

**First-tier Tribunal Health, Education and Social Care Chamber
Care Standards**

**Considered on Papers
On Friday 15th November 2013**

Before;

**Deputy Chamber President Judge John Aitken
Specialist Member Mr T John Williams
Specialist Member Ms Wendy Stafford**

**Mrs Sandra Borland
(Catherine's Cross Nursery)**

Appellant

v

Ofsted

Respondent

[2013] 2117.EY- SUS

DECISION

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Procedure Rules. However, not only must both parties consent, which they have, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have a good picture of the allegations made, indeed there is no substantial dispute on the facts, the response and the level of risk present, from the papers. There appears to be no substantial factual dispute which might affect our decision (although of course we will not draw final conclusions about the main allegations rather whether such an allegation has been made and matters which arise from that relating to risk) and we consider that we can properly make a decision on the papers without a hearing.

2. The appellant appeals to the Tribunal against the respondent's decision dated 18th October 2013 to suspend the appellant's registration to provide childcare at non domestic premises namely the Catherine's Cross Nursery on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 29th November 2013.

3. The Tribunal makes 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***, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify children or their parents, not previously identified in the press so as to protect their private lives.

The Law

4. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. This Act establishes two registers of childminders: the early years register and the general child care register. Section 69 (1) Act provides for regulations to be made dealing with the suspension of a registered persons' registration. The section also provides that the regulations must include a right of appeal to the Tribunal.

5. 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.”

6. The suspension shall be 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.

“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”.

7. 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.

8. 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.

9. There is no suggestion before us that any child has come to harm at Catherine's Cross Nursery. Quite the reverse, there are letters from parents supporting the good work done at the nursery. It is an important local resource for the community. Three matters are raised by Ofsted in connection to the suspension. Firstly that a child attended the Nursery in the first quarter of 2013, and despite it being seen that she was bruised on several occasions the staff at the nursery were in effect duped in accepting probably false explanations. Very shortly after the child's last visit she suffered a serious assault by her mother's partner and it is alleged that the nursery failed to safeguard the child, because had they reported the bruising something may have been done about it, and the assault prevented. The appellant points out through Mrs Susan Lawrence her (Deputy Manager) at the nursery that they were given no indication by any other body that there may be a problem, and that at its worst this is an error by a member of staff. It happened months ago, has not been repeated and there is simply no reason to suspend for that reason.

10. Secondly Ofsted point to a report in July 2013 indicating that the Nursery was inadequate in some areas, the appellant points out that these are in general minor matters capable of simple rectifications most of which have been put right. Lastly when the suspension was notified tensions between the appellant and her Deputy Manager (Mrs Sarah Lawrence) became evident and the appellant was slapped by the Deputy Manager in the presence of the Ofsted inspector who served the notice, but not the children who were on the premises. A history is given as to why the Deputy Manager reacted poorly. In any event it is accepted that Mrs Borland may not be up to the job of managing the Nursery. The suspension is personal to her although the documents are confusing Ofsted have suspended the appellant. They have not closed the Nursery itself, but of course without a registered person to run the Nursery, it cannot operate. Mrs Lawrence has specific written instructions to represent Mrs Borland and she makes it plain that it is accepted that Mrs Borland cannot in fact run the Nursery.

11. We consider that given the admissions made within the additional evidence supplied on the appellant's behalf it is plain that her suspension is appropriate, not because, and we cannot stress this enough, she is any sort of danger to children, but rather because as is said she is not sufficiently knowledgeable for this difficult position.

Conclusions

12. In those circumstances, whilst we again repeat no child is at risk from the staff at the nursery, there is not an adequate safeguarding system in place at

present or at least not one which is adequately managed, nor any evidence one is immediately to be put in place and because of that we consider there is a risk to children, should a difficult situation arise in the future.

13. We well understand that this decision will have an impact on the immediate operation of the Nursery, but nothing in this decision prevents the operation of a properly managed Nursery at Catherine's Cross. It may be that the next step is for the nursery to make application to Ofsted with proposed changes, that is not however a matter for us at this time.

Decision

The appeal against interim suspension is dismissed, the suspension continues.

**Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Tuesday 19th November 2013**