

First-tier Tribunal Care Standards

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

[2022] 4530.EY
[2022] UKFTT 309 (HESC)

Hearing held on the Papers on 16 August 2022

BEFORE
Tribunal Judge Ian Robertson
Specialist Member Lorna Jacobs
Specialist Member John Hutchinson

BETWEEN:-

M R

Appellant

-v-

Ofsted

Respondent

DECISION

1. This is an appeal brought by M R (The Appellant) against the decision of Ofsted (the Respondent) dated 2 March 2022, to refuse to waive her disqualification from being registered as a Childminder.
2. Both parties consented to this appeal being determined on the papers and we considered a full bundle prepared by the Respondent. In addition we considered late material submitted by the Appellant by way of Notice dated 4 August 2022. We did not consider that the Respondent was prejudiced by our consideration thereof.
3. At the commencement of the hearing the Tribunal ordered that there shall be a restricted reporting order under Rule 41b of the Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 prohibiting the publication (including by electronic means) in any written publication available to the public or inclusion in any programme for reception in England and Wales of any matter likely to lead members of the public to identify any child or its family mentioned in the appeal. For that reason the Appellant, her family and users of her services are referred to by their initials

4. This case has a lengthy litigation background and has come before this Tribunal on a number of occasions in different guises. Essentially however the Appellants disqualification is as a result of her husband, a member of the same household, being disqualified.
5. The case is summarised in a useful document called "List of Issues"

The Appellant is disqualified in two ways:

- a. Disqualified by association from working on domestic premises due to the cancellation of CR's childminder registration taking effect on 16 December 2021.
- b. Disqualified due to the Appellant's application to be a registered childminder being refused on 19 March 2021.

Whilst 'disqualified', the Appellant is prevented from applying for registration with Ofsted.

The following are issues to be determined by the Tribunal panel at the final hearing:-

a) The overall issue of whether the disqualification should be waived, taking in to account the following general headings:-

- i. The risk to children.
- ii. The nature and severity of issues leading to disqualification.
- iii. The age of the issues leading to disqualification.
- iv. Whether the issues leading to disqualification remain issues of concern.
- v. Any account of the Appellant, including her explanation of and attitude to the disqualifying event.

b) The position of the Respondent is that:

- i) There are significant concerns about the Appellant's husband, Mr R, which led to the cancellation of his registration as a childminder on the basis that he was not suitable to be registered and contributed to the decision to refuse the Appellant registration on the basis that Mr R was not suitable to be a household member. Those concerns have not changed.

Appellant Response – By Ofsted's own admission, neither myself or C have been convicted or cautioned by the Police for any offences against children. By Ofsted's own admission, C's disqualification is the result of action taken by Ofsted and confirmed by the Tribunal. How can the Tribunal confirm any actions that have not resulted from a thorough Police investigation? How can Ofsted implement any actions without a thorough Police investigation? The DBS have decided NOT to put C on the barred list.

- ii) The Appellant has not demonstrated any steps she has taken to address any of the concerns leading to disqualification.

Appellant Response – I have taken numerous steps including liaising with close family members for advice and making them aware of the situation from the day the allegations against C came to light. In fact, I called my brother to attend the initial meeting with the Social Worker. I attended a course that highlights domestic abuse and potential manipulation to ensure C was not grooming me. I have spoken to an independent advisor concerning the allegations and followed her advice of how to get to the bottom of these allegations as it has been made clear that Ofsted and the Police have no intention of doing so. On numerous occasions both I and C have requested a full investigation into the allegations as they are believed to be malicious but the police have refused this request. I have asked the court and social workers to conduct a full investigation but once again I have been ignored. I have evidence of malicious allegation but no evidence that C has done the things he has been accused of. Given that we ran both a school and childminding services in our home, C had access all day every day to children but no child ever complained of abuse.

- iii) The Appellant has shown little or no acceptance, insight or reflection about the issues which have led to her disqualification.

Appellant Response – I have to live with this situation every day and still have no clarity. I have to take my son with me everywhere I go on the off-chance the allegation may be true, although I still keep an open mind either way because there is no evidence for C's actions, only hear say that you REFUSE to investigate. I have no social life apart from family gatherings F3 where I can take my son because you refuse to investigate our concerns. HOW CAN I ACCEPT SOMETHING ON THE BASIS OF WORDS? Dress the situation up with clever words but it does not negate the fact that no one has done anything to address the possibility that this is stemmed from a malicious complaint and until that fact is settled, I have to keep an open mind as someone who has not witnessed such abuse. Once again, I ask: If Ofsted had any doubts that C was suitable for the position then why was his he reinstated as a childminder and later registered as a proprietor of an Independent School? And if Ofsted believed that C was innocent of any previous allegations then surely, they must acknowledge that the accusers made malicious complaints and therefore any complaint coming from the same source therefore cannot be trusted? It is my understanding that S W is the daughter of M W who is one of the people who made an accusation that was not upheld, therefore why has Ofsted not pursued a thorough investigation into the possibility that a

false accusation has been made by S? Again, it is not enough for Ofsted to simply collect the information and evidence I have provided without investigating and addressing each point raised. I would like a thorough police investigation as well as an internal investigation into the points raised. I would like Ofsted to address each of the points I have made throughout before making a decision.

6. The document is set out in full as given that this is a paper appeal it is important that both sides cases are accurately reflected in this decision.

7. THE LAW

The enabling legislation is the Childcare Act 2006 S75 which gives power to draft regulations prescribing circumstances leading to disqualification to act as a Child minder

The relevant Regulations are Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 ("the Regulations").

Regulation 4 of the Regulations states:

'(1) Subject to paragraphs (10) and (11) and regulation 10, a person ("P") is disqualified from registration under any of Chapters 2 to 4 of Part 3 of the Act if any of paragraphs (2) to (9) apply.'

(2) Any of the orders or other determinations specified in Schedule 1 has been made—

(a) with respect to P;

Schedule 1, paragraph 21 includes:-

'Refusal at any time of registration in respect of the provision of nurseries, day care, child minding or other provision of childcare, disqualification from such registration or cancellation of any such registration under—

(c) Chapter 2, 3 or 4 of Part 3 of the Act;'

Regulation 9 of the Regulations prescribes:

"Subject to Regulation 10, a person who lives –

a. In the same household as another person who is disqualified from registration under Chapters 2, 3 and 4 of Part 3 of the Act...

The particular Regulation that pertains to this appeal is Reg 10 which allows the Chief Inspector to waive the disqualification. This is a discretionary power.

1. *Subject to paragraph (4), where a person (“P”) would be disqualified from registration by virtue of regulation 4, 5, 7(1) and 7(3) or 9 but has disclosed to the Chief Inspector the facts which would otherwise cause P to be disqualified, the Chief Inspector may give consent to waive the disqualification for any or all of the following purposes...*

The burden of proof is on the Appellant who must establish her case to support a waiver on the balance of probabilities.

The Tribunal must make our decision on the basis of all the evidence available at the date of the hearing. We have power either to confirm the Ofsted decision or grant a waiver

BACKGROUND

8. As indicated above there have been a number of Tribunals dealing with different aspects of this case.

9. Suspension Tribunal 6 October 2020

Judge Lewis and colleagues dealt with an appeal by Mr R against suspension in refusing the appeal the Tribunal stated inter alia;

“On 3 August 2020, the First Tier Tribunal (Judge Thorne and panel) issued a judgement in relation to the Appellant’s home-school (case reference [2019] 3857.INS). The Appellant had appealed against the Secretary of State for Education’s decision to impose a restriction upon the school to the effect that no new pupils could be admitted. The Tribunal dismissed the Appellant’s appeal. His answers gave further rise to a concern of a risk of harm to minded children cared for by the Appellant. The decision can be read in full, but that Tribunal set out in detail answers that caused them concern. In summary, the Appellant admitted that documents provided to Ofsted were falsified in order to mislead Ofsted in relation to the education being provided. He used his own systems to track children’s progress. He did not want to share them with Ofsted because they would plagiarise them. In that case he also expressed a strong view that the action against him was racially motivated.

10. Suspension Tribunal 3 November 2020

Judge Scott Trueman and colleagues upheld a further period of suspension of Mr R.

11. Tribunal Regarding Disqualification 22 November 2021

Ofsted went on to disqualify Mr R and his appeal was heard over 16 days by Judge Bennett sitting with colleagues. In refusing the appeal the Tribunal summarising their decision as follows;

Summary

104. We find each of the allegations relied upon by Ofsted within the Scott Schedule established. We accept that some allegations are serious and relate to fundamental requirements for Ofsted to be able to be satisfied CR in the role of Childminder does not pose a risk to children. Regulatory interactions should be routine benefitting the Registrant and the Regulator. This is clearly not the case, CR has the greatest suspicion about regulatory interactions. He has built a story around them involving race, political and conspiracy theories, fraud and external control.

105. CR has not developed throughout his time as a registered Childminder and although some matters are old, his continued non-observance and reluctance to deviate from his own path is entrenched. CR correctly points out that there have not been complaints about a child in his care; we agree no evidence has been put forward although there are allegations relating to his own children from several relationships. Despite the opportunity of reflection since Ofsted's cancellation decision, we have no reason to suspect CR is either more aware or able to conform to Ofsted's requirements and EYFS obligations.

106. A central issue is whether CR understands safeguarding, in particular whether he can assess safeguarding risks. We have found he lacks integrity in his dealings with Agencies, the impression we gained was he has a mission involving a higher calling. We find the evidence illustrates CR cannot appropriately identify and assess safeguarding risks and importantly refer as required. His activities as a Childminder are such they may harm a child and that children may not be kept safe from harm. Overall we conclude his continuation may place a child at risk of harm and that cancellation of registration is both necessary and proportionate. Conditions could not satisfactorily address the risk

12. These are strong findings that have not been overturned on appeal and we are bound by them, made as they were following such a lengthy hearing. It is against this background therefore that we come to this appeal.
13. As outlined above MR is disqualified by virtue of her husband's disqualification as a member of the same household (and of course by virtue of her own application for registration being refused on 19 March 2021). Essentially however the basis of both grounds is the same, namely the findings made against Mr R.
14. As indicated above this is an appeal by MR against the refusal of the Chief Inspector to grant a waiver. This is a discretionary power held by the Chief Inspector. The Regulations are deliberately vague in Order to allow the chief inspector to apply their discretion appropriately unfettered by rigid parameters. In exercising their discretion they must act fairly and with an open mind. They cannot act in an arbitrary or discriminatory way and must at all time have primary regard to the purpose of the Regulatory regime that they are acting under. The discretion is there to correct any anomalies or unfairness's created by the Regulations.

15. The Burden of proof lies on the Appellant and it is for them to persuade the Chief inspector (and the Tribunal on appeal) to exercise that discretion. In other words they must show that although they are statutorily barred from being a Child minder there are particular circumstances in their case that call for that disqualification to be waived.
16. Thus in this case we know that very serious findings have been made against Mr R. It is accepted that he is a member of MR's household. Therefore, it is for MR to show the inspector (and us on appeal) that she has taken all steps to ameliorate all risks that may be posed by Mr R in accordance with the findings made (whether or not she agrees with them).
17. We would be looking for amongst other things; An acknowledgment that the findings exist and that steps will be taken to mitigate against any risks posed. Thus, a regime is in place whereby Mr R was not in the premises whilst they were used for child minding, confirmation that he played no part in running or exercising control over the childminding, clear co-operation with inspectors, full access to the premises at all times by inspectors, attendance upon safeguarding courses etc.
18. There is however no evidence of this whatsoever. MR's own responses quoted above show a total disregard for the inspectors and their role. There is no acknowledgement that findings have been made and no attempt to ameliorate the risks identified.
19. The reality is that this appeal has been run as a backdoor appeal against the findings made against Mr R. This misses the point completely. It is an appeal against the exercise of the Chief Inspectors discretion. Nothing filed within the appeal points to the Chief Inspector having exercised their discretion inappropriately and nothing points to our exercising our discretion to grant a waiver. This appeal is in our view without merit and accordingly is dismissed.

Judge Ian Robertson

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

Date Issued: 01 September 2022