

First-tier Tribunal Care Standards

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

**NCN: [2021] UKFTT 404 (HESC)
[2021] 4436.EY-SUS**

Heard by Video Link on 11 November 2021

BEFORE

**Ms S Iman (Tribunal Judge)
Ms Heather Reid (Specialist Member)
Mr Paul Richardson (Specialist Member)**

Heather Louise Bone

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. Heather Louise Bone ("the Appellant") appeals to the Tribunal against the Respondent's decision dated 08 October 2021 to suspend her registration as a childcare provider on the Early Years Register in respect of both the compulsory and voluntary parts of the Childcare Register for a period of six weeks until 18 November 2021 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').
2. The Tribunal made 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 any children or their parents in this case so as to protect their private lives.

Hearing

3. The hearing took place on 15 October 2021. This was a remote hearing which has not been objected to by the parties. The Tribunal, having reviewed

the hearing process was satisfied that both the parties and the witnesses were able to give their evidence and submissions to the Tribunal and they were able to hear the proceedings satisfactorily and that the proceedings had been fair and just.

Attendance

4. The Appellant was represented by Mr Wilkin Solicitor. The Appellants witnesses that were called and gave evidence on behalf of the Appellant were Mr Timothy Bone, Dr Grimbley, Dr Fussey and Mr Frank Harrison.
5. Ms Sukhveer Kandola Counsel represented the Respondent and the Respondents witnesses were Ms Stephanie Nixon, Early Years Senior Officer ('EYSO').

Late Evidence

6. The Tribunal received the following late evidence, Witness Statement from Susan Crawford dated 04 November 2021, a supplementary witness statement from Heather Bone dated 04 November 2021 and a witness statement from Stephanie Nixon 09 November 2021
7. There was no objection for either party regarding the admission of the late evidence and it appearing to the Tribunal to be necessary to the proper determination of the appeal to admit it, the Tribunal admitted the above under Rules 5(3)(d)/15(2) as it considered that it was relevant and in the interests of justice to do so.

Background

8. The Appellant has been registered as a childminder since October 2002. She has had four inspections between the period 2005 -2019 and the overall judgement was "good" on each occasion.
9. On 06 October 2021, Ofsted received concerns from the Local Authority Designated Officer (LADO). An allegation had been made by Child A, a child that was previously minded by the Appellant. The disclosure of this allegation had taken place at the child's school.
10. Child A (aged 9), alleged the Appellant had "whacked" him hard on his arm, got his arms and pinned him down by the shoulders whilst the Appellant let his sister "whack" him, lifted him by his head and put him in the corner of the kitchen, carried him by his head and hit his hand.
11. A case review was held in the late afternoon on 07 October 2021 and a decision was made by Senior Officer Stephanie Nixon, to suspend the registration of the Appellant. The Appellant was subsequently contacted by telephone to inform her that her registration would be suspended from 08 October 2021. A suspension notice was then served on the Appellant also on 08 October 2021. The Appellant lodged her appeal on 21 October 2021.

12. There remains an ongoing police investigation in relation to the allegations and arrangements have been made to meet with the complainant and his family to obtain full accounts. The police have an investigation open in relation to the allegations. Arrangements have been made to meet with child A and his family to obtain full accounts. The police have indicated to Ofsted that they will be interviewing Child A regarding this matter on 13 November 2021. The police have also indicated again to Ofsted that they plan on interviewing the Appellant the following day.
13. The Respondent submitted that the grounds for suspension are met. Ms Kandola on behalf of the Respondent reminded the Tribunal that test was a low one – whether children *may* be at risk of harm.
14. She submitted that due to the seriousness of the allegation made about the Appellant, that she is alleged to have exposed a child in her care to physical and emotional harm on more than one occasion, there were properly held concerns about the Appellant's inability to safeguard children in her care and that there existed a clear safeguarding risk to children. She submitted that suspending the registration was an appropriate and proportionate step to take in the circumstances at this particular time.
15. Mr Wilkin submitted that an objective analysis of the evidence points to the risk of children in the Appellant's care coming to harm being extremely small. The Appellant has an impeccable track record. All of the parents of the other children in her care support her and there is compelling evidence to suggest that the rather vague allegations against her have not been raised in good faith.
16. Mr Wilkin explained that the allegations against the Appellant are vague as there was lack of detail around them including information about when they may have occurred.
17. He explained that there was no evidence before the Tribunal that substantiated that there had been any physical harm to Child A. He explained that in his view Ofsted had failed to balance all the factors and if that balancing exercise was undertaken then the matter would fall heavily in favour of lifting the suspension immediately and that Ofsted had erred in failing to conduct a balancing exercise and failing to apply the requirements of the regulations.

Legal framework

18. The statutory framework for the registration of childminders is provided under the 2006 Act. 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.
19. 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.”

20. *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”.

21. 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.

22. 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.

23. 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*’.

24. Accordingly, the threshold is not an especially high one, and it does not require us to make findings of fact about what has happened. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the relevant information, would believe that a child might be at risk. We need to consider the position as at today. Even if the threshold of the regulation is met, we need to consider whether a suspension is necessary and proportionate.

Evidence

25. We had regard to all the evidence that was presented in the bundle and what was presented to us at the hearing. We reminded ourselves that we are not making findings of fact at this stage and we summarise some of the oral and written evidence briefly, highlighting the key points. We wish to make it clear that the following is not intended to be a transcript of the hearing

26. Ms Nixon is employed by Ofsted as an Early Years Senior Officer (‘EYSO’) and has been in this post since 1 September 2019. She had provided detailed statements with appendices that included the case reviews in respect of her dealings with this matter.

27. Miss Nixon explained in her evidence that her assessment of the risk of harm

to children remain unchanged since the initial decision was made to suspend the Appellants registration. She explained the allegations were serious and that there was a live ongoing police investigation. The allegations also stated that other children had witnessed some of the incidents. She explained that it was important that the police investigation was not impacted in any way and should be allowed to progress.

28. She explained that during the case review, she considered the Appellant's history, including the fact that she has had four 'good' inspections and no complaints or concerns since she was registered as a childminder. However, due to the nature of the allegations received by the LADO and the intention of the police and social services to pursue the concern she made the decision to suspend the registration of the Appellant.
29. She considered that the threshold for suspension is currently met as the information indicates that the continuation of care could place children at risk of potential physical and emotional harm. The continuation of care by the Appellant could also impact on impending investigations by the other agencies involved, who had expressed that they wished to interview the child and possibly other children who may have witnessed the incident.
30. Ms Nixon took care to explain that Ofsted had only received limited information from the police. She explained that she was aware that the child had alleged that during their time in the Appellant's care the child was 'whacked' if they were naughty and had been hit hard on their arm by the Appellant. The child stated that if they whacked their sister then the Appellant would hit them hard on the arm.
31. The child referred to another child in Year 6 being aware that the Appellant 'hits children'. The child also alleged that there was a time when they were fighting with their sister and the Appellant got his arms and pinned him down by the shoulders and let his sister 'whack him super hard'. The child alleged another time when they were being silly at the table and the Appellant 'got angry' and lifted him up by the head and put him in the corner of the kitchen. The information provided by the child states that the child's mother had spoken to the Appellant about this incident, who said she had not touched the child.
32. The child alleges that both of their sisters had seen the incident and they then told their mother that they had seen the Appellant carry the child by the head. The child alleges that there was one time that they went to Beavers after school club and their hand was hurting after the Appellant had 'whacked it'. No dates had been provided regarding these incidents.
33. Ms Nixon explained that she has been advised that an interview with Child A is intended to take place on 13 November 2021 and with Appellant on the 14 November 2021. The Detective Inspector confirmed to Ofsted that the allegation therefore remained 'under investigation' by the police. She acknowledged as a Senior Officer that it was her continual duty to review suspensions and any new information which may be presented. The

significance of the allegations is such that to allow the continued care of children by the Appellant could place children at risk of harm. Ofsted will continue to monitor the suspension but Ofsted are not in a position to gather any further evidence or investigate the matter at present as the matter was with the police who are still the lead agency.

34. She also explained that she had regard to the positive testimonials in the bundle in respect of Appellant, but they did not impact on the decision to suspend as these individuals were not aware of the specific details of the allegation and the nature of the police investigation. She was clear that lifting the suspension could expose other children to risk of harm.
35. She was clear that having considered all the evidence in the bundle her current view regarding the risk of harm remain unchanged. Ms Nixon explained that at the end of the initial six-week suspension which was on the 18 November a case review would occur.
36. Ms Crawford' LADO manager in her witness statement had detailed the record of a conversation the Appellant had with her on the 11 October. The Appellant explained that she thought the allegation related to a boy who she had looked after for a while, with his 2 younger sisters. She said that she had stopped him hitting his sister but did not recall exactly when it was and that he was often aggressive to his sister. could be unpredictable. She said she had given them notice on 1st October 2021 regarding her contract to look after him.
37. The Appellant gave evidence to the Tribunal and explained that she had been a registered childminder since 2002. She re-iterated that she had had no previous allegations or complaints made about her in the 19 years that she had been a childminder.
38. She explained that it was only when she received the OFSTED response to her appeal dated 28 October that she became aware of the nature of the allegations that a 9-year old child had alleged that she had physically assaulted him and manhandled him whilst he was being cared for.
39. The Tribunal were made aware that she first began to look after Child A in early 2019 when he was aged about 7. Child A frequently behaved in an unpleasant fashion towards his sister. He would shout at her, poke her, pulled her hair and was generally unpleasant towards her, often making her scream and that she had discussed this behaviour with Child A's mother. His behaviour began to deteriorate and matters came to a head on Friday, 1 October 2021 and she decided to cancel the contract because of his behaviour. The decision to cancel the contract upset Child A's mother as demonstrated by the text messages she had forwarded to the Tribunal.
40. She explained that text messages that she had forwarded were genuine messages. She accepted that the allegations were serious but maintained that nothing had happened and her innocence. She explained that she had indicated to the police that she was happy for a voluntary interview to occur

but no one had called her for an interview. The first time that she was aware that she was to be interviewed on the 14th November 2021 was at the hearing from Ms Nixon's evidence.

41. She explained that she had good relationships with the families that she worked with including the mother of Child A as far as she was aware. She initially agreed that the parents were her friends but later clarified that she was did not mean that she was personal friends with the parents as she did not socialise with them.
42. Mr Bone gave evidence to the Tribunal and explained the emotional impact that the allegation had had on his wife. He explained that the family were doing their best to support her. His evidence included the information that during the summer of 2021 during the school holiday's Child A's behaviour deteriorated considerably.
43. The Appellant was struggling to cope with his aggressive and abusive behaviour towards his siblings. When the Appellant mentioned this to the mother the response was that "she was struggling" and that "he takes after his father" and "hopefully it will get better once they go back to school.
44. When the Appellant cancelled his child- minding contract she felt that she had let him down, even though she had done her best to overcome his behaviour.
45. Dr Grimbley attended and gave character evidence in support of the Appellant. He explained that he had provided his statement in the capacity of a parent who used her child-minding services . He explained that he was a paediatric consultant and that he had noticed that the allegations had had a significant impact on the Appellant. He explained that she was clearly devastated by the allegations and that it had caused her considerable anxiety and upset. He explained that the *anxiety was not abating* and he was saying this as observations he made as a friend. He also agreed that they were serious allegations that had been made and accepted that he didn't know any of the details of the allegation nor was able to comment on them.
46. Mr. Frank Harrison also attended and gave character evidence to the Tribunal. He also discussed the emotional impact the allegations and the suspension had had on the Appellant. He explained how his grandchild would be looked after by Miss Bone. He accepted that he didn't remain on the premises when dropping his grandson off and additionally also accepted that the allegations were serious.
47. Dr Fussey also gave character evidence to Tribunal and explained that she was not Ms Bone's GP .She did explain that she did have patient's where she has had to assess their mental health and in her view the Appellant was in shock and found the whole circumstances incredibly upsetting and that it was very clear to her that this was difficult. She described her as caring and loving and genuine and was unsure how she would get over this emotionally in years to come.

The Tribunal's conclusions with reasons

48. We have carefully considered the written and oral evidence and submissions and we have borne in mind that a suspension must not involve fact-finding in respect of the allegations or be a pre-judgement. We have balanced a number of factors and had regard to all the evidence in the round and we concluded that we were satisfied that there may be a risk of harm to a child placed in the Appellant's care.
49. Our reasons include that from the details given that the allegations could lead to criminal charges. We accept that the allegation is serious and if proved indicates that children for whom child minding is provided, are at risk of harm.
50. We also have borne in mind that parents place significant trust in a childminder when they place their children in their care. Parents are entitled to expect a high standard of integrity from those they entrust with the care of their children and the allegations are in our view serious as they relate to repeated assaults on a child whilst in the care of a child-minder.
51. We have also taken into account that the Appellant has provided a child-minding service for many years and we have heard from parents who still wish to use her services despite the allegations that have been raised.
52. However, this is a case where the police investigation remains live with police interviews to be completed with the Appellant and Child A in the coming days. We note from Ms Nixon evidence that OFSTED will initiate their own investigation in due course but that it cannot commence until such time as police indicate it appropriate and/or the police investigation is concluded in order to avoid any prejudice to police enquiries. We noted Ms Nixon's undertaking to keep abreast of the development of any police enquiries and keep the matter under review.
53. We have noted the length of time the enquiry has been in hand and have acknowledged any delay. We accept the enquiry is neither frivolous nor that the allegations are bound to fail.
54. We have also as part of our balancing exercise around proportionality had regard to the fact that there were a number of testimonials in the bundle, which commented on the care and professionalism the Appellant had demonstrated towards the children in her care and some detailed her role in the community. A number of those testimonials, as well as the witnesses that attended to give oral evidence, also explain that they are not aware of the specifics of the allegations.
55. We have also borne in mind that the Appellant has strongly and consistently contested the allegation and has provided evidence to us that she considers it is unfounded and that she has engaged with the agencies throughout.
56. It was clear to the Tribunal that the allegations being made have had a significant impact on the Appellant. She was visibly upset when giving

evidence to the Tribunal. The Tribunal have therefore had careful regard to the impact of a continued suspension on the Appellant both emotionally and financial, however, the Tribunal notes that the investigation continues and interviews will be taken from those involved which may include other children as witnesses and therefore it is neither possible nor appropriate at this stage for us to reach a conclusion about the underlying allegations and/or the motivations behind them at this stage. Therefore, on balance, any impact on the Appellant is outweighed by the concern that allowing continued provision of child minding, may expose a child to risk of harm.

57. Following our conclusions about the seriousness of the allegation and the ongoing police enquiry, we conclude there is reasonable cause to believe that continued provision of child minding by the Appellant may expose a child to risk of harm. We accept that the suspension is necessary and proportionate to allow time for circumstances giving rise to allegations to be investigated and its continuation is appropriate.

Decision

The decision dated 08 October 2021 to suspend the registration of Mrs Heather Bone is confirmed and the appeal is accordingly dismissed.

Judge Iman

First-tier Tribunal (Health, Education and Social Care)

Dated: 17 November 2021