

Care Standards

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

[2018] 3374.EY-SUS

Considered on the papers on
5th July 2018

Before
Tribunal Judge T Jones
Specialist Member B Graham
Specialist Member B Cairns

Between

ESSEX LEARNING CENTRE

Appellant

-v-

The Office for Standards in Education, Children's Services and Skills
(Ofsted)

Respondent

DECISION

The Appeal

The Appellant appeals the decision of the Respondent made on 14th 15th June 2018 to suspend the Appellant's registration from Voluntary Part of the Childcare Register until 26th July 2018 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').

Paper Determination

1. The appeal was listed for consideration on the papers, pursuant to rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('2008 Rules'). Both parties must consent, which they have in this case, but the Tribunal must also consider that it

is able to decide the matter without an oral hearing. The parties had until noon on 2nd July 2018 to file submissions and information with the Tribunal.

2. In this case, we have sufficient evidence from both parties regarding the nature of the allegations made and the conclusions reached. In the circumstances, we consider that we can properly make a decision on the papers without a hearing. The Tribunal noted the directions earlier given for submission of documents by the parties.

Restricted reporting order

3. 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 up to the issue of the notice of statutory suspension.

4. This is a summary of events taken from information provided by the Respondent. It is not a full narrative of the documents the Respondent filed with the Tribunal and supplied to the Appellant. The Tribunal's role is not to make findings of fact it is tasked to carry out a risk assessment.
5. The Respondent has become aware that the Charity Commission (CC)
6. have put in place an external independent manager **and** are currently assessing the on-going suitability and competency of the trustees including Mr Rahim (the Appellant) one of five Trustees of the Charity **Essex Islamic Academy**, who is the nominated individual by Essex Care Limited responsible for the care setting.
7. Concerns arose following a former employee of the ~~care place~~ **Charity** setting being convicted (March 2018) of serious terrorism offences, which included showing children materials concerning radicalisation and inciting them to re-enact acts of violence. One of the Metropolitan Police officers dealing with the issues at trial of this individual (who was sentenced to 25 years imprisonment) said that children were terrified of this individual and were traumatised.
8. In May 2018 officers of the Respondent who only then became aware of these concerns spoke to and then interviewed the Appellant, a Trustee of the Charity concerned and the nominated individual as to his role and responsibilities ~~within the care place setting~~ **as a nominated individual for a registered provider of day care.**
9. A case review followed and concerns arising **in** discussions ~~with~~ **about** the Appellant included: poor knowledge of safeguarding, **and the lack of** a sound knowledge of "Prevent" anti-radicalisation procedures. The

Appellant appeared to blame others for outsourcing provision of lessons to these children and had failed to inform the respondent of ongoing concerns as to the Charity, and the ~~care place setting~~ Mosque that were apparent in the lead up to the trial of the person later convicted of very serious offences and the impact of his offending upon children in the ~~care place~~ registered setting. These matters should have been reported to the Respondent as a requirement of registration.

10. The Appellant was said to be less than open with the Respondent's officers, by way of example, though it is a requirement of registration, it is said he failed to share with the Respondent the existence of an order made in January 2018 by the CC, or that the Charity had then failed to provide the CC with details of the ~~care place~~ registered setting.
11. A decision was made by the Respondent to suspend the Appellant's registration from 14th 15th June 2018 in light of on-going concerns children may be exposed to risk of harm in the ~~care place~~ registered setting, and the Appellants suitability for continued registration.
12. The Respondent on the basis of the information they had believe the suspension is warranted given the concerns they are aware of. The Respondent is aware of the requirement to progress the investigation without undue delay and to consider the on-going need for the suspension order.
13. Whilst the Respondent has considered the Appellants appeal in this matter the Respondent reminds the Tribunal its role is not to make findings of fact. The Respondent sets out the response to the appeal this is at pages 216 to 220 of the bundle. The Respondent's case on this point is also set out in synopsis at paragraphs 27 to 32 of Ms Nazarkardeh's witness statement dated 27th June 2018. These documents have been circulated to the parties and we do not intend therefore to repeat the same here.
14. The Appellant resists the suspension continuing. We have considered submissions and documents within the bundle, they are repeated in places but the Appellant should be assured they have been read and considered fully by the tribunal.

Legal framework

15. The statutory framework for the registration of ~~childminders~~ providers of day care is provided under the Childcare Act 2006. 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.
16. When deciding whether to suspend a ~~childminder~~ provider of day care, 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.”

17. “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”.

18. 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.

19. The powers of the Tribunal are 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. The Tribunal remains an independent of the parties to this appeal; it has to reflect of the statutory duties and powers of the Respondent in light of all the available information before it.

20. 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.

Appellant’s submissions and materials.

21. It is said the setting is a very different place to where the issues giving rise to the conviction of a former employee arose. CCTV has been installed and steps are and have been taken to ensure there is no risk of harm to children.

22. None of the Charity’s trustees were implicated in the offending. The Trustees were not told by the police, or the local authority they had to inform the Respondent of the then on-going investigation or any actions taken by the CC.

23. A number of documents have been filed by way of example as to recruitment procedures being enhanced, training undertaken, including safeguarding training (a certificate dated 22nd June 2018 is one example of this). There is support from the CC for the Charity; an example of this

is an interim manager for the Charity is in place, by order of the CC.

24. The Appellant states the safety of children is of the highest importance, he has been the nominated person since 2013, and he holds to question just where the risk to children arises following his discussions with the Respondent's officers.

The Tribunal's conclusions with reasons

25. The standard required to justify a suspension is not a high one. During the short period of the suspension, it is for the Respondent to investigate matters to determine if there is a case for longer-term enforcement action, or whether the outcome of the investigation is that there is no longer reasonable cause to believe children may be harmed.
26. We reminded ourselves of the threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts or determining the veracity of allegations in this case. When considering the threshold for an order to be made the Tribunal is aware of the Respondent's enquiries continuing. This suggests there are material concerns such they are obliged to investigate apparently serious matters.
27. The Tribunal is aware these matters may well be contested if the concerns are not resolved by the parties working together in the meanwhile. It has not lost sight of the fact that the Appellant's approach has been to co-operate with the Respondent which is to the Appellant's credit. Some steps have been taken as to training and installation of CCTV. The training was undertaken recently April/May/June 2018 and there is concern that it may not be embedded in current practice of ethos of the Appellant's ~~care placement~~ **registered setting**.
28. That said the suspension came about on ~~7th~~ **15th** June 2018. There is nonetheless, we find a reasonably held underlying concern as to safeguarding issues on the part of the Appellant. There are reasonably held concerns that have yet to be investigated, and dealt with, as to the allegation the Appellant has not kept the Respondent informed of the response of the police investigation, the CC's involvement as to the serious issues that have arisen at this ~~care setting~~ **Charity**; has sought on occasion to blame others; has minimised or not recognised the harm or potential harm to children in the ~~care setting~~ **Charity** but has expressed need to ensure such events, or any risk of harm, does not occur.
29. The Respondent confirms they are ever mindful of their duty to lift the suspension as soon as circumstances permit and they continue to liaise with the other agencies in this regard We are assured that the Respondent's investigation is progressing.

30. Against the required standard whilst not finding fact, in overview of all submitted by both sides we have decided, much in line with the Respondent's submissions made in their reply to the appeal and the witness statement we have referred to already, we find that there are sufficient concerns to warrant the Tribunal continuing the suspension. We concluded that we are satisfied that there may be a risk of harm to a child placed in the Appellant's care at this time.
31. In reaching our decision, we also took into account a range of factors including the Appellant's submissions, the effects on children and parents who might use the services and the disputed nature of the allegations. We have taken full account of the Appellant's submissions and concerns as to the veracity of the allegations. However, in our view at this time, in terms of a risk assessment on the available information is that the nature of the allegations being investigated by the police led us to conclude that at this point in time the action taken is both necessary and proportionate.
32. We reminded ourselves that 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 the suspension is necessary and to conclude its enquiries as soon as possible.
33. In overview and for these reasons, we conclude therefore that at this time the continued provision of child care by the Appellant to any child may expose such a child to a risk of harm.

Decision

34. The decision to suspend registration is confirmed and the appeal is dismissed.

**Tribunal Judge T Jones
Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 10 July 2018
Amended under Rule 44 date issued: 17 July 2018**