

First-tier Tribunal Care Standards

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

**[2022] 4623.EY-SUS
NCN: [2022] UKFTT 225 (HESC)**

Hearing held via CVP

Before

**Tribunal Judge Ian Robertson
Specialist Member Dorothy Horsford
Specialist Member Elizabeth Walsh-Heggie**

Kadidia Diomande

Appellants

-v-

OFSTED

Respondent

DECISION

REPRESENTATION

The Appellant represented herself

OFSTED were represented by Miss Wendy Gutteridge (solicitor)

DECISION

NATURE OF THE HEARING

1. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was remote via Video. A face to face hearing was not held as it was not practical and nobody requested

it. All issues could be determined in a remote hearing. Due to the nature of the hearing (see below) we considered that this was fair and reasonable in the circumstances.

LATE EVIDENCE

2. We accepted late evidence from Ofsted in the form of a statement from Josephine Afful from Ofsted attaching minutes from a meeting held by the Royal Borough of Greenwich to consider allegations against Ms Diomande. As this was simply minutes of discussion and had no forensic evidential value we allowed the minutes in as a record of that meeting only.

THE APPEAL.

3. This is an appeal dated 27 June 2022, brought by Ms Diomande against the decision of OFSTED to suspend her Child Minder registration pending further investigation to 6 August 2022. The appeal is brought under the Childcare (Early Years and General Child care Registers (common Provisions) Regulations 2008.

12.—(1) A registered person whose registration has been suspended under regulation 8 may appeal to the Tribunal against the suspension.

(2) On an appeal under paragraph (1), the Tribunal must either—

(a) confirm the Chief Inspector's decision to suspend registration, or

(b) direct that the suspension shall cease to have effect.

THE BACKGROUND

4. Ms Diomande was first registered as a Childminder on 27 September 2010 at her last inspection on 14 October 2016 she was rated as

outstanding. On 13 May 2022 Ms Diomande's 16 year old son attended school with a bloody injury to his forehead. The boy told the police that his mother had hit him as a result of his refusing to mop the floor, A S47 (Children Act 1989) child protection investigation was started by the LA, the Royal Borough of Greenwich, and her other children aged 13, 9 and 5 were interviewed by the police. They alleged that this was not an isolated incident and that their mother frequently hit them (see E mail from police as JA2 setting out details of the allegations)

5. On 18 May OFSTED suspended her registration until 28 June 2022 pending further investigation. On 27 June that suspension was continued until 6 August and that is the subject of this appeal.

THE LAW

6. By S69 Childcare Act 2006 power is granted to make regulations governing the suspension of registration for, inter alia, Child minders. The relevant Regulations are the Childcare (Early Years and General Child Care Registers (Common Provisions) Regulations 2008.
7. The test to be applied is set out in Regulation 9;

The circumstances prescribed for the purposes of section 69(1) of the Act are 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.

8. Further provisions that apply here are set out in Regulation 10

10.—(1) Subject to paragraph (2), the period for which the registration of a registered person may be suspended is six weeks beginning with the date specified in the notice of suspension given in accordance with paragraph (4).

(2) Subject to paragraph (3), in a case in which a further period of suspension is based on the same

circumstances as the period of suspension immediately preceding that further period of suspension, the Chief Inspector's power to suspend registration may only be exercised so as to give rise to a continuous period of suspension of 12 weeks.

(3) Where, however, it is not reasonably practicable (for reasons beyond the control of the Chief Inspector)—

(a) to complete any investigation into the grounds for the Chief Inspector's belief referred to in regulation 9, or

(b) for any necessary steps to be taken to eliminate or reduce the risk of harm referred to in regulation 9,

within a period of 12 weeks, the period of suspension may continue until the end of the investigation referred to in sub-paragraph (a), or until the steps referred to in sub-paragraph (b) have been taken.

9. Our powers as set out above are limited to agreeing the suspension or setting it aside. We apply the same test in Regulation 9, the burden of proof is on the Respondent and the Standard of Proof is the balance of probabilities. It is not for us at this stage to make findings of fact. The Schedule of Issues provided by OFSTED is admirably short and to the point;

The single issue in this case to be determined is whether there is a reasonable belief that the continued provision of childcare by the Appellant, to any child, may expose such a child to a risk of harm. The Tribunal will not be invited to make any findings of fact at a suspension hearing.

THE EVIDENCE.

10. We had read the Bundle that runs to over 200 pages and have heard evidence from Linda Du Preez and Josephine Afful from OFSTED and Ms Diomande herself. Ms Afful confirmed her statement and confirmed that the decision to continue suspension was based in part upon not having final decisions from other agencies. Ms du Preez confirmed that a case review to consider cancellation was scheduled shortly after the initial suspension concluded. This was however superseded by this appeal and she felt it would be helpful to consider the information that came out of this hearing as part of a general review. She confirmed that her concerns related to a lack of acknowledgement, an attitude that was not focused on safeguarding and concerns expressed by third parties such as the children's school. She still believed that without suspension childminded children **would** be exposed to the risk of harm.
11. Ms Diomande told us that she did not know of the allegation made by the other children until she went for police interview. She spoke to them afterwards and they completely denied making any allegations, they are good and safe at home. The incident with the 16 year old she said involved him throwing a metal mop at her, he is taller than her and she just caught him with a finger-nail. In cross examination she could not say why she gave different accounts to police, Ofsted and in her witness statement. She refused to answer a question as to whether she ever smacked her children.. She emphasised the police have closed the case.
12. Without making any findings it is clear from the evidence that there are a number of outstanding issues that require consideration by OFSTED, for example why all the children should make such serious allegations in the first place and further why they should have subsequently retracted them. They will no doubt want to consider Ms Diomande's evidence before us and her attitude expressed regarding the incidents. Pending that further consideration it is reasonable to believe that provision of childcare in this period up to 6 August or prior determination **would** expose any such child at risk of harm.

13. Accordingly, the Appeal is dismissed

Judge Ian Robertson

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

Date Issued: 25 July 2022