

First-tier Tribunal Care Standards

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

[2021] 4427.EY-SUS

Hearing held by video (CVP Kinly)
on 1 November 2021

BEFORE
Tribunal Judge McCarthy
Ms D Horsford (Specialist Member)
Ms S Jacoby (Specialist Member)

BETWEEN:

Mrs Claire Goodway

Appellant

-v-

Ofsted

Respondent

DECISION

Representatives:

For the Appellant Ms Jennifer Agyekum of Counsel
For the Respondent Miss Sukhveer Kandola of Counsel

Witnesses (in order called):

Mrs Jo Rowley, Early Years Regulatory Inspector
Mrs Dianne Andrews, Early Years Senior Officer
Mrs Claire Goodway, the Appellant

Appeal

1. On 28 September 2021, Ofsted decided to continue the suspension of Mrs Claire Goodway as a childminder on the Early Years Register and the compulsory part of the Childcare Register. The suspension is due to end at midnight on 9 November 2021.
2. On 12 October 2021, the Tribunal received Mrs Claire Goodway's appeal against the decision. The appeal is made under regulation 12 (appeal against suspension) of the Childcare (Early Years and General Childcare Registers) (Common Provision) Regulations 2008.

3. As is usual in an appeal such as this, we make 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 ('2008 Rules'), prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify any children or their parents or carers in this case so as to protect their private lives.

Preliminary matters

4. The Tribunal decided it was appropriate to hear this appeal by video because the issues were such that this would be a fair, just and proportionate way of hearing evidence and arguments. Neither party raised any concern about this decision, and we are satisfied that nothing arose during the hearing that suggested the approach was not appropriate.
5. On 28 October 2021, the Mrs Goodway's solicitors informed the Tribunal that she had tested positive for Covid-19 and was to finish a period of self-isolation on 1 November 2021. Her GP said she would be too ill to attend the hearing and recommended the hearing should be postponed. Ofsted opposed a postponement because of the short length of time the suspension has to run. We notified the parties that we wanted to hear more from each side about their positions before we could make a decision and informed them that the application would be decided as a preliminary matter.
6. At the start of the hearing on 1 November 2021, Mrs Goodway attended. Ms Agyekum told us that the application was not being pursued although we should bear in mind that Mrs Goodway is still recovering. We informed Ms Agyekum that we were happy to proceed in such circumstances, and that we would be happy to offer Mrs Goodway any breaks or additional time she might require during the hearing.
7. Because of the additional strain video hearings can place on participants, after starting at 10.00 a.m., we took breaks from 10:55 to 11:15 a.m., 12:45 to 1:45 p.m., and 2:45 to 3.00 p.m. The hearing finished at 3:45 p.m. We advised all present that if they needed a break at any other time, then they could request one. Neither Mrs Goodway nor any other of the participants requested any additional breaks.

Applicable Law

8. Section 69(1) of the Childcare Act 2006 makes provision for regulations to be made dealing with the suspension of registration, which are the Childcare (Early Years and General Childcare Registers) (Common Provision) Regulations 2008.
9. Regulation 9 identifies the circumstances in which registration may be suspended. They are when, "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 meaning as in section 31(9) of the Children Act 1989, which is, "ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another."

11. As we are dealing with an appeal and not merely reviewing the Chief Inspector's decision, we must stand in the shoes of the Chief Inspector and decide for ourselves whether at the date of this decision circumstances persist that engage Regulation 9. We recall that even if we are satisfied the threshold for suspension has been passed, before we make our decision, we must also consider whether suspension is necessary and proportionate in all the circumstances.
12. The burden of proof lies on Ofsted. The standard of proof, being "reasonable cause", falls below the civil standard of proof but above reasonable cause to suspect. The belief is to be judged by whether a reasonable person, assumed to know the law and in possession of the information, would believe that a child might be at risk of harm.

Evidence

13. Before the hearing, we read the appeal bundle dated 28 October 2021, which is divided into sections A to I. The electronic (PDF) bundle contains 319 pages. During the hearing, it transpired that Ms Agyekum was using the bundle prepared on 25 October 2021, but this did not cause difficulties because the only difference was the version that we were using included the skeleton arguments. Throughout the hearing, it became common practice to refer to pages by both the electronic page number as well as the section page number.
14. The parties confirmed there was no late evidence.
15. We heard from the three witnesses listed above after they affirmed or swore the oath. It is not efficient to rehearse all their evidence here. Instead, we draw from our notes of the hearing and record relevant evidence as necessary when we make our findings.
16. We record that there is broad agreement about the events that led to the suspension of registration. There are some disputes about what and when Mrs Goodway is reported to have disclosed information to a Social Worker and to Ofsted officers but we are not asked to make findings of fact on these points as they are peripheral to the issue we have to decide in this appeal.

Background

17. Mrs Goodway has been registered with Ofsted as a childminder since 19 October 2006. She operates her business from her home.
18. Ofsted has carried out inspections in March 2007 (outcome: satisfactory), 21 November 2011 (outcome: good), 15 April 2016 (outcome: good), 5 November 2019 (outcome: inadequate), 3 March 2020 (outcome: requires improvement) and 18 May 2021 (outcome: good, but not published).
19. Ofsted initially suspended Mrs Goodway's registration on 26 May 2021 and continued the suspension on 6 July and 17 August 2021. Mrs Goodway did not appeal these decisions.
20. The decision notice of 28 September 2021 to continue Mrs Goodway's suspension contains the following reasons.

"The reason for continuing the suspension of your registration is that we

believe children would be at risk of harm should you continue to operate. Following enquiries made by Ofsted and other agencies, it was concluded that you had failed to take steps to safeguard children in your care and protect them from harm. To further eliminate the risk of harm we have also followed Ofsted's process to cancel your registration."

21. The safeguarding concerns are in respect of Child A and Child B, who are cousins, and incidents that occurred between 29 March and 12 May 2021. Child A was placed in the care of his aunt and uncle, who are the parents of Child B. Mrs Goodway had been minding Child B for about 18 months in total, and began minding Child A in March 2021. Mrs Goodway minded the children four days per week for about seven hours per day.
22. Ofsted alleges that Mrs Goodway failed to raise concerns or submit a referral regarding Child A, who was 20-months old, despite recording progressively worse bruising and other injuries to their body during that period. Ofsted also alleges that Mrs Goodway failed to disclose concerns regarding Child B despite on 30 April 2021 recording the injury as a, "handprint on thigh (3 fingers looked like handprint)".
23. In addition to undertaking its own enquiries, Ofsted was part of a multi-agency group that attended four Allegation Management Meetings (AMMs), co-ordinated by the LADO, on 27 May, 4 June, 23 June and 1 July 2021. The meetings were chaired by the LADO and representatives from Cambridgeshire Children's Social Care, Cambridgeshire Police and Ofsted participated. The group considered the allegation that Mrs Goodway, "in her position of trust, failed in her duty with the result that harm was caused to a child."
24. The unanimous conclusion of all professionals present at the AMMs and the LADO outcome was that the allegations were substantiated because,

"there was sufficient evidence to prove that Ms Goodway had behaved in a way that indicates she may not be suitable to work with children. Additionally, LADO believed it could also be argued that Ms Goodway has behaved in a way that has harmed a child because her failure to act and report appropriately led to harm of the child, although not directly caused by Ms Goodway."
25. The police officers who took part in the AMMs confirmed to the multi-agency group that there was no intention to proceed with any criminal action against Mrs Goodway.
26. Mrs Goodway accepts that she failed to raise the concerns as alleged. She provides some explanation why she did not do so and recognises that her reasons for not raising the concerns are unacceptable. Mrs Goodway says that she has changed, having reflected, gained insight into where she went wrong, is remorseful, and by attending additional training in safeguarding children, which she has implemented by updating her policies and information to families who would use her services.
27. On 7 July 2021, Ofsted issued a notice of intention to cancel Mrs Goodway's registration. Mrs Goodway presented her objections on 13 August 2021. After considering her objections, Ofsted decided that Mrs Goodway's registration

should be cancelled, and issued a notice to that effect on 25 August 2021. An appeal against that decision was received on 22 September 2021 and is pending separately in this Tribunal.

28. As Ofsted has issued a notice to cancel registration, we understand its investigations are complete.

Summary of each party's position

29. Ofsted sets out its case in its decision letter, its response to the appeal, its case summary, its skeleton argument, and the closing submissions made by Miss Kandola. Throughout its documents and submissions, Ofsted explains that it considers the failures of Mrs Goodway to safeguard children in her care are very serious and without demonstrating sufficient change in her approach, there is reasonable cause to believe there continues to be a risk that children in her care may be exposed to harm.
30. Ofsted says it has reached its decision based on its records (which include previous concerns about Mrs Goodway's approach to safeguarding), its investigations into the specific incidents, the investigations of other agencies, and despite the positive steps Mrs Goodway has taken, which include her remorse, reflection, further training, and adjustments of policies.
31. Ofsted is not satisfied that there is sufficient reliable evidence to show that Mrs Goodway has changed her approach to safeguarding sufficiently to reduce the risk that children in her care may be exposed to harm. Ofsted does not accept Mrs Goodway's assertions that she has changed her approach to safeguarding and although it accepts that she has attended additional targeted training, it is not satisfied Mrs Goodway understands what is required of a professional working with children. Ofsted also rejects the value of the parents' references provided by Mrs Goodway on the grounds that they are based only on what she has told them about the reasons for her suspension.
32. Mrs Goodway sets out her case in her appeal application form, her grounds of appeal, her response to the notice of intention to cancel registration, and the closing submissions made by Ms Agyekum. Throughout these documents, Mrs Goodway admits to her past failures but says she has changed sufficiently so that it was no longer reasonable to consider that a child in her care may be exposed to a risk of harm.
33. Mrs Goodway relies on the following factors: there has never been a similar allegation of possibly exposing a child in her care to harm during the 15 preceding years when she has provided childminding service, that she has cooperated with enquiries into the incidents that led to her suspension, that she has admitted her failures, that she has shown remorse and reflected on her failures, and that she has increased her knowledge of safeguarding by attending additional and targeted training. She submits that a reasonable person would realise there is no risk of the circumstances that led to her suspension being repeated and that her continued suspension is unnecessary.
34. Mrs Goodway adds to this set of factors that it is disproportionate to continue her suspension because of the negative impact it has on the children she used to mind and on their parents (as set out in the references), as well as the negative

impact on her own livelihood and business.

35. Mrs Goodway is also concerned that Ofsted is using continued suspension as a stopgap, that is, as a pre-judgment of its decision to cancel her registration, which is not permitted because that is not the test that should be applied.

Our findings with reasons

36. We begin our analysis of the evidence and information provided by considering the period between 29 March and 12 May 2021. We have no doubt that Mrs Goodway's failure to report concerns about the harm suffered by Child A and Child B undermined her ability to safeguard children in her care. We have no doubt that her registration had to be suspended. We recognise that Mrs Goodway does not suggest otherwise.
37. We recognise that Mrs Goodway has expressed appropriate remorse about what happened, has reflected on the incidents and has gained some good insight into what went wrong. We can see that she is passionate about making amends, including attending additional training and adjusting her policies.
38. When considering whether Mrs Goodway's registration should continue to be suspended, we recognise that the historic failings are serious and significant. It is necessary to understand the seriousness and significance of the failures because it indicates whether Ofsted is right in concluding that she has failed to make sufficient changes to reduce the risk of exposing a child in her care to harm. In other words, the fact children in her care have previously been exposed to harm will be a good indicator that the risk will remain present unless sufficient changes are made to the way she provides childcare.
39. We recognise that between 29 March and 12 May 2021, there were at least eight occasions when Mrs Goodway or her assistants recorded and/or discussed injuries to Child A and Child B, as set out in the chronology. We say at least eight occasions because in the LADO AMMs report there is reference to Child A's wrist having been broken during the period in question. That injury does not appear elsewhere in the evidence we have.
40. The majority of injuries were bruising, with increasing severity during that period. On 6 May 2021, scratch marks to Child's A penis and testicles were noticed during a nappy change. The records of concern maintained by Mrs Goodway identify the various injuries sustained during the March to May 2021 period but do not on each occasion include an explanation about the causation. Mrs Goodway says that she was reassured by the carers about how Child A sustained the injuries when she asked. Ofsted suggests that this lack of record keeping means there is a lack of evidence to support Mrs Goodway's account. That is immaterial to us because Mrs Goodway accepts that her approach to the incidents was fundamentally wrong.
41. Ofsted has provided evidence that one of Mrs Goodway's assistants recounted how members of the public had expressed concern about the visible injuries to Child A when visiting the zoo on 12 May 2021. We also identify that as Child A vomited whilst in her care on that day and was suffering from loose stools, Mrs Goodway told his carers that she would not provide childcare for him for 48 hours.

42. As admitted by Mrs Goodway, she was aware of the recorded injuries and that she returned Child A to his uncle and aunt when they came to collect him. It is clear to us that this indicates that Mrs Goodway was not at that time considering the possibility that Child A was being exposed to harm at home.
43. Mrs Goodway says she did not know about the concerns raised by members of the public as she was caring for other children and the concerns were not passed on by her assistant. That may be the case, but the issue raised by Ofsted is that this is an indication that the injuries suffered by Child A were obvious signs of safeguarding concerns that were being ignored by Mrs Goodway.
44. Ofsted also reports that photographs have been seen of Child A's injuries at that time and they are indicative of a child that has been beaten. We have not seen those photographs as they belong to Mrs Goodway, who no longer has access to them. Copies are held by the police but have not been released to Ofsted despite Mrs Goodway having given permission last week for them to be disclosed. We do not need to see the photographs for the purposes of this appeal because there is no dispute that Child A had extensive facial bruising on the day in question.
45. Having recognised the seriousness and significance of the incidents that occurred between 29 March and 12 May 2021, we move on to consider why Mrs Goodway failed to act. This is relevant because as part of our assessment to decide whether there continues to be a risk that a child in her care may be exposed to harm, we need to understand more about what happened to assess whether there has been sufficient change to reduce such risk.
46. At several junctures in the evidence, we note that Mrs Goodway says she did not want to raise her concerns because she wanted to be sure. She understands that this was not appropriate. In oral evidence, Mrs Goodway added to this explanation that she had not wanted to believe a child might be suffering harm. She told us that she blocked most of it out. At other places, Mrs Goodway describes her positive relationship with the carers of Child A and Child B, and she acknowledges that she place her trust in them as having good parenting skills (even though she now admits this trust was misplaced). When we stand back and look at these three points, we realise that Mrs Goodway had difficulty believing that her opinions of a parent or carer was not correct, and this distorted her view of the injuries she observed and recorded.
47. We believe this indicates that Mrs Goodway was unable to dissociate her emotional attachment to children and their parents/carers to the extent needed to make objective assessments about safeguarding concerns. In other words, she did not maintain a suitable professional distance to be able to put the needs of children first and her judgement is likely to be clouded by her emotional attachment to children and their parents/carers.
48. We find this assessment fits other parts of the evidence. For example, in her oral testimony, Mrs Goodway spoke about how childminding is a passion for her, that not being able to mind children felt as if a part of her has died, that everything she ever knew was childminding, that it was not just a business but opening her home to other families and created a bigger family, and that she misses them every day. Although there is a positive side to this approach in terms of providing a welcoming and nurturing environment, we see it as evidence that Mrs Goodway

took her welcoming and nurturing approach beyond appropriate boundaries. This is further reflected, for example, in Mrs Goodway asking Ofsted whilst suspended whether she could meet up with parents and children who she had minded. We see this as Mrs Goodway bringing her own needs to the fore even if she intended to do so to maintain relationships.

49. Our concerns about Mrs Goodway's attitude to the children she minded are increased because we do not understand why she says she was planning to raise safeguarding concerns on 14 May 2021. She suggests that she thought social workers were having regular contact with Child A and therefore there was no need for her to raise concerns. If that was the case, we do not understand why she was planning to report her concerns at all. Nor does her proposal fit with her actions on 12 May 2021, when she returned Child A to his carers with instructions not to bring him back within 48 hours, which would mean that Mrs Goodway would not have contact with him before 14 May 2021 and therefore would not have any additional information on which to raise concerns with other agencies. We are more confused by her lack of action when we consider that she mentioned her concerns about Child A to a social worker on 13 May 2021, after being contacted by the social worker. None of this makes sense to us and we do not find Mrs Goodway's account to be reliable.
50. We are aware that Ofsted has raised other concerns about Mrs Goodway's honesty and integrity. We can see that Mrs Goodway has provided different accounts at different times about whether she had spoken to social services directly about Child A or whether she had simply asked his carers to put her in touch. We are satisfied the latter is more likely to be accurate but that is not what we have to consider. We accept that changing accounts is an indication that a Mrs Goodway has not been honest and not being honest undermines her integrity.
51. We also take into account the concerns raised by Ofsted that Mrs Goodway has failed to respond appropriately to its concerns regarding her updated safeguarding policy. For example, in her amended policy documents, she does not identify the correct professional agency to contact or how it should be contacted if she or her assistants have a safeguarding concern. We are concerned that Mrs Goodway suggested that she was about to further revise her policies to include the concerns raised by Ofsted, which she had realised needed amending because of a safeguarding course she attended with her local authority on 20 October 2021. We do not accept her evidence at face value on this point because it appears to be opportunistic insofar as there was no indication in her evidence in chief or cross examination that she was proposing to further amend her policies. It was only in response to our questions that she proposed this course of action and we believe it was simply occurring to her as she was answering our questions.
52. Our concerns about the reliability of Mrs Goodway's evidence leads us to conclude that we cannot rely on her explanations or accounts about the events in the week of 10 May 2021. If we cannot accept her evidence at face value, we cannot be satisfied she has developed the skills necessary to be able to mind children without possibly exposing them to a risk of harm. In other words, we do not find that the evidence when looked at in the round shows that it is reasonably likely she has learned sufficiently from the incident or courses to change her approach to such situations. Therefore we are not satisfied the positive steps

she has taken are enough to reduce the risk to the necessary low level.

Our conclusions

53. This is a case where concerns of child safety occurring in response to a quick succession of serious incidents in March to May 2021 were not appropriately raised by Mrs Goodway. Although she has shown appropriate remorse, good insight into her failure and although she has sought to redress that failure by undergoing intensive training, we are not satisfied she has shown a change to her fundamental approach to her childminding business to maintain the professional boundaries necessary to safeguard children effectively.
54. Having made this finding, we do not need to carry out a proportionality assessment because the fact we find the appellant is unable to show she can safeguard children effectively means it is in the public interest to suspend her registration because not doing so may expose a child she is minding to harm. That is the test we have to apply and having applied it we find that the Chief Inspector's decision to maintain Mrs Goodway's registration as a childminder is correct.

Decision:

The appeal is dismissed.

We confirm the Chief Inspector's decision of 28 September 2021 to suspend registration.

Judge McCarthy

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 03 November 2021