

Care Standards

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

**NCN: [2023] UKFTT 69 (HESC)
[2022] 4803.EY-SUS**

Before

Mr H Khan (Judge)

Ms J Heggie (Specialist Member)

Ms D Rabbetts (Specialist Member)

Elettra Marziani

Appellant

-v-

Ofsted

Respondent

DECISION

Appeal

1. Ms Elettra Marziani (“the Appellant”) appeals to the Tribunal against Ofsted’s (the Respondent”) decision dated 15 December 2022 to renew the suspension of her registration as a childminder on the Early Years Register on both the compulsory and voluntary parts of the Childcare Register. The suspension imposed is for six weeks from 16 December 2022 to 26 January 2023 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’).

Determination

2. 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. In this case, we have sufficient evidence regarding 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.

Restricted reporting order

3. 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.

Late evidence.

4. We received various pieces of late evidence from the Appellant. This included witness statements and information/complaint made to Ealing Council.
5. We admitted the late evidence and in doing so the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008.

The Appellant

6. The Appellant registered as a provider of childcare on non-domestic premises in April 2021. The Appellant registered in her own name as a sole provider of the provision, named 'Ninna Nanna Childcare', located in the London Borough of Ealing.

The Respondent

7. The Respondent is the body responsible for the regulation of registered providers under the Childcare Act 2006 and the various regulations made under that Act. Its primary concern in performance of this role is the welfare and safeguarding of children.

Events leading up to the issue of the notice of statutory suspension

8. On 28 October 2022, the Respondent received whistleblowing concerns from staff employed at Ninna Nanna Childcare. The concerns received were allegations of a safeguarding nature against the Appellant, which the Respondent referred to the Ealing Local Authority Designated Officer (Ealing LADO). The Ealing LADO referred the allegations to police.
9. The registration of Ninna Nanna Childcare was suspended to allow time for the allegations to be investigated. As the allegations raised concerns about the Appellant's safeguarding practices, the Respondent considered that the provision of any childcare by the Appellant may

expose a child to a risk of harm, and subsequently suspended the Appellant's childminding registration from 4 November 2022.

10. On 14 November 2022, the Ealing LADO convened a multi-agency ASV (allegations against staff and volunteers) meeting. In attendance were staff from Ealing Council Early Years, Police, the Respondent and the LADO from the London Borough of Hounslow (Hounslow LADO), who is the LADO for the borough where the Appellant resides. The Respondent shared further allegations which had been reported by parents of children who attended Ninna Nanna Childcare. The outcome of the meeting was that the Police would investigate all the allegations.
11. A further ASV meeting was held on 5 December 2022. Police shared information that they had received further allegations in respect of both the Appellant and her staff, and that their investigation was continuing.

Legal framework

12. 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.
13. 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.”
14. “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”.
15. The suspension shall be for an initial period of six weeks, which can be extended by a further period of six weeks where based on the same circumstances. Thereafter it can only be extended, under regulation 10 where it is not reasonably practical for the Chief Inspector, for reasons beyond her control, to complete any investigation into the grounds for her belief under regulation 9, or, for any necessary steps to be taken to eliminate or reduce the risk of harm referred to in regulation 9. In those circumstances the suspension may be extended. 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

16. 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 childcare by the registered person to any child may expose such a child to a risk of harm.
17. 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.

Evidence

18. We took into account all the evidence that was presented in the bundle by both parties and the late evidence which was sent in by the Appellant.
19. The Appellant's case included the impact of the current proceedings on her family, her loss of income, and about the lack of updates she had received about the investigation. For the avoidance of any doubt, we have taken into account all the concerns expressed by the Appellant.

The Tribunal's conclusions with reasons

20. We remind ourselves that 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.
21. We reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts.
22. We acknowledge the Appellant's submissions around the impact of the proceedings on the Appellant. We also acknowledge the Appellant's evidence.
23. However, we considered the whole circumstances of the case and we concluded that we were satisfied that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm. Our reasons for doing so are set out below.
24. We acknowledge that, although we do not have the exact details of the allegations, the *allegations* are said to include risk of physical and emotional harm to children, and neglect.

25. We took into account that there is an active police criminal investigation which has not been completed, for reasons beyond the Respondent's control. The police informed the ASV on 5 December 2022 that they had received further allegations in respect of both the Appellant and her staff.
26. We have no reason to doubt the evidence put forward that the Police have informed the Respondent (in January 2023) that they are dealing with several allegations, raised against the Appellant and her staff. Furthermore, the Police plan to interview the Appellant and have advised the Respondent not to proceed with its regulatory inquiries at this stage as it may impede or hamper the criminal investigation.
27. It is clear that a number of agencies are involved in investigating the matter. The Police, Local Authority and the Respondent are all involved, and each has a different role, with the result that each of their investigations has a separate goal. It is clear in this case that the Respondent cannot carry out its investigation straightaway in case it compromises the police investigation. The Respondent is waiting for confirmation from the Police as to when it may address the specific allegations with the Appellant.
28. We concluded that there is a possibility that evidence sufficient to support enforcement action against the Appellant may emerge from the investigation
29. We note that despite the other investigations and the advice that the Respondent had received from the Police not to proceed with its regulatory activities, the Respondent has sought updates from the Police and from the LADO on a regular basis. It is clear from the statements of Ms Ramesh and Ms Nazarkardeh that the suspension has been kept under regular review at this stage.
30. In reaching our decision, we also took into account a range of factors including the Appellant's personal circumstances and the disputed nature of the allegations. We acknowledge the impact of such proceedings on the Appellant including any financial impact and on her well-being. We also took into account the testimonials from the parents that the Appellant has provided. Although it is not clear how much those individuals were aware about these proceedings, nevertheless, we acknowledge that those testimonials are positive.
31. 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.
32. In our judgement, considering the matter overall, including the nature of the allegations and the ongoing investigations leads us to conclude that, at this point, the action taken is both proportionate and necessary.

33. We conclude therefore the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm.

Decision

34. The decision to suspend the Appellant's registration is confirmed and the appeal is dismissed.

Judge H Khan

Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 20 January 2023