

## Care Standards

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

Heard on 25 November 2016 at Chester Civil Justice Centre

[2016] 2586.EY-W-SUS

Before

Mr H Khan (Judge)

Ms L Jacobs (Specialist Member)

Ms S Last (Specialist Member)

Susan Maureen West

Appellant

-v-

Welsh Minister

Respondent

### DECISION

#### The Appeal

1. Ms Susan West (the“Appellant”) appeals to the Tribunal against the Respondent’s decision dated 27 October to suspend her registration. That suspension is to remain in place until 7 December 2016 unless the Care and Social Services Inspectorate Wales (“CSSIW”) decides to lift the suspension sooner.

#### Restricted reporting order

2. 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.

#### Attendance

3. The Appellant was represented by Mr Keenan (Counsel). We heard oral evidence from the Appellant. The Appellants’ witnesses were Ms

Rebecca Artell & Ms Rebecca Wright. The Appellant had requested witness summons for Ms India Steel, Ms Ceri Ann Gaunt and Ms Bethany Jones and witness summons had been issued. However, despite witness summons being issued, they did not attend the hearing although Ms Gaunt and Ms Jones provided an explanation for their non attendance.

4. Mr Robert Edwards (Counsel) represented the Respondent. The Respondents witnesses were Ms Sue Millington (Area Manager for Childcare and Play), Ms Suzanne Hamer (Inspector) and Ms Gemma Lynch (Inspector) from CSSIW.

#### **Events leading up to the issue of the notice of statutory suspension**

5. The Appellant is a day care provider registered by the Welsh Ministers, as the registration authority, under Part 2 of the Children and Families (Wales) Measure 2010 in relation to Scallywags Day Nursery and Private Nursery School, Wrexham. The Appellant is registered to provide full day care for up to 69 children under the age of 12.
6. The setting had been inspected in July 2016 and a Non-Compliance Notice had been issued in relation to inadequate security provision.
7. On 26 October 2016, CSSIW carried out an unannounced inspection of the setting following a concern raised by a parent whose child had previously left the service unnoticed. The parent had indicated that the entrance to the nursery and the door to the childcare room remained insecure.
8. During the inspection, the CSSIW inspectors were informed by staff that the children in the Appellants care had been mistreated. It was alleged that the Deputy Manager, Ceri Hughes, had force fed and physically mistreated the children. It was also alleged that the Appellant was notified of this inappropriate behaviour but had dismissed those concerns.
9. Following the inspection, the CSSIW inspectors made an immediate safeguarding referral to Wrexham County Borough Council Social Services Department. The matter was also reported to North Wales Police.
10. On 27 October 2016, an internal meeting was held at CSSIW and it was concluded that the setting was a Service of Concern. Furthermore, the inspectors concluded that as the Appellant and the Deputy Manager were implicated in the allegations, there was reasonable cause to believe that the continued provision of day care exposes, or may expose, one or more of the children cared for to the risk of harm and that the most appropriate and proportionate action was to suspend the service to allow time for the circumstances to be investigated.

11. The Appellant was then served with a Notice of Decision to suspend her registration with immediate effect in accordance with regulations 40 to 43 of the Childminding and Day Care (Wales) Regulations 2010. The suspension imposed was to remain in place until 7 December 2016 unless CSSIW decided to lift the suspension.
12. On 30 October 2016, the Appellant made a written request for the suspension to be lifted under the regulations. CSSIW considered the request and concluded that the grounds for suspension continued to apply. The circumstances in which the children were mistreated had not been fully established and the suspension was, therefore, to remain in place. The Notice of Decision to refuse to lift the suspension was served on the Appellant on 2 November 2016.
13. On 7 November 2016, a meeting took place in accordance with part 4 of the All Wales Child Protection Procedures to consider the allegations. North Wales Police agreed to undertake enquiries in relation to the issue.
14. There are currently ongoing investigations into the allegations by Wrexham County Borough Council Social Services Department and North Wales Police.

### **Issues**

15. We were informed by Mr Edwards that although there were issues regarding the premises such as a lack of perimeter fencing etc, the grounds being relied on for the suspension were the safeguarding issues referred to above.

### **Legal framework**

16. There was no dispute about the legal framework.
17. The test when deciding whether to suspend a day care provider is set out in Regulation 40 Childminding and Day Care (Wales) Regulations 2010 states:-.

#### **Power to suspend registration**

- 40.—(1) The Welsh Ministers may, in accordance with regulations 41, 42, 43, 44 and 46(8), suspend the registration of any person acting as a child minder or providing day care for children if—
- (a) they have reasonable cause to believe that the continued provision of such care by that person exposes, or may expose, one or more of the children cared for by that person to the risk of harm; and
  - (b) the purpose of the suspension is for one or both of the purposes set out in paragraph (2).
- (2) The purposes of the suspension are—

- (a) to allow time for the circumstances giving rise to the belief of the Welsh Ministers to be investigated; and
- (b) to allow time for steps to be taken to reduce or eliminate the risk of harm.

18. Whilst the word “*harm*” is not defined in the 2010 regulations, the enabling statute (The Children and Families (Wales) Measure) adopts the definition contained in the Children Act 1989. Harm means “*ill treatment or the impairment of health or development, for example impairment suffered from seeing or hearing the ill treatment of another.*”
19. 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.
20. We must look at whether the suspension is both necessary and proportionate. We make no findings of fact.

## **Evidence**

21. We took into account all the evidence that was presented in the bundle as well as 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 everything that was said at the hearing.
22. Ms Millington set out that she had met with the Appellant on 27 October 2016. She made her aware of the safeguarding issue regarding the Deputy Manager. She had also raised with her that the inspectors had been told that the Appellant was rarely present at the service as she undertook full time employment as a social worker.
23. Ms Hamer was one of two inspectors who conducted the inspection. She confirmed that they were not aware of any safeguarding concerns prior to undertaking the unannounced inspection on 26 October 2016. The reason that the inspection had been arranged was in order to test out the security of the premises and to confirm whether or not the non-compliance issue identified at the last inspection had been met by the Appellant. Their visit was prompted after they received a complaint from a parent who was concerned that lessons had not been learnt after an earlier incident where a young child left the service unnoticed.
24. She described how Bethany Jones, a trainee, who was working at the nursery had made a child protection disclosure to her regarding incidents she had witnessed in respect of children in the baby room. These involved the Deputy Manager and the allegations were around force feeding and physical mistreatment. She alleged that this had

gone on for a few months and the other practitioners were aware of it but no one knew how to stop it.

25. Ms Hamer had then spoken to Ms Ceri Gaunt who worked at the setting. Ms Gaunt confirmed to Ms Hamer that she had personally witnessed the incidents and this was the reason why the cook (Lorna Davies) had walked out two weeks ago. Ms Gaunt told her that another colleague, India Steel, had witnessed such incidents and had informed the Appellant of what she had seen. However, the Appellant had been dismissive of those concerns.
26. Ms Hamer had then referred the matter to Wrexham County Borough Council Social Services Department. She had also spoken to Wrexham County Borough Council Social Services Department on 23 November 2016. They had confirmed that there was an ongoing investigation under Part 4 of the All Wales Child Protection Procedures to consider the allegations.
27. Ms Hamer confirmed that she had spoken to North Wales Police on 22 November 2016 and they had confirmed that their investigation was still ongoing.
28. Ms Lynch confirmed that she accompanied Ms Hamer at the inspection and confirmed the disclosure of the safeguarding allegations made by Ms Bethany Jones.
29. Ms Hamer and Ms Lynch both denied pressurising any of the Appellants staff to make the allegations, telling any staff not to attend the Tribunal hearing or adding to the allegations. Furthermore, they both had concerns about the authenticity of Appellants evidence relating to documentation of the conversation with India Steel after concerns were raised with her.
30. The Appellant confirm that she had purchased the setting in 2002. She qualified as a social worker in September 2015. Since then she has worked for various councils. She confirmed she has a good understanding of child protection issues. She accepted force feeding is a very serious issue which could lead to very serious consequences for the child. She had personally written the Child Protection Policy for the setting.
31. She confirmed that she was horrified about the nature of the allegations. She denied not taking the allegations seriously and referred the Tribunal to a staff concerns/discussion form which was produced a few days after her discussion with India Steel. She denied being made aware of allegations prior to the discussion with India Steel or of dismissing those concerns. She stated that she had not followed the settings Child Protection Policy as it involved allegations being made by a "third party" and she wanted to investigate it first. The

Appellant confirmed that she did not think the inspectors had any axe to grind with her.

32. Ms Rebecca Artell confirmed that her induction she was given all the policies and procedures of the setting to read which included safeguarding and the whistleblowing policy. Furthermore, there was a notice in the staff room which provided contact details for CSSIW if they had concerns which they did not feel the setting had addressed
33. Ms Rebecca Wright submitted that she had witnessed a safeguarding incident two weeks prior to the inspection. She did not tell Ms West as Ms India Steel had informed that she would do so. Furthermore, she understood that Ms Steel was waiting for the Deputy Manager to go on holiday before raising this with Ms West.
34. We also considered the other statements produced with the bundle including the testimonial from parents regarding the setting.

### **The Tribunals conclusions with reasons**

35. 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.
36. We reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts.
37. We agreed with the decision taken by the Respondent that the continued provision of care by the Appellant exposed or may expose one or more of the children cared for by the Appellant to the risk of harm and the purpose of the suspension is to allow time for the circumstances giving rise to the belief of the Welsh Ministers to be investigated and/or to take steps to be taken to reduce or eliminate the risk. We did so for the reasons set out below.
38. We preferred the evidence of the Respondent as it was clear, evidence based and corroborated. The Appellants witnesses, Ms Gaunt, Ms Evans and Ms Steel did not attend despite a witness summons being issued although we had been given an explanation for the absence of Ms Gaunt and Ms Evans. The Appellant's case was that Ms Gaunt, Ms Evans and Ms Steel disputed the Respondents version of events at the inspection on 26 October 2016. However, whilst there were statements from them in the bundle, these were brief and they could not be cross examined on the points they disagreed on with the Respondent.

39. We concluded that that the inspectors acted appropriately. As Ms West herself accepted, there was no reason for them to act otherwise. Furthermore, the inspectors visited the premises to inspect for other reasons relating to security of the premises but were only made aware of the safeguarding concerns by the Appellant's own staff.
40. There was no dispute between the parties that safeguarding allegations had been made. The nature of those allegations were corroborated by Ms Wright at the hearing and Ms Steel who had raised them with the Appellant. As the Appellant herself recognised, these were serious allegations involving young children with potentially serious consequences.
41. Furthermore, there are ongoing investigations by Wrexham County Borough Council Social Services Department and North Wales Police and the period of the suspension will allow for those investigations to be completed.
42. In reaching our decision, we also took into account a range of factors including that the Appellants circumstances, the parents who use the services, the disputed nature of the allegations and the fact that the Appellant has been running the nursery since December 2002. 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.

### **Decision**

43. The Appeal against the interim suspension is dismissed and the suspension is confirmed.

**Judge H Khan**  
**Lead Judge Primary Health Lists/Care Standards**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 2 December 2016**