

Care Standards

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

Heard on 7 and 8 November 2013 at Crewe Magistrates Court

Mrs Diane Peake

v

Ofsted

[2013] 2062.EY

[2013] 2103.EY

Before

**Miss Maureen Roberts, Tribunal Judge
Mr Graham Harper, Specialist Member
Mrs Sallie Prewett, Specialist Member**

DECISION

Representation: The Appellant was represented by Mr Willmer of Counsel. She gave evidence. Mr and Mrs Thomas, her brother and sister in law attended to support her.

The Respondent was represented by Mr Reed solicitor of Sternberg Reed Solicitors. The Tribunal heard evidence from Ms L Lawton Regulatory Inspector and Ms S Will Senior Officer Compliance Investigation and Enforcement Team, for the respondent.

Reporting restrictions

1. 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 children or their parents in this case so as to protect their private lives.

The background

2. The appellant has been involved in childcare for over thirty years and registered as a childminder since 1983. She has been childminding at her home since that time. There have never been any complaints made against her by a parent or child in that time.

3. The appellant has a step-brother (DT) who is now aged 69. Since his retirement, in 2008/2009 he has resided with the appellant, when in the UK. It is accepted that, DT spends considerable parts of the year residing in Nepal.
4. On 12 March 2013 an 11-year-old girl (B) minded by the appellant told her mother that her friend, another 11 year old girl (S), also minded by the appellant, had said that she thought DT was going to rape her. The mother of B told the school who informed S's mother. S disclosed to her mother behaviours by DT, which S had found frightening and confusing. Both girls said that DT had touched and kissed S and spoken of buying her a gift (earrings).
5. Both girls were interviewed by the police in March and April 2013. The Tribunal Panel viewed the DVD recordings of those ABE interviews before the hearing.
6. As a result of the disclosure, on 13 March 2013 a social worker and police officer attended at the appellant's house and informed her that a complaint had been made about her step-brother. She was not told any detail of the complaint.
7. On the 14 March 2013 the respondent then attended and stated that because of the allegations her registration was to be suspended.
8. DT left the country and went back to Nepal on 15 March 2013. He returned to the UK on the 14 June 2013 and was interviewed by the police on the 18 July 2013. He denied the allegations that had been made. He admitted that he had been living with his sister, the appellant and that he had discussed with S that he intended to purchase some earrings for her.
9. The Tribunal Panel listened to the taped interview prior to the hearing.
10. The appellant was interviewed by the police, on 10 April 2013 and the 8 August 2013. She explained that DT had little contact with the minded children and that she had not seen inappropriate behaviour by him or any change in the children's behaviour.
11. The Tribunal noted that at a paper hearing on 19 April 2013 the suspension was lifted and the appellant was free to continue childminding. The appellant decided to continue minding the children that she had but not to take on any new children. She said that it would be unfair to parents to take on new children whilst the matter was unresolved.
12. On 11 June 2013 the respondent imposed a condition on the appellant that DT was not to be on the premises when she was childminding.
13. Further, on 27 September 2013 the respondent notified the appellant that her registration was to be cancelled. The appellant appeals against both of these decisions by the respondent.

The Law

14. The evidence relating to the two appeals is the same. They fall to be considered together and the Tribunal has three alternatives open to it. The Tribunal can dismiss the cancellation appeal in which case the cancellation will be effective and the condition not required. The Tribunal can dismiss both appeals in which case the registration would continue without any condition and finally the Tribunal could allow the appeal against cancellation by permitting the appellant to continue with the condition as imposed by the respondent.
15. The relevant statutory provisions are contained in the Childcare Act 2006 and regulations made under that act. Both sides were professionally represented and the statutory provisions and regulations relevant to the appeal were in the bundle. In the circumstances of these appeals the central issue is that of the suitability of the appellant to continue as a registered childminder.

The issues

16. The issues before the Tribunal were to determine whether the allegations of sexually inappropriate behaviour amounted to sexual abuse and/or grooming by DT. Secondly to consider the allegations that the appellant had left children, other than her own grandchildren, in his care. Thirdly, whether the events demonstrated that there had been an insufficient level of supervision of the children by the appellant.
17. The central issue for the Tribunal as noted above, was that of the suitability or otherwise of the appellant.

Preliminary matter

18. The Tribunal heard opening statements from both parties at the start of the hearing.
19. It then emerged that neither Mr Willmer nor the appellant had seen the ABE DVD recordings of the interviews with the two girls nor had they listened to the tape-recorded interview with DT. The Tribunal was also informed that the respondent's staff had not been able to hear some of the tape-recorded interview.
20. The Tribunal therefore adjourned so that the relevant persons had an opportunity to watch the DVDs and listen to the tapes and began the substantive hearing at 2:15pm.

Evidence

21. The Tribunal had the benefit of reading the bundle which included witness statements from the respondent's witnesses, from parents of the children at the appellant's premises, ABE interviews with the two girls and a tape recorded interview with DT. We had a statement from Mrs Peake.

22. The Tribunal also had a case summary from the Respondent, the correspondence, notes of meetings and the notices that had been served on the appellant. We had statements from the respondent's staff, the parents of the children concerned, the social worker and the police officer involved. In addition, for the appellant the Tribunal had a number of references and copies of certificates obtained by Mrs Peake.
23. One matter the Tribunal sought to clarify at the start of the hearing was the times when DT had lived at the appellant's house. The appellant said that DT started to live with her in 2009.
24. More recently he had been in Nepal from 30 March 2012 until 4 May 2012 and then was back in the UK. He returned to Nepal in November 2012 until 10 February 2013. He was in the UK until he went back to Nepal on the 15 March 2013. He returned to the UK on 14 June 2013.
25. It was the appellant's evidence that DT had lived with her from 2009 until November 2012. She said he had then moved his things out of her house and lived with his son after that date because his son had purchased a flat on the other side of the town where they both lived.
26. The transcribed summary of DT's PACE interview confirmed that he had lived with the appellant since 2009 when he was not away travelling. He said he last flew out on 15 March 2013 and had been staying, prior to that, with his sister, the appellant.
27. The two 11-year-old girls who made the allegations have been minded by the appellant since S was 4 years old and B 7 years old. One child, S, said that she had been kissed by DT and touched on her legs by him. She said he had invited her to touch his nipple on one occasion which she had done but was scared about it. She said he had kissed her using his tongue. She referred to a period of time for this behaviour as being for the year prior to her birthday in October 2012.
28. Ms Lawton the Regulatory Inspector in this matter outlined her involvement with the appellant. She had been notified by the social worker of the allegations. The social worker had been contacted by the police and informed of the allegations being made by the two girls.
29. The allegations were made on 13 March 2013. Ms Lawton attended the appellant's house on 14 March 2013 and told her, that her registration would be suspended.
30. Further investigations took place and the police were the lead investigators. As noted above interviews were conducted with the two children. The appellant was interviewed by the police, on 10 April 2013. DT was interviewed on 18 July 2013 when he returned from Nepal.
31. On 16 April 2013 Ms Lawton attended the appellant's house by arrangement to interview her about the allegations. Also present were her brother (not DT) and his wife as supporters and a fairly lengthy interview took place with the appellant in which the concerns about DT's behaviour were outlined to her.

32. She said that she knew from the police that the allegations involved something sexual. She said that DT was never in the lounge alone with children and that she would never be out of sight or hearing of the children. She said that she had never left any minded children in the sole care of DT.
33. At the end of that meeting Ms Lawton recorded there were concerns that the appellant did not display an understanding of the kind of approaches that might be made to children who are being groomed; for example that the children may not show different behaviour when this is happening. In her view the appellant did not appear to understand the significance of the allegations being made against a household member.
34. Following that meeting the respondent issued a notice of requiring the appellant to undertake further safeguarding training. The appellant said that she had done this training online. It involved some introductory material and going through scenarios with a tick box response.
35. On 29 May 2013 Ms Lawton conducted a further interview with the appellant. By this stage the appellant knew most of the details of what had been said by the two girls. She was asked whether she thought it was possible that the allegations might be true and replied that it was hard to believe. She said she did not believe what they were saying was true or that DT was a potential risk.
36. At the conclusion of this interview Ms Lawton considered that the appellant had shown no empathy towards the two girls and had not reflected on the effect the alleged behaviour might have on them. She only spoke about the upset that had been caused to the younger children because her suspension from childminding had been disruptive for them. Ms Lawton also concluded that she appeared to be trying to discredit the character of one of the girls.
37. Ms Lawton considered that the interviews and statements revealed sexualised behaviour by DT towards the girls.
38. It was Ms Lawton's evidence, confirmed in cross-examination, that she had found the appellant to be weak and hesitant in her evidence. She said that the interview was an opportunity for the appellant to be open about what she knew and to discuss the possible implications of what had happened.
39. Ms Lawton considered that the appellant did not have sufficient knowledge or appreciation of the issues in respect of safeguarding in particular in respect of minded children making allegations against a child minder or a household member.
40. Ms Lawton acknowledged that she appreciated that the appellant was shocked and upset at the allegations that had been made against her

step-brother. However she found her vagueness and lack of forthrightness of concern.

41. Ms Lawton said that the CPS had decided not to take further action but that clearly the criminal level of proof was different to that of the respondent or the Tribunal. She did not consider that the appellant's responses to the allegations were adequate.
42. In addition she did not think there was further training that would help the appellant in this area. She noted that she had done some further training but did not consider that she had the reassurance that children would be safe. She stated that the appellant could have been more frank, open and given a more detailed account of events.
43. In addition the appellant could have given some acknowledgement that there might have been some truth in the allegations and understood the children's response, which might have reassured Ms Lawton.
44. Ms Lawton said she had looked at the evidence and the risk from DT and did not consider that the risk was going to be eliminated in the future. She said that she did not think it was conceivable that the appellant had not seen or heard something over the time of the alleged abuse. This was related to the issue as to whether the appellant had been supervising children properly and in her view, if she had been supervising them, then she would have seen or heard what had been happening.
45. The appellant gave evidence to the Tribunal and said that she was dyslexic and that this affected her concentration, her ability to remember what had been said to her and her spelling and reading. She said that when she tried to explain herself she often went blank particularly when she was under pressure.
46. She confirmed that she has been childminding for some 30 years with no complaint. She also said that she has looked after children with disabilities such as autism and Down's syndrome.
47. She said that on 13 March 2013 she was visited by the police and a social worker who said that there had been a sexual allegation made by an 11-year-old child minded by her. Subsequently she gave a statement to the police.
48. The appellant said that she found it hard to believe what had been said and that she, "realises things can happen". She said she could not think straight and had been unwell since the allegations had been made and that she has been in shock. She has not taken any minded children since July 2013 because she wanted to wait for the outcome of this hearing.
49. She said that DT had stopped living with her in November 2012 when his son had purchased a flat. He had moved his things out. She said that he visited her house and that he had stayed on the weekend of the

8/9 March 2013. She said she would always keep the children in sight or hearing of herself.

50. The appellant said that she had found Ms Lawton intimidating and that the interviews were a lot of pressure.
51. The appellant was asked if, with hindsight, she thought that the allegations could possibly be true. She said, "I don't think so I don't think they are true". She said she realised things like that could happen. She said she could think of no reason why the children would have said what they did.
52. Finally the appellant denied that DT had ever been left in the house with minded children on his own or that he had taken minded children out on a walk. She acknowledged that he had often gone out walking with her grandson.
53. Ms Will the senior compliance and enforcement officer for the respondent said that she had shared and reviewed all the evidence presented to her and explained the procedures as to how the decision was made and judged to be appropriate action. She said that she had considered the history of the appellant, the fact that she had worked for 30 years without complaint and had looked at previous inspection reports and, more recently the references supplied by the appellant.
54. She was made aware of the allegations and said that it was good practice to listen to the child and allow the child to speak freely. She described the allegations as quite sophisticated and that it was of concern that DT was befriending one of the children and getting to know her and her interests. She noted the incident where DT had spoken with S about giving her earrings. He had mentioned this to the appellant who had said that he should not do so. It then appeared that he had discussed it again with S and said that it was a secret.
55. Ms Will acknowledged that the CPS were not taking the matter further but that the respondents considered that the allegations clearly amounted to grooming and that they were too clever to have been made up by the two children. She had not seen the video evidence until much later in the investigation. She described the two girls as mature and aware for their age. She did not think that they could make up such a grooming story.
56. Ms Will also noted that a much younger minded child AP aged 3½ at the time had described inappropriate behaviour (kissing and tickling) from DT to her mother. This had been recorded by the social worker and passed to the respondents.

Conclusions and Decision

57. We carefully considered the written evidence submitted to the Tribunal in advance and the evidence given to us at the Hearing. We also took account of the legal provisions under the Childcare Act 2006 the regulations and relevant Case Law.

58. It was the respondent's submission that the allegations were credible and that there was ample evidence to find, on balance, that they were believable, consistent and that all of the children who had reported inappropriate sexual contact, had done so independently of each other. They noted the corroborating evidence in the surrounding details, the interviews and the ages of the children.
59. The respondent noted the evidence of DT and his disclosure about the discussions regarding the earrings and that S spoke of him saying that it should be kept as a secret. The respondent submitted that there was no motive or reason for the children to have invented or concocted a story about DT.
60. On the issue of the allegations, it was the appellant's submission that the Tribunal should make no finding about the allegations and that the fact that the CPS had not proceeded to charge DT meant that the evidence had not been tested and that no firm conclusions could be drawn from what the children had said.
61. The Tribunal concluded that there is compelling evidence on the balance of probabilities that DT's actions amount to grooming of one of the 11-year-old girls. Her evidence and that of the other girl on the ABE recorded interviews was convincing. The actions of DT in befriending her, finding out about her interests, offering to buy her a present and kissing and touching her are cogent evidence amounting to grooming behaviour.
62. The Tribunal note that, when DT was in the UK, from 2009, he resided with the appellant. This included the period, from early May 2012 to November 2012. He stayed with her, on occasion, between February 2013 until his return to Nepal on 15 March 2013.
63. With respect to whether the appellant left DT in charge of minded children when she went out there was conflicting evidence regarding this issue. The Tribunal accept there were certainly short periods of time when the appellant would be involved with some task when she would not have been within sight or hearing of the minded children and DT.
64. The Tribunal also accepts that the appellant had asked parents whether it would be acceptable for a minded child to be with DT. On balance we conclude that there may have been infrequent occasions when she left the house for short space of time and when minded children were in the house with DT alone.
65. In respect of whether any minded children went on walks with DT; on the evidence before us we do not conclude that DT took any minded children on walks when he went out with his grandson. We accept that in fact he declined to do so because of the extra responsibility.
66. The Tribunal are mindful of the appellant's long service with children and the fact that she has successfully looked after children, some with

disabilities for a very long time, with no word of complaint or concern about her.

67. We acknowledge that the appellant has been a very effective hands-on childminder for a considerable number of years. The references before the Tribunal were clear evidence of the high regard in which she is held and how valued she is by her ex-charges and their parents.
68. However on the evidence before the Panel we find that DT's actions amount to grooming of one of the 11-year-old girls and an attempt to groom the other girl. Although the appellant says in witness statements that she accepts that DT is a potential risk to children, at the Tribunal she stated that she did not believe the allegations being made against him and displayed a failure to understand different ways in which child abuse and grooming can take place.
69. On the evidence before us we consider that the appellant probably did see the occasional kiss or hug from DT to a minded child but did not perceive the potential safeguarding issues involved.
70. We conclude that, unfortunately for a variety of reasons, including her own dyslexia, she has not been able to keep up with the considerable changes in the procedures, policies and legislation particularly in respect of the safeguarding of children. This is not a reflection on her as a person as she is clearly a caring woman who has found it impossible to believe that her step-brother could have acted in an inappropriate way.
71. The Tribunal conclude that the appellant's inability to assimilate contemporary practice in regard to safeguarding, together with her lack of objectivity about her brother DT's behaviour, has precluded her from recognising the risks or potential risks of harm to minded children in her care. It follows that if the appellant cannot protect children in her care, she is no longer suitable to continue to be registered as a child care provider.
72. We therefore dismiss both the appeals.

APPEALS DISMISSED.

Our decision is unanimous

**Judge Maureen Roberts
Tribunal Judge Care Standards
Health Education and Social Care Chamber**

Date Issued: 14 November 2013