

Care Standards

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

Considered on the papers on Friday 24 May 2013

Before

**Tribunal Judge Melanie Lewis
Specialist Member Ms Wendy Stafford
Specialist Member Ms Judith Wade**

JS

Appellant

-v-

**OFSTED
2013 (2037.EY/SUS)
(No. 3)**

Respondent

DECISION

Background

1. Ofsted originally suspended the Appellant's registration on 23 November 2012. The first period of suspension from 23 November 2012 to 3 January 2013 went unchallenged. A second period of suspension was then imposed from 4 January 2013 to 14 February 2013. The Appellant appealed, but her appeal was dismissed on 1 February 2013: JS –v- Ofsted [2013] UKFTT 70 (HESC) (No.1).
2. A third period of suspension was imposed on 14 February 2013 to expire on 27 March 2013. This was successfully appealed on 4 March 2013: JS –v- Ofsted [2013] 2021 UKFTT (HESC) (No.2).
3. Ofsted issued a notice of intention to cancel the Appellant's registration under Section 68 of the Child Care Act 2006. The notice was dated 20

February. That is the subject of a separate appeal. CS 2033.EY (No. 4)

Current Appeal

4. The Appellant appeals to the Tribunal against the Respondent's decision dated 2 May 2013 to suspend her registration for a period of 6 weeks from the period beginning 2 May 2013.
5. By the consent of the parties the case was listed for consideration on the papers under Rule 23 of the Procedure Rules and we were satisfied that we were able to determine the matter without a hearing.

Allegation of Events leading to the Notice of Statutory Suspension

6. The background to this case is set out in the 2 previous decisions. The grounds relied on for cancellations are lengthy and wide ranging.
7. There are new factors for us to consider. On 30 April 2013 Jennifer Fisher Ofsted Regulatory Inspector with the National Compliance Investigation and Enforcement Team made an unannounced visit to the Appellant's home accompanied by her colleague Mandy Mooney, also a regulatory inspector.
8. The suspension of her registration was because it was believed that children were, or may be exposed to harm. The Appellant's own children aged 7 and 10 were left unsupervised, whilst she was out dropping off and picking up minded children. They were also involved in the preparation of hot food whilst unsupervised.
9. The basic facts are not in dispute, save for some discrepancy on the timings, but of no more than about 5 minutes. The door was opened by the Appellant's daughter aged 7, who was unsure if an adult was in the house. During this time the Appellant rang home. The inspectors arrived at 16.28 hours and the Appellant arrived back at 16.47 hours. The Appellant then left again to take 2 of the minded children home. On the inspectors' account she was out for 15 minutes, on her account she was out for 7 minutes. They were also concerned that prior to her departure she had not confirmed the whereabouts of her 7 year old daughter who had gone out to play and that there was a hot pan on the stove, which she asked the children to stir.
10. The Appellant's immediate explanation for leaving her children unattended was that the gear box on her 9 seater car had broken. She was therefore using a 5 seater car, which was too small to transport her own children. She said that she thought her 5 seater car was insured.
11. These concerns were subsequently referred to the Kent Central Duty Team. The Local Authority asked OFSTED to consider suspending the

Appellant. They decided to suspend her registration due to their own concerns.

12. The inspectors noted men's clothing in the house. The Appellant was directly asked if any one other than her family was living in the house and she said no.
13. By letter dated 6 May 2013 the Appellant offered a fuller explanation and reassurance. In future her own son aged 17 would undertake to be at home and on the day in question, felt her children were safe as he was due home. She stated as she has continued to maintain, that both children were sensible, the environment was safe and the children were well known by neighbours.

Events following Suspension

14. The Local Authority considered Ofsted's referral and instituted a Section 47 Children Act 1989 investigation. They escalated this to a core assessment, which should be completed by 21 June 2013, within the 35 working days allowed.
15. Ofsted declined to consider lifting the suspension due to an escalation of their concerns in three other areas:-
 - (i) They had raised the issue of whether the 5 seater vehicle was insured for business use i.e. carrying minded children. The Appellant had said that it was. She had made enquiries and had been told that it was 'providing she didn't do too many miles'. Shortly after 9 am on 1 May 2013, the Appellant's husband sent in the insurance certificate but it was dated that morning.
 - (ii) On 7 May 2013 Ofsted received information from TM, the father of a minded child. Email correspondence was produced. Having been suspended again, there was concern that the Appellant was offering her services as a nanny in their private home, or putting forward DB to be her assistant who had not yet been approved.
 - (iii) Following a visit from the Local Authority on 7 May 2013, concerns noted by the inspectors during their visit on 30 April were further confirmed. They had met a young man called 'R', a foreign exchange student who stated that he had been living at the property for 2 weeks. The Appellant denies he was living there, and states that the person concerned was a friend of her son who visited from time to time and that he may have not have clearly understood what was being asked of him. 'R' wrote a letter confirming that he lived elsewhere but visited. There was also another male, aged around 50 at the house, a friend of the Appellant's husband who had domestic problems. He refused to give Children's Services and the police his details and say how

long he had been residing at the property. The Appellant had not alerted Ofsted to the presence of either person and they had not been vetted/checked as members of the household.

- (iv) The inspectors made another unannounced visit on 13 May 2013, first to 'DB' who said that she had been contacted by parents who had previously used JS. She explained that she was not registered to mind and they seemed surprised by this. When asked later that day, the Appellant denied that she had put DB's name forward.
- (v) On 13 May 2013 the Inspectors found other evidence that persons other than family members were living at the house. The Appellant admitted the friend of her husband was staying temporarily, but thought this was alright as she was suspended. She again denied that 'R' lived there, but this did not fit with her doing his washing. In her response dated 16 May 2013, she said she sometimes did his washing to help him out.

The Law

- 16. The statutory framework for the registration of childminders is provided under the Child Care Act 2006. This Act establishes 2 registers of childminders: the Early Years Register and the General Child Care Register. 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.
- 17. Under the **Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008** when deciding whether to suspend a childminder the test set out in Regulation 9 is:-

"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"
- 18. The suspension shall be for a period of 6 weeks. Suspension may be listed as any time if circumstances described in Regulation 9 cease to exist. This imposes an ongoing obligation upon the Respondent to monitor whether suspension is necessary.
- 19. 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, for example, impairment suffered from seeing or hearing the ill-treatment of another"

20. The powers of the Tribunal are that it stands in the shoes of the child inspector and so in relation to Regulation 9 the question of 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 risk of harm.
21. The burden of proof is on the Respondent. The standard of proof is a '*reasonable cause to believe*' which falls somewhere between the balance of probabilities test and '*reasonable cause to suspect*'. 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.

Consideration

22. We have considered the decision letter and read detailed witness statements of Elaine White and Jennifer Fisher with supporting documentation. We also considered a detailed response from the Appellant dated 6 May 2013 and another dated 16 May 2013, again with supporting letters and documentation.
23. The question for us is whether the matters which legitimately cause Ofsted concern, in the context of the case overall, are such that the children maybe at risk of harm, to justify further suspension.
24. In the decision letter, the risk is analysed as the Appellant's actions putting children at risk which raised significant concerns about her overall suitability to supervise and safeguard children as a registered childminder.
25. These are separate allegations, but we must analyse the risk in the context of the three earlier suspensions and an ongoing investigation by both Ofsted and the Core Assessment by the Local Authority.
26. The first Tribunal in dismissing the appeal concluded that it could not have confidence in the Appellant's ability to respect rules which were in place to ensure the safety of children. They were satisfied that Ofsted had established a present risk of harm not because of deliberate ill-treatment but '*in the face of strong evidence to be one in which the Appellant does not understand the need for some rules which conflict with her experience and needs and as a result is unwilling or unable to comply with rules established for the safety of young people, at least in the short term*'. (paragraph 17).
27. The second Tribunal recorded that the '*Appellant had every reason to comply with the requirements if she wished to keep her registration*' (paragraph 24). It was stressed at paragraph 26, that in the event of new material coming to Ofsted's attention, it might well be entitled to impose a new period of suspension.

28. The Appellant weighs that there was a minimal risk to her own children in leaving them unattended and that special circumstances justified that risk. This is not supported by the Local Authority now carrying out a Core Assessment.
29. The Appellant explains the lack of insurance as an oversight or being misled. Neither explanation shows that she understands the regulations and the need to comply with them, despite the history showing that she had been cautioned and warned before of the need to comply. Having unauthorised persons living in the house had been the subject of previous warnings and were at the heart of the previous suspensions,
30. We adopt the conclusion reached by the first Tribunal, albeit on different facts and having made our own determination that the Appellant is unwilling or unable to comply with rules established to maintain and ensure care and safety for minded children, at least in the short term.

Decision

The appeal against interim suspension is dismissed.

The suspension of 2 May 2013 is confirmed.

Judge Melanie Lewis
Tribunal Judge Care Standards
Date Issued: 29 May 2013