

First-tier Tribunal Care Standards

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

[2023] 5142.EY-SUS

Neutral Citation Number: [2023] UKFTT 958 (HESC)

Mrs Kalvant Rauth

Appellant

-v-

Ofsted

Respondent

BEFORE

**Siobhan Goodrich (Judge)
Denise Rabbetts (Professional Member)
Dorothy Horsford (Professional Member)**

Considered on the Papers

On 9 November 2023

DECISION AND REASONS

The Appeal

1. By notice dated 19 October 2023 the Appellant appeals against the Respondent's decision made on 12 October 2023 to suspend her registration as a childminder on the Early Years Register and both the compulsory and voluntary parts of the Childcare Register. The suspension is in place until 22 November 2023.
2. The right of appeal lies under regulation 12 of the Childcare (Early Years and General Childcare Registers (Common Provisions) Regulations 2009, ("the Regulations"). The Applicant seeks a direction that the suspension shall cease to have effect. The Respondent resists the appeal and requests that the decision to suspend registration be confirmed.

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 any child or family members in this case.

The Background

4. On 30 September 2010 the Appellant was registered on the Early Years Register to provide childminding at her home at 49 Copgrove Road, Leeds, LS8 2ST (“the registered address”). The Inspections outcomes in 2012 and 2010 were “good”. In 2019 an inspection prompted by complaints made by parents resulted in a judgement of “Inadequate” and Welfare Requirement Notices were issued.
5. On 28 September 2023 the Respondent received a notification from the childcare advisor at Leeds City College to the effect that the Appellant has been carrying out childminding from an unregistered non-domestic premises at Happy Days Creche, GSL Wholesales, Roundhay Road, Leeds LS7 1AB and significant concerns were raised regarding the safety of the premises.
6. On 9 October 2023, Ms McDonell, EYRI, visited the registered address which looked to be under renovation and uninhabited. She also visited Happy Days Creche and observed the Appellant minding a child. The Appellant admitted that she has not been operating from the registered domestic premises. She said that she did not live at the registered address and that she thought she had moved out “this summer, August I think” (i.e. 2023). She said she did not know if she would be moving back once the building work had been finished. She provided a new home address.

The Decision under appeal

7. We set out below a summary of the matters relied on when suspension was imposed on 12 October 2023 and in support of the Respondent’s belief that children are, or may be, exposed to a risk of harm.
 - a) It is believed that the Appellant may not have lived at the registered address since August 2022. The Appellant did not notify Ofsted of this significant event (i.e. the change of registered address).
 - b) She has cared for children at unregistered non-domestic premises, Happy Days Creche, GSL Wholesales, Roundhay Road, Leeds LS7 1AB. The premises has some potential hazards and has not been approved by Ofsted.
 - c) She has continued to use her childminding registration number and the registered address to claim childcare fees which calls into question her ongoing suitability to be a registered child minder.

The Appeal

8. In summary, the Appellant’s position set out in the grounds of appeal is that she seeks reinstatement of her childminder registration or help towards achieving registration. In this context she points out that although the registered property was sold in August 2022 she has a 12 month rental agreement for the same property.

She states that she would appreciate information about the possibility of expediting the “re-registration” process as the current situation is adversely affecting her clientele and, consequently, her income.

Legal Framework

9. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of a registered person’s registration: see regulations 8-13 of the Regulations.
10. 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.”
11. “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”.
12. The duration of a suspension under regulation 9 is for a period of six weeks. It may, however, 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 remains necessary.
13. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector. The first issue to be addressed by the panel is whether, as at today’s date, 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 (the threshold)
14. The burden of satisfying us that the threshold under regulation 9 is met lies 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.
15. We are further guided by **GM** at [21]

“Although the word “significant” does not appear in regulation 9, both the general legislative context and the principle of proportionality suggest that the contemplated risk must be one of significant harm. “
16. Even if the threshold test is satisfied by the Respondent that is not an end of the matter because the panel must decide whether the decision is necessary and proportionate in all the circumstances.

The Evidence

17. We have read and considered the indexed bundle which consists of 228 pages. We need not relate its contents in detail. We have considered the witness statements of:
- Elaine McDonell, Early Years (EY) Regulatory Inspector
 - Stephanie Nixon, EY Senior Officer
 - Diane Piewinska, EY Senior Officer
 - Karen Crabtree, Leeds City College childcare advisor
 - The Appellant.
18. The Appellant refers to the premises at Roundhay as a playroom designed for short stays aimed at helping parents to dropping off and picking up their children. She has acted as a registered childminder for many years. She maintains that she submitted a completed “Notice of Change – Change to the Premises” from by post. Amongst other matters, the Appellant has also provided:
- a letter from a parent (OO) who speaks of the high regard she holds for the Appellant as a childminder.
 - A 12 month tenancy agreement regarding the registered premises between the landlord and York Rauth as primary tenant dated 8 August 2022.
19. We have also considered the skeleton argument from the Respondent filed on 7 November 2023.
20. We are satisfied that we have sufficient information to make a decision on the papers. We will not refer to every aspect of the evidence but have taken all the information before us into account.
21. We are not finding facts. Our task is essentially that of a risk assessment as at today’s date in the light of the body of evidence before us and in circumstances where the evidence is necessarily incomplete.
22. We add that whilst reference is drawn from case law as to our “placing ourselves in the shoes of the Chief Inspector”, we are an independent Tribunal making a risk assessment as at today’s date against the threshold set out in paragraph 9 and on the basis of the evidence available as at today’s date. We consider there are two issues to be consider:
- Has the Respondent discharged the burden of satisfying us that the threshold test in regulation 9 is met?
 - If so, is suspension necessary and proportionate?
23. In our view, the circumstances raise serious concerns regarding the ability of the registered provider to work within the limitations of her actual registration as a childminder. It would appear that children have been minded by the Appellant on unregistered non-domestic premises for some time and without the necessary application to the regulator having been made. Further, the current state of the non-domestic premises that have been used by the Appellant may pose a risk to the safety of children. The issues with the premises include: loose electrical wires; a damaged ceiling with the attendant risk of plaster falling down; bathroom facilities

that were unsafe as cleaning fluid was easily accessible; makeshift baby changing arrangements on the floor in the same room where the children eat and play. There are also concerns regarding potential access by strangers to children at a non-domestic setting and other fire safety and evacuation issues which would need to be addressed before the premises could be approved as suitable for children.

24. In the light of all the material before us we reasonably believe that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of significant harm. The Respondent has satisfied us that the threshold test under regulation 9 (and applying the guidance in **Ofsted v GM and WM** [2009] UKUT 89 (AAC)), is met.
25. Applying **GM**, we reminded ourselves that regulation 9 sets a low threshold but the mere fact that the threshold has been met does not necessarily mean that the power of suspension in regulation 9 is justified and should be exercised. In our view the continuation of the suspension at the present time has a clear purpose, namely, to enable Ofsted to complete its investigation in order to make a decision about the Appellant's suitability in the context of her existing registration or in the context of any registration application she may make regarding non-domestic premises. As matters currently stand it appears that the Appellant has been providing childminding at unregistered non-domestic premises which is an offence under section 85A of the Childcare Act 2006. It is open to the Appellant to make the necessary application to provide childcare in a non-domestic setting and/or in different domestic premises but the onus is upon her to make the application.
26. The issue is proportionality having regard to the serious consequences of suspension not only for the Appellant but also for parents and families who may wish to use her services. Suspension is always a serious matter because of the adverse impact on business interests, livelihoods, professional reputation and standing. We have taken full account of the personal and professional impact upon the Appellant, as well as the impact of suspension of a childminding resource on families.
27. Having considered all the matters placed before us we balanced the harm to the Appellant's interests, and the interests of families and children in need of care services, against the risk of harm to children being looked after in a setting that has not been approved by Ofsted. The material before us leads us to conclude that the suspension is necessary and proportionate to the legitimate need to protect the safety of children.
28. We would add that in her appeal notice the Appellant seeks information as to whether it is possible to "expedite re-registration" and she also seeks assistance, seemingly from the Tribunal. Our role, however, is simply to decide this appeal. On the information before us the Appellant has not yet made any application to the Respondent regarding her registration. That is a matter on which she should seek independent advice and address with Ofsted. We note that the Appellant has been in contact with the CAB.

Decision

The decision to suspend registration is confirmed and the appeal is dismissed.

Tribunal Judge Siobhan Goodrich

First-tier Tribunal (Health Education and Social Care)

Date Issued: 10 November 2023