

First-tier Tribunal Care Standards

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

2024-01148.EY-SUS

Neutral Citation Number: [2024] UKFTT 00570 (HESC)

Heard by video link on 27 June 2024

BEFORE

Mr H Khan (Judge)

Ms D Rabbetts (Specialist Member)

BETWEEN:

Mrs Gemma Leeson

Appellant

-v-

Ofsted

Respondent

DECISION

Appeal

1. Mrs Gemma Leeson ("the Appellant") appeals against the decision of Ofsted ("the Respondent") dated 5 June 2024 to suspend her registration. The period of suspension is for six weeks from 5 June to 16 July 2024. The decision was made pursuant to section 69(1) of the Childcare Act 2006, The Childcare (Early Years and General Childcare Register) (Common Provisions) Regulations 2008 and the Statutory Framework for the Early Years Foundation Stage ("EYFS").

Attendance

2. The Appellant represented herself.
3. Ms R Birk, Solicitor, represented the Respondent. The Respondent's sole witness was Mr Duncan Gill (Early Years Senior Inspector).

The Hearing

4. The hearing was conducted as a video hearing. The Appellant had emailed the Tribunal in advance to say that she would be dialling in by phone but did manage to dial in by video.

Restricted reporting order

5. 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.

The Appellant

6. The Appellant has been registered as a childminder on the Early Years Register, trading as Petite Gems Childcare.

The Respondent

7. The Respondent is the body responsible for the regulation of registered providers under the Childcare Act 2006 and the various regulations made under that Act. Its primary concern in performance of this role is the welfare and safeguarding of children.

Late Evidence

8. The Tribunal received an application from the Respondent to admit further evidence. This was in the form of a witness statement of Ms Aimee Hill dated 24 June 2024. The Respondent informed the Tribunal that the Appellant agreed to the evidence of Ms Hill being read as she did not want Ms Hill to attend the hearing. The Appellant's position at the hearing was that she disputed the admission of the evidence as she disagreed with its contents.
9. In considering any late evidence, the Tribunal applied rule 15 and took into account the overriding objective as set out in rule 2 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008. We concluded that we would admit the late evidence as it was relevant to the issues that the Tribunal had to determine. Furthermore, there was a reasonable explanation provided as to why it was late. This was because the Respondent was waiting for confirmation from the Police that a statement could be given in these proceedings given that the matter had been referred to the police. However, we made it clear to the Appellant that she could make submissions with regards to what weight we should attach to the evidence.
10. We wish to place on record that there was no restriction on Mrs Hill attending the hearing.

Events leading up to the issue of the notice of statutory suspension.

11. On 17 April 2024, concerns were referred to the Respondent from Local Authority regarding the Appellant's alleged decision to request alternative care for a minded child with possible special education needs, without the consent of the child's parents. The alleged concerns related to the alleged sharing of personal data.
12. On 30 May 2024, further concerns were received by the Respondent relating to the Appellant's alleged communication with parents of a minded child. There were additional allegations relating to the Appellant sending photos of children without the parents' consent.
13. On 05 June 2024, the Respondent's conducted an unannounced regulatory visit at the Appellant's domestic premises to obtain further details. There were allegations regarding the Appellant's behaviour towards the inspector as it was alleged that she was locked in and prevented from leaving the property. A young child was present and witnessed the incident which included the Appellant shouting, being aggressive and recording the inspector on her phone.
14. A decision was made to suspend the Appellant's registration on the basis that children in her care may be at risk of harm. The inspectors returned to the property to serve the notice of suspension in person. On being notified of her suspension, it is alleged that the Appellant began to raise her voice again and shouted at the inspectors.

Legal framework.

15. Section 69(1) of the Childcare Act 2006 provides for regulations to be made dealing with the suspension of the registered provider's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.
16. 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:
 - a. *'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'.*
 - b. "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".

17. Regulation 10 sets out further provisions relating to suspension. Regulation 10(2) deals with further periods of suspension which allows a further period of up to 6 weeks suspension to be imposed if it is based on the same circumstances as the previous period of suspension. This may only be exercised to give a continuous period of suspension of 12 weeks unless subsection 3 is satisfied, in which case the period of suspension may continue beyond 12 weeks.
18. Regulation 10(3) provides that where it is not reasonably practicable to complete any investigation (10(3)a)) or for any necessary steps to be taken to eliminate or reduce the risk of harm (10(3)(b)) the suspension may continue until the investigation is concluded or the risk of harm is eliminated or reduced. It is the Respondent's position that 10(3)(b) applies and that the steps being taken by Ofsted are to cancel the Appellant's registration.
19. The case of *Ofsted v GM and WM [2009] UKUT 89* established that on an Appeal under Regulation 12 "*The First-tier Tribunal stands in the shoes of the Chief Inspector and so, in relation to Regulation 9, the question for the First-tier Tribunal is whether, at the date of its decision, it 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*";
20. The threshold is clearly a low threshold. The threshold is that a child *may* be exposed to a *risk* of harm (emphasis added). It is not necessary for the Chief Inspector or the Tribunal to be satisfied that there has been actual harm, or even a likelihood of harm, merely that there may be a risk; and
21. The Tribunal must apply the test in Regulation 9 at the date of the hearing.
22. The standard of proof lies on the Respondent between the balance of probabilities and a reasonable case to answer. 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. The burden of proof is on Ofsted.
23. As the test is that there needs to be only "reasonable grounds to believe" that the threshold is met, the Tribunal does not need to make any findings of fact.
24. If the Tribunal is satisfied that the threshold for suspension contained in Regulation 9 is satisfied, the Tribunal would also need to consider whether the suspension is proportionate.
25. 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.

Evidence

26. We took into account all the evidence that was presented in the bundle and what was presented to us at the hearing. We have summarised some of the evidence before us and we wish to make it clear that the following is not intended to be a transcript of the hearing.
27. Mr Gill set out that he was a decision maker. He had been made aware of the allegations by one of the inspectors, Mrs Hill, on 5 June 2024. These allegations included filming the inspector without consent, shouting at the inspector and preventing the inspector from leaving. This was all done whilst there was a child aged around 7 years old on the premises. Mr Gill was concerned that such behaviour put children at the risk of emotional harm.
28. Mr Gill set out that in 21 years of doing this job, he had never come across a situation like this. Mr Gill set out that he had personally visited the premises on the same day to check on the child and to deliver the notice of suspension. The Appellant had shouted at him and the Inspector.
29. The incident on 5 June 2024 had been reported to the Police. It had also been reported to the Local Authority Designated Officer (LADO).
30. Mr Gill was concerned that the risk of harm had not been eliminated. There had been no reflection on the impact on the child and he had found the Appellant's behaviour to be unprofessional.
31. The Appellant denied the allegations. She denied that the child had been harmed in any way. She denied being aggressive. The Appellant stated that the inspector had a "*psychotic*" episode, was "poorly" and made reference to the Inspector's hygiene. The inspector had "*spun a web of lies*". The allegations were false and she denied them. She denied hurting anyone. She had reported the matter to the Police.
32. The Appellant made reference to her employment history. She had held responsible posts and was a good motivator. She described the impact of these proceedings on her. In particular, there had been an impact on her emotionally and financially.

The Tribunal's conclusions with reasons

33. We remind ourselves that 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.
34. We would like to place on record our thanks to all the witnesses including the Appellant who gave evidence at the hearing.

35. We reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts. That is that we are not deciding what happened on 5 June 2024.
36. We concluded that we were satisfied that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm. Our reasons for doing so are set out below.
37. We found the evidence of Mr Gill to be clear, well-reasoned and credible.
38. We acknowledge that these proceedings have had an impact on the Appellant. They have had a personal, emotional and financial impact. We acknowledge that the Appellant may have been nervous at the hearing. We ensured that we granted the Appellant breaks when they were requested. However, we found that the evidence of the Appellant to be erratic and in some instances evasive. The Appellant's oral evidence contradicted the written evidence such as for example that set out in the emails sent by the Appellant herself. The Appellant proceeded to deal with the range of reasonable questions with a "no comment" responses. Furthermore, the Appellant made unsubstantiated allegations at the hearing that the inspector, Ms Hill had a "*psychotic episode*" and that Ms Hill was "*poorly*".
39. We acknowledge that there are allegations regarding incident on 5 June 2024. We acknowledge that this is disputed. Both the Appellant and the Respondent have referred the incident on 5 June 2024 (and what happened after that) to the Police. The outcome of that investigation has yet to be determined. Both sides are therefore are waiting for the outcome of their report to the police.
40. Furthermore, we note that the Respondent has referred the matter to the Local Authority Designated Officer (LADO). The outcome of that referral has not yet been determined. The Respondent cannot therefore complete its investigations without the outcome of those two other investigations.
41. We acknowledge that although these are at this stage unproven allegations, the alleged incident concerned allegations of erratic behaviour towards a professional inspector whilst a child was present. The *allegations* are said to have involved a child who witnessed the Appellant raising her voice and shouting, preventing an individual from leaving the premises and filming an individual without her consent. Furthermore, some aspects of this behaviour were alleged to have been repeated in the presence of two inspectors later on the same day. We took into account the evidence that Ms Hill was an inspector was known to the Appellant as she had dealt with her registration previously without any issue.
42. We concluded that the reason why any investigation had not been completed or any necessary steps taken to eliminate or reduce the risk

of harm were not reasonably practicable for reasons beyond the control of the Respondent at this stage. The Respondent and the Appellant were awaiting the outcome of the referral to the Police about the incident on 5 June 2024. Furthermore, there was an ongoing LADO referral.

43. We acknowledge the Appellant's concerns about the impact that this has had on her since the suspension was imposed. 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.

44. In reaching our decision, we also took into account a range of factors including the Appellant's personal circumstances and the disputed nature of the allegations. However, in our view, the nature of the allegations led us to conclude that at this point, the action taken is both proportionate and necessary.

45. We conclude therefore that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm.

Decision

46. The Respondent's decision to suspend the Appellant's registration dated 5 June 2024 is confirmed and the appeal is dismissed.

Judge H Khan

Lead Judge

First-tier Tribunal (Health Education and Social Care)

Date Issued: 01 July 2024