

## Care Standards

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

Considered on the papers on 6 November 2015

**BEFORE**  
Tribunal Judge Meleri Tudur  
Specialist Member Denise Rabbetts  
Specialist Member Susan Last

**IN THE MATTER OF AN APPEAL  
BETWEEN:**

**LG**

**Appellant**

**-v-**

**Ofsted**

**Respondent**

**[2015] 2513.EY-SUS**

### **DECISION**

#### **Restricted reporting order**

1. 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.

### **Events leading to the issue of the notice of statutory suspension**

2. The Appellant appeals to the Tribunal against the Respondent's decision to suspend her registration as a childminder on the Childcare Register for six weeks from the 30 September 2015 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').
3. The Appellant is a registered childminder since November 2006. On the 30 September 2015, the Appellant notified the Respondent of a safeguarding issue in relation to child in her care and possible allegations made of inappropriate sexual contact by her son, X.
4. The Appellant had previously been the subject of a suspension of her registration in November 2014, following a separate allegation of inappropriate touching by her son, X but dating back about four years. The Appellant was sent an Initial Warning Letter for failing to notify Ofsted of allegations of abuse and the suspension was lifted.
5. The Respondent has during the course of the current investigation received an incident log from the police which details concerns raised by the Appellant with the police about her son X following disclosure by his cousin that he had been inappropriately touched and X's penis placed in his mouth.
6. During the course of the suspension, a section 47 report has been prepared by the social worker, Gabrielle Rowland dated 29 October 2015 in which a recommendation is made for further investigation and assessment of the family. It was noted that the Appellant was found to minimise professionals concern around X's alleged inappropriate behaviour and the social worker and the police found that when the joint visit was undertaken, X appeared guarded and presented as if he had been "prepped" in what he was to say to the police and social worker. The report further raised issues about the mental health of other members of the Appellant's family and suggested that her husband was subject of another section 47 report in respect of another child in another family.
7. The Assistant Local Authority Designated Officer, Phillip Larmond is undertaking his own s47 report which is to be completed in a maximum of 15 days from the 29 October 2015.

### **Legal framework**

8. 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 persons' registration. The section also provides that the regulations must include a right of appeal to the tribunal.
9. 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."*
10. "*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"*.
11. The suspension is 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.
12. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so, 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.

## **Evidence**

14. The Appellant submitted in her grounds of appeal that the basis of the suspension was wrong because "there is no evidence" the allegation made referred to her son, X. She considers that she and her son, X have been targeted because of another sexual incident four years ago which was dealt with in December 2014. Since the suspension in 2014 she describes herself as being overly cautious, not allowing children to go upstairs in the setting other than to use the bathroom and X stays in his room until the minded children go home.

15. A witness statement from the Appellant and her husband confirms that he is not subject to another s 47 report as stated in the Respondent's Response to the appeal and the s47 report dated 29 October 2015. The Appellant has made a number of challenges to the factual accuracy of the Respondent's case in her statement.

### **Tribunal's conclusions with reasons**

16. On the evidence presented by the Appellant and the respondent, we find as facts that the Appellant took her son, X, to the police in 2011 following an allegation of inappropriate sexual contact with his cousin. This is the Appellant's own evidence and she did so in order that a police officer could tell him off for his inappropriate behaviour. She has confirmed in her evidence that she was aware of a second allegation of inappropriate behaviour but not of inappropriate contact with a second child in 2014. She received an Initial Warning Letter from Ofsted for her failure to inform them of an important incident in 2014. One of the issues for OFSTED at that time was the delay and apparent collusion between the Appellant and the parents not to report alleged abuse to the relevant authorities and a lack of understanding of the safeguarding procedures.
17. The Appellant has explained that she did not immediately report the current incident on the 27 September 2015 until the 30 September 2015 because the parent wanted to make further enquiries before taking the matter further.
18. We have concluded that there are three issues which lead to the conclusion that children in her care may be at risk of harm unless the Appellant is suspended. The first is that despite receiving the warning letter in December 2014 and being required to improve her understanding of child safeguarding processes, the Appellant waited three days before reporting alleged potential abuse of a child to Ofsted. The requirement places an obligation to undertake safeguarding procedures whether or not the allegations involve the setting or the child minder's own family, consequently the expectation would be that after her experience last year, the Appellant would respond quickly to any safeguarding issues raised with her and would not collude with the parent to delay reporting pending some further enquiries by the parent.
19. Secondly, the Appellant is aware of the two other allegations of inappropriate sexualised behaviour by her son, yet in her witness statement places the blame for instigating those two previous incidents on the other two, younger, children. There is no recognition of the fact that her own son, X, may need further assessment and may need

support and help to minimise or eliminate inappropriate behaviours and to identify and reduce any risk to the children in her care.

20. Finally, there are issues about co-operation and working with the professionals to identify issues and to resolve them. The Appellant is seeking to explain why the alleged incident hasn't happened rather than showing insight into the potential risks and the need for further investigation and assessment to conclude whether an issue has been identified. The Appellant's daughter has not returned the relevant forms consenting to assessment and the son, X appeared to be guarded and "prepped" for interview. Until the family have been the subject of a full assessment by the LADO as recommended by the s47 report, then all the relevant information upon which to base a decision about harm to minded children or a risk of harm to minded children will not be available.
21. We are satisfied on the evidence presented that the low threshold that there may be a risk of harm to the children in the Appellant's care is met in this case and the appeal against the suspension fails.

## **Decision**

Appeal dismissed.

The notice of suspension is confirmed.

**Judge Meleri Tudur**  
**Deputy Chamber President**  
**Care Standards & Primary Health Lists**  
**First-tier Tribunal (Health Education, Social Care)**

**Date Issued: 9 November 2015**