

PROTECT

In the First-Tier Tribunal (Health, Education and Social Care)  
Heard at Pocock Street  
On Friday 1<sup>st</sup> February 2013

Before

**Deputy Chamber President Judge John Aitken**  
**Specialist Member Mrs Carol Caporn**  
**Specialist Member Mr Paul Thompson**

**JS**

**Appellant**

**-v-**

**OFSTED**

**Respondent**

**[2012] 2014 EY-SUS**

**Decision**

1. Upon hearing the Appellant and Respondent, 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 the Appellant, children minded by her or their Parents in this Case so as to protect their private lives. Further in the Appellants Case it is made to protect her business until a final decision is made as to whether her registration is cancelled. For the avoidance of doubt, this Order does not apply to steps taken to notify Parents or relevant authorities of proceedings against the Appellant.

2. The Appellant appeals to the Tribunal against the Respondent's decision dated 24<sup>th</sup> December 2012, and the confirmation of that decision following submissions to Ofsted on 15<sup>th</sup> January 2013 to suspend her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for a second period of six weeks until 14<sup>th</sup> February 2013. An initial suspension period being from 23<sup>rd</sup> November 2012 to 4<sup>th</sup> January 2013 and having passed unchallenged.

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**Allegation of Events leading to the issue of the notice of statutory suspension.**

3. The Appellant was first registered with Ofsted in 2007. On 23<sup>rd</sup> April 2010 the Appellant was issued with a formal warning for an offence of failing to comply with her conditions of registration. The Appellant was not prosecuted for this offence but was advised that it may be taken into account should she commit any offence in the future. The Appellant was subsequently formally cautioned again on 29<sup>th</sup> October 2010 for failing to comply with the conditions of her registration for over minding. The Appellant had also been issued with welfare requirement notices in April and October 2010 regarding her duty to implement the Early Years Foundation Stage. This specifically related to ensuring that people whose suitability had not been checked did not have unsupervised contact with children, as well as ensuring her premises were suitable, including preventing children from gaining access to unsafe areas, adequately supervising children and keeping and maintaining records of attendance.

4. On 8<sup>th</sup> November 2012, Regulatory Inspector Mandy Mooney contacted the Appellant in respect of the status of the Appellant's son's Criminal Record's Bureau check. During the conversation the Appellant mentioned to Ms Mooney that her child minding assistant Gary Radix had moved out of her home and was no longer working as her assistant. Ms Mooney noted this on Ofsted's records. On 15<sup>th</sup> November 2012, Ofsted gave the Appellant a formal warning for failing to meet a condition of her registration in that she had failed to notify Ofsted that Jerome Berner was sleeping at her premises for four nights a week from 10<sup>th</sup> September 2012. The Appellant suggests he was mainly living in France.

5. Following information received by Ofsted an unannounced inspection was undertaken on 23<sup>rd</sup> November 2012. On 23<sup>rd</sup> November 2012 a decision was taken to suspend the registration of the Appellant whilst investigations commenced because the inspection that day was obstructed by the Appellant, who is alleged to have given a false indication of the number of children she was minding, allowing children on to an insecure driveway, and children sleeping covered in paint and glitter and she was notified accordingly.

6. That initial period was extended as described above following the receipt of further information and inspections and it is this that the Appellant seeks to have set aside. The allegations during the first suspension period indicated that the Appellant had continued to child-mind whilst suspended. Had failed to notify all of the Parents of her children of her suspension. She is also alleged to have misled an Inspector as to amongst other matters the identity of a child on an unannounced inspection whilst suspended on 29th November 2012.

7. In broad terms the allegations are either denied, explained as accidental, inadvertent or due to exceptional circumstances by the Appellant.

**The Law**

8. 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

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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.

9. 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.”*

10. 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.

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 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.

13. 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.

## Issues

14. The Appellant deals with some matters by indicating that she has improved since suspension, in particular by repairing her computer which had led to poor record keeping, moving the paint and glitter to a place where children could not get access, locking the door by which a child escaped. However many of the more serious allegations such as over minding, misleading the inspectors, employing assistants without CRB checks are denied. Since the purpose of this hearing was not to resolve all of the factual issues they remain allegations, however it is clear that Ofsted have multiple sources of evidence over repeated incidents and in those circumstances the evidence is strong. The Appellant too, has a number of witnesses she intends to rely upon should they be required

## Conclusions

15. Ofsted have not yet decided whether to seek to cancel her registration as a childminder, although we note that in a letter dated 15<sup>th</sup> January 2013 to the Appellant they

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have indicated that they will make that decision before the end of the current suspension period. We consider that it is appropriate that they do make this decision as soon as possible.

16. An essential element of the application to remove the suspension is whether one can have confidence in the Appellant to respect the rules which are in place to ensure the safety of children. On a personal level the Appellant is pleasant and engaging and as she was to tell us, plainly passionate about looking after children. We have no doubt that this passion has created for her, a loyal following of Parents and Children. However her responses to this investigation are somewhat chaotic, as were her submissions before us, both written and oral and given the strong evidence in many areas of non compliance, such as an unannounced visit when under suspension which found her with a child which she normally child-minded and the misleading of the Inspector as to that child's identity. We do note that she has an explanation, which if accepted indicates it would be for a short period and she claims panic rather than any real intention to mislead. Nonetheless the evidence of failing to comply with the original suspension is also strong.

17. Given that the rules are established to ensure safety we consider that the suspension should continue. We stress that we have not resolved the many areas of factual difference between the Parties, but Ofsted have established that there is at present a risk of harm to children. That risk does not arise from any deliberate ill treatment by the Appellant, but rather by allowing children into a well meaning environment but one which appears 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 children, at least in the short term.

## Decision

The Appeal against interim suspension is dismissed, the suspension until 14<sup>th</sup> February 2013 is confirmed.

**Judge John Aitken  
Deputy Chamber President  
Health Education and Social Care Chamber  
Monday 4<sup>th</sup> February 2013**