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In the First-Tier Tribunal (Health, Education and Social Care)
Considered on Papers
On Friday 19th April 2013

Before

**Deputy Chamber President Judge John Aitken
Specialist Member Ms Bridget Graham
Specialist Member Ms Wendy Stafford**

Mrs Diane Peake

Appellant

v.

Ofsted

Respondent

[2013] 2028.EY- SUS

Decision

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Procedure Rules however not only must both parties consent, which they have but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have a good picture of the allegations made, the response and the level of risk present, from the papers, there appears to be no substantial factual dispute which might affect our decision and we consider that we can properly make a decision on the papers without a hearing. We stress however that we have not seen evidence of an interview scheduled to take place before this hearing nor of any report thereafter.

2. The appellant appeals to the tribunal against the respondent's decision dated 13th March 2013 to suspend her registration as a child minder on the General Childcare Register under Section 69 of the Childcare Act 2006, for six weeks until 23rd April 2013.

3. 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

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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.

4. The appellant has been a registered childminder for almost 30 years (since 1985). On 12th March 2013 a ten year old minded child was overheard at school saying to a friend that she thought that the appellant's brother David Thomas was going to rape her. David Thomas is a regular visitor to the appellant's home and child minding premises and is known to stay overnight there. A Police enquiry has commenced and the appellant has been interviewed. The police have evidence of sexual abuse involving at least one child. There is no evidence that she was aware of the abuse.

5. The appellant's brother resides in Nepal but is a frequent visitor to the United Kingdom and the appellant.

6. On 13th March 2013 a decision was taken to suspend the registration of the appellant and she was notified accordingly, further representations were considered and the decision affirmed on 19th March 2013.

The Law

7. 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 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.

8. 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.”

9. 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.

“Harm” is defined in regulation 13 as having the same definition as in section 31

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(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”.

10. 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.

11. 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

12. Ofsted are concerned that the appellant may not prevent further access to the children by the appellant’s brother, may fail to safeguard them from similar threats and when the premises were inspected noted that the appellant was vague confused and the premises untidy. There is also an allegation that the appellant has left the children alone with he brother which the appellant denies.

Conclusions

13. We understand the concern of Ofsted consider that it is proper to take steps to ensure that the children minded by the appellant are protected, until a fuller picture of what was being disclosed on 12th and 13th March. We consider it was entirely appropriate to suspend at that time.

14. The position today however, is that looking at the appellant’s almost 30 years as a childminder, is there a real risk that she will allow her brother to have access to the children whilst the investigation is ongoing? We consider that the Police having satisfied themselves as far as they are able without more evidence that the appellant was not aware of what was going on, that there is no appreciable risk now of that happening.

15. We have looked at the risk that the appellant would fail to safeguard the children from another similar threat, we again see no appreciable risk of that in the short term, it may be that Ofsted’s investigations and the issue relating to who was left alone with the children have a long term bearing on the level of risk and the suitability of the appellant in the long term, but we do not consider that in

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the short term with which we are dealing a person with her experience is at all likely to allow any other unauthorised person to look after the children.

16. We have looked also at the satisfactory rating of the appellant at the last inspection, and we note untidiness and the vagueness over what had happened, but we accept she could reasonably plead shock over such a serious abuse of trust and these allegations alone do not warrant suspension of such an experienced childminder.

17. We would add however that if the circumstances change, and we have in mind in particular any evidence that the appellant has allowed her brother to re-enter the premises used for childminding whilst the investigation is continuing a further suspension would no doubt be justified. Nor of course as we have indicated are we aware of any evidence which may arise from recent interviews with the appellant.

Decision

The appeal against interim suspension is allowed, the suspension shall cease to have effect.

Judge John Aitken
Deputy Chamber President
Health Education and Social Care Chamber
Friday 19th April 2013