

Care Standards

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

[2015] 2359.EY-SUS

BEFORE

**Judge Melanie Plimmer
Specialist Member Susan Last
Specialist Member Denise Rabbetts**

BETWEEN

L

Appellant

-v-

Ofsted

Respondent

DECISION

Considered on the papers on 6, 12 and 24 February 2015

The appeal

1. The Appellant has appealed against the Respondent's decision dated 16 January 2015 to suspend her registration as a child minder for six weeks until 26 February 2015.

Restricted reporting order

2. 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, any child minded by the appellant, or any member of the families of these individuals, so as to protect their private lives.

Background facts

3. The Appellant is a very experienced child minder of over 21 years, who has received good or outstanding inspections from the Respondent. She has provided us with numerous supporting letters from parents, full of praise for her services as a child minder.

4. Although the decision letter did not set out the reasoning for the Respondent's decision to suspend the Appellant, this was summarised in the response to the appeal application. This states that the suspension was imposed after the Respondent received serious allegations against the Appellant's husband i.e. that he was the perpetrator of sexual and / or emotional abuse against his stepchildren, many years ago when they were teenagers. These allegations were first made many years after the events allegedly took place, by the Appellant's daughter (and her husband's step daughter) A, in 2010. At this time A's children were placed in foster care and the Appellant was successful in applying for a Special Guardianship Order in respect of them. At the time the relevant local authority concluded that A's allegations against her stepfather were without foundation.
5. The Appellant did not draw the allegations or the outcome of the local authority's investigation to the attention of the Respondent. The Respondent first knew about the 2010 allegations when told about them on 15 January 2015. This information came via the relevant LADO.

Procedural history

6. The Tribunal first considered the matter on 6 February 2015 but decided that it required further information regarding the investigations being carried out by the Respondent. At this stage the Tribunal had more limited information which is summarised in a witness statement from Ms Mooney dated 2 February 2015. This attached inter alia, summaries of interviews held with the Appellant, A and her sister B, concerning the allegations. The Tribunal adjourned the hearing for a few days to enable the Respondent to provide further information regarding the investigations.
7. The Respondent provided the relevant information in compliance with directions but also made an application to withhold disclosure of certain information pursuant to Rule 14 of the 2008 Rules, and to delay disclosure of certain other information. That application was considered by the Tribunal when the matter came before it on a second occasion on 12 February 2015. The Tribunal refused the Respondent's application to withhold information or delay disclosure for reasons set out in a decision dated 12 February 2015, that is not necessary to repeat here. It followed that the Appellant needed to be given an opportunity to consider and make submissions on the further evidence relied upon by the Respondent. This included: (a) unredacted minutes of a case review record dated 16 January 2015; (b) unredacted minutes of a strategy meeting held on 19 January 2015; (c) the unredacted transcript of an interview with the Appellant's father held on 9 February 2015.
8. The Tribunal issued further directions for each party to submit updated submissions in light of the evidence available at the time. We received

very helpful submissions from both parties and are grateful to the parties for working efficiently in order to meet a short and ambitious timetable. In submissions dated 16 February 2015 the Respondent's solicitors provided an update regarding the need to hold further interviews with the Appellant, A and B. An interview with the Appellant was postponed in order to enable her recently instructed solicitors to consider the papers. In submissions dated 19 February 2015 the Appellant's submissions addressed all the information available to the Tribunal and submitted that the Respondent had not discharged the burden of establishing a reasonable belief that the continued provision of childcare by the Appellant may expose the children to a risk of harm.

9. Prior to our consideration of this matter for the third time on 24 February 2015, the Respondent invited us to consider adjourning the matter for an oral hearing. We did not consider this would be proportionate in light of the inevitable further delay this would lead to. We are satisfied that we have adequate evidence to make a decision without an oral hearing. The Tribunal received further submissions and evidence from the Respondent late on 23 February 2014. Whilst we understand that the Respondent simply wishes to update the Tribunal, we have decided not to admit the further submissions and evidence. If we did, we would need to provide the Appellant with a further opportunity to address this evidence, and we do not consider that it is appropriate or proportionate to delay matters further.

The legal framework

10. The statutory framework for the registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the 2006 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.
11. 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.
12. 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.
13. "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*".

14. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector, and must either confirm the decision to suspend or direct that it shall cease to have effect. The burden of proof is on the Respondent. The standard of proof is whether there is 'reasonable cause to believe'. 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.

Tribunal's conclusions with reasons

15. As noted above, this Tribunal stands in the shoes of the Chief Inspector, and considers whether, in light of the information available to the Chief Inspector, he or she had reasonable cause to believe that a child might be exposed to harm. The Tribunal must itself determine the reasonableness of the Chief Inspector's reasons for believing there is a risk of harm. It is not for the Tribunal to take a view on the truth of the allegations prior to the completion of the investigation. We must focus on whether the test for suspension is met and whether this is a proportionate step in all the circumstances. We have decided that the Respondent has discharged the relevant test and there is reasonable cause to believe that a child might be exposed to a risk of harm.
16. The allegations against the Appellant's husband are very serious. Whilst these have been investigated in 2010 and found to be without substance then, further relevant evidence has become available that justifies a reinvestigation on the part of the Respondent (the police and local authority having indicated that they shall not be investigating further). The telephone interview with B suggests that she did not want to disclose anything about the abuse when she was a child because she was fearful of the consequences, so told her mother she did not know what to believe regarding A's allegations. She has more recently alleged that the Appellant's husband was psychologically bullying and emotionally abusive. She spoke of inappropriate sexualised behaviour such as measuring her body and looking up her skirt. This was said in the context of accepting that her stepfather had changed and she did not wish to get her mother into trouble. B's evidence seems to be considered and balanced. There is no evidence before us to support the submission made by the Appellant that as B has become close with A in the last year she "*now seeks to agree with whatever [A] suggests*".
17. We accept that both A and B have indicated that they do not want the police involved and do not wish for their mother's child minding or care for A's children to be adversely impacted. The Appellant points out that this contradicts their allegations. We accept that A and B appear to be reluctant complainants in that they do not wish to go to the police and A in particular is content for her teenage children to reside with the Appellant and her husband, rather than be taken into care. It is not however for A and B to assess whether there is a risk of harm to minded children. A and B may well believe that the Appellant's husband has changed but it remains important for their allegations of

historic abuse against him and the risk he currently presents to be investigated.

18. The Appellant has described her relationship with her father as difficult and that he fell out with her husband. We have carefully considered the transcript of the interview. The Appellant's father also comes across as a reluctant complainant. He is clear that his daughter is an excellent child minder – "*so protection of the children*" and is sorry that he has "*lost*" his daughter. We do not detect malicious intentions on his part but a desire to make the relevant authorities aware of the serious allegations he has been told about.
19. The Appellant has been aware of the allegations and investigation in 2010 for a lengthy period of time but omitted to report these to the Respondent. We have been told that the Appellant wholeheartedly accepts she made a mistake in this regard. She points to the stress that she was under in 2010 and that her focus was on keeping her grandchildren safe and happy. We accept this it is understandable that the Appellant was distracted in 2010 but we do not consider this sufficiently explains why the Appellant failed to report the outcome of the investigation over the following four years. The Appellant is after all a very experienced child minder, well aware of her child protection obligations. We also note that the Appellant accepts she made an inappropriate suggestion to her husband that he should try to shock A by telling her to show him her breasts when she was a teenager, in order to call her bluff because she was exhibiting inappropriate provocative behaviour and that this was done out of "*sheer desperation*". In our view such a suggestion on the part of the Appellant was entirely inappropriate and misconceived, whatever A's behaviour at the time.
20. The Appellant is an extremely experienced and well-regarded child minder. Her suspension has an inevitable serious impact upon her livelihood. We have considered whether there might be other less intrusive ways in which children might be protected during the investigation. Such measures have not been advanced by the Appellant's solicitors, but it is difficult to envisage what these might be when the Appellant's husband resides with her and assists in the child minding.
21. We are satisfied that the Respondent has been conducting investigations as expeditiously as possible in all the circumstances. We accept that disputed historical allegations of child sex abuse are very difficult and require careful and sensitive but robust investigation. Proactive steps have been taken to interview the relevant individuals quickly and it is understandable that there will need to be further interviews of A and B, who thus far have only been interviewed by telephone. We accept that this is not the fault of the Respondent, which has been acting diligently and sensitively in making contact with the relevant individuals. We note that the relevant officers have

rearranged professional commitments to try to ensure that further interviews take place this week. **Ofsted v GM & WM** [2009] UKUT 89 (AAC) makes it clear that where Ofsted wish to resist an appeal against suspension on the ground that further investigations need to be carried out, it needs to be made clear to the Tribunal what those investigations are. We are satisfied that we have been told that further interviews with specific individuals need to be carried out and these shall take place reasonably quickly.

22. We are satisfied that there is reason to believe on the evidence currently available to us that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm, and in all the circumstances of this case, the decision to suspend was, and continues to be a proportionate one.

Order

23. The Tribunal does not adjourn the determination of this appeal.

24. The appeal against suspension is dismissed.

Judge Melanie Plimmer
Lead Judge, Care Standards and Primary Health Lists
First-tier Tribunal (Health, Education and Social Care)

Date Issued: 25 February 2015