premises on which the childminding is to take place, the arrangements for childminding on those premises, any person who may be caring for children on those premises, and any person **who may be on** those premises

- (c) the person has failed to comply with a requirement imposed on that person by regulations under this Part;
 - (d) ...
 - (3) ...
 - (4) A cancellation under this section must be in writing.
 - (5) The Welsh Ministers may prescribe other circumstances in which the registration of a person registered under this Part may be cancelled.
15. Section 37 makes provision for appeals to the First-tier Tribunal and by subsections (3) and (4) states that on an appeal the tribunal must either confirm the taking of the step, the making of the other determination, the making of the order, or the giving of the notice (as the case may be), or direct that it does not have, or ceases to have, effect. Unless the tribunal has confirmed (in this case) the cancellation the tribunal may also impose conditions on the registration of the person concerned and/or vary or remove any condition previously imposed on the person's registration.
16. The material regulations made under the above Measure are the Child Minding and Day Care (Wales) Regulations 2010. In this case the Welsh Ministers rely upon regulations 6(3) and 9(1)(b), although regulations 20 and 31 and paragraph 10 of Schedule 4 are also material.
17. Regulation 6 deals with the issue of suitability of (in this case) a childminder for a child under the age of 12, and states that a person is not suitable unless the person satisfies the requirements set out in paragraph (3), viz:
in relation to child minding —
- (i) the person who acts as child minder satisfies the requirements prescribed in paragraphs 2 to 7 of Part 1 of Schedule 1; and
 - (ii) there is full and satisfactory information or documentation available in relation to that individual in relation to each of the matters specified in paragraphs 2, 16 and 17 of Part 1 of Schedule 2.
18. The Welsh Ministers rely in particular upon paragraph 2 of Schedule 1 :
The applicant is of suitable integrity and good character to look after children under the age of twelve.
19. Regulation 9 sets out some general requirements for registered persons. The Welsh Ministers rely upon regulation 9(1)(b). Paragraph (1) reads as follows :
- (1) The registered person must, having regard to—
 - (a) the statement of purpose, the number and needs (including any needs arising from disability) of the relevant children, and
 - (b) the need to safeguard and promote their welfare, act as a child minder or provide day care (as the case may be) with sufficient care, competence and skill.
20. Regulation 20 deals with safeguarding and welfare. Paragraphs (2)–(4) provide:
- (2) The registered person must ensure that every person who has attained the age of 16 and who—

- (a) lives on the relevant premises;
 - (b) works on the relevant premises (other than a person mentioned in regulation 28); or
 - (c) is otherwise present on the relevant premises and has or is likely to have regular contact with relevant children, is suitable to have contact with children.
- (3) For the purposes of paragraph (2), a person who works on the relevant premises includes a person who works on a voluntary basis.
- (4) The registered person must confirm to the Welsh Ministers that in respect of each person mentioned in paragraph (2) —
- (a) where appropriate, an enhanced criminal record certificate has been issued; and
 - (b) where appropriate, the person is registered with the DBS and that the person has provided the DBS registration number to the registered person.
21. The material parts of regulation 31, which concerns the provision of information, can be found at paragraphs (1) and (2):
- (1) A registered person must notify the appropriate office of the occurrence of any of the events set out in Schedule 4 and must at the same time provide the Welsh Ministers with any information specified in that Schedule in respect of that event.
 - (2) Notification must be made—
 - (a) where it is reasonably practicable to do so, in advance of the event occurring; and
 - (b) in all other cases as soon as reasonably practicable, but not later than 14 days after the event has occurred.
22. Paragraph 10 of Schedule 4 (events to be notified to the Welsh Ministers) refers to any other significant event which is likely to affect the welfare of any child on the premises.

Written evidence

23. The evidence submitted on behalf of the Welsh Ministers comprises three statements by CIW officers :
- a. Paula Seamarks (a Team Manager Child Care and Play based at the North Wales office at Llandudno Junction)
 - b. Joanne Cubberley (a Regulatory Inspector based at the same office); and
 - c. Janette Gahan (an Inspection Team Manager based at the Merthyr Tydfil office), who dealt with representations made by the appellant in response to the initial Notice of Intention by producing an extremely detailed report answering each point.
24. On 12th October 2018 the appellant belatedly submitted a document described as her “Final written submissions”, but filed no witness statement. Instead, she provided nine written character references. As three are dated April 2015 (perhaps relevant to her then suspension) and the others are undated (but one refers to her latest suspension) it is perhaps unsurprising that none address the issues of non-compliance with DBS requirements, or about GH. Her written

objections to the Notice of Intention, dated 20th June 2018 but not received by CIW until 25th June, are exhibited to Ms Gahan's statement at pages D89–92.

Discussion and findings

25. The tribunal repeats its surprise that an appeal against a decision so fundamental as the cancellation of registration is being dealt with on paper, although if the insurance cover available to the appellant does not cover the costs of legal representation then that is unfortunate. However, that does not explain her unwillingness to co-operate with the tribunal, or the rather blasé attitude adopted in interview with CIW officers in April 2018 when she claimed not to have read GH's DBS certificate, even though the police had taken the trouble to contact her about its contents in December 2017 and give her forewarning about what would appear on the certificate. This was also despite GH saying in interview, when asked for permission to reveal its content to her, that she was already aware of what it said.
26. The tribunal also notes that, when interviewed by CIW in March 2017 about an ongoing investigation by Flintshire Social Services Department into GH's sexting allegation, she asserted that he was not living at her home but (despite bail conditions preventing him from contacting anyone under the age of twenty one) it was her decision whether to invite him there, and later – beyond saying that he lived at "the pub down the road" – refused to cooperate by providing his then current address.
27. It is matters such as these, the very delayed application for a DBS certificate for GH in September 2017, and the further five week delay in forwarding a copy to CIW after it was received in January 2018, that contribute to Ms Gahan's and the Welsh Ministers' belief that the appellant has not acted with sufficient integrity and good character to look after children. In her objection to the Notice of Intention, at D92, she says that
I had the DBS certificate in an envelope. I just hadn't got round to going to the post office (sic).
28. She goes on to say that in the twelve years that she has been a childminder she has had no accidents or incidents until now. However, she ignores the fact that in 2015 she was suspended for a similar DBS issue and in November 2016 was served with four non-compliance notices. On inspection in late January 2017 she remained non-compliant. She was then interviewed in March 2017 about GH, was alleged in May 2017 to have left a nine-month-old baby with an unregistered person, and then there were the final DBS issues when GH moved in.
29. The character references, mostly over three years old, do highlight her good works on the local council and as a school governor, which make her attitude as displayed in this case – and her repeated relationships with men having criminal records, all the more disturbing.
30. It is clear to this tribunal that following her failure to apply promptly for a DBS certificate for her then partner in 2015, which she admitted was an oversight and resulted in her suspension, it is astonishing that the appellant should take

such a casual approach when the allegations concerning GH were drawn to her attention in early 2017, and again in August when she invited him to move in with her at the relevant premises.

31. The Welsh Ministers also rely upon the safeguarding concerns identified in late 2016, and her admission in interview in March 2017 that she had only the vaguest grasp of the legal position concerning her safeguarding obligations [D77], but the DBS issue and a failure to recognise that the allegations of rape and sexting – at the stage when she learnt that they were live investigations – do raise safeguarding concerns that she ought to have reported to CIW.
32. Applying due consideration to the explanations offered and the evidence as a whole, the tribunal upholds the Welsh Ministers' decision to cancel the appellant's registration.

FOR THE ABOVE REASONS IT IS DETERMINED THAT:

1. The appeal against the Notice of Decision to Cancel Registration dated 24th July 2018 be dismissed.
2. The tribunal makes a restricted reporting order under rules 14(1)(a) & (b) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the children in this case either directly or through the identification of their parents.

Graham Sinclair
First-tier Tribunal Judge
Health Education and Social Care
Care Standards

Date issued 19th November 2018