Care Standards Tribunal reiterates essential legal and procedural requirements of suspension decisions

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Mrs EI v Suffolk Childcare Agency [2024] UKFTT 00429 (HESC)

The Care Standards Tribunal has handed down its decision in the first known case regarding the appeal of a suspension decision by a childminder agency, other than Ofsted.

In the case, a childminder's registration was suspended following a serious allegation of child sexual abuse by a 4-year-old minded child against the childminder's 12-year-old son.

The statutory framework for the registration of childminders is provided under the Childcare Act 2006, as amended. Provision about childminder agencies is made under Chapter 2A of Part 3. Sections 35 and 37 provide for childminder agencies to register childminders operating from domestic premises. The Appellant's right of appeal arose under regulation 9 of the Childcare (Childminder Agencies) (Cancellation etc) Regulations 2014 (SI 2014/1922) ("the Regulations").

When deciding whether to suspend a childminder, the test is set out in regulation 6(1) of the Regulations as follows: "*in circumstances where the agency reasonably believes that the continued provision of childcare by that provider to any child may expose such a child to a risk of harm."* In this Regulation, "*harm*" has the same meaning as in section 31(9) of the Children Act 1989.

In EI v Suffolk Childcare Agency, the Care Standards Tribunal set out that:

1. The suspension test is in identical terms for Ofsted and childminder agencies. Ofsted v GM and WM [2009] UKUT 89 (AAC), which discussed suspension of registrations by Ofsted, applies equally to childminder agencies other than Ofsted [25].

2. It is not necessary for the agency, (or the Tribunal), to be satisfied that there has been actual harm, or even a likelihood of harm, merely that a child may be exposed to a risk of harm. "*Harm*" is defined in regulation 6(1) 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".* The first issue to be addressed by a Tribunal is whether, as at the date of its decision, it reasonably believes that the continued provision of childcare by the Appellant to any child may expose such a child to a risk of harm (the threshold test) [26].

3. Even if the threshold test is satisfied by the Respondent, "*that is not an end of the matter because the panel must decide whether the decision is necessary, justified and proportionate in all the circumstances*" [31].

The Appellant sought to present an alternative to suspension; that a family friend could look after her 12-year-old whilst the police and children's services investigations were ongoing. In addition, it was argued that there were no safeguarding concerns relating to the Appellant's care of minded children. The Appellant argued that such an approach was proportionate and weighed fairly against the substantial impact on the Appellant's livelihood [57-58]. There was no timescale for the Police investigation being concluded.

The Respondent argued that the suspension remained necessary for three core reasons [59]:

1. The police investigation into the allegation was outstanding. What the risks of harm are would crystallise on completion of that investigation. At that stage, and not before, it would then be appropriate for the Respondent and other statutory bodies to investigate.

2. The Appellant's safeguarding practice-before, during and after the index incident demonstrated that children were at risk of harm in the Appellant's care at the present time.

3. The proposed option did not negate existing risk of harm and, in any event, generated further risks of harm. The Agency does not have equivalent enforcement powers to Ofsted as set out in Section 77 of the Childcare Act 2006, and requiring regular inspections would be disproportionate for a small childminder agency without the same resources as Ofsted.

The Tribunal determined that the suspension was necessary and proportionate for several reasons at [61-89]. The option of her son staying with Mrs C would only partially mitigate the risk of harm to children in her care [88]. The Tribunal agreed with the Respondent that the Appellant's own safeguarding practice was also a concern.

The Tribunal heard evidence over two-days from the Appellant, the Respondent childcare agency, the LADO, the Police and Children's Services and received written submissions from both parties before reaching their decision.

The Tribunal further iterated the essential procedural requirements of suspension decisions, particularly in terms of specifying the period of suspension by following the stepped approach under Regulation 7 under the Regulations [34], to follow good practice by advising of the right of appeal [33], keeping a childminder up-to-date with its investigations [38] and recommending the Agency carry out a review of how it exercises its regulatory function. Furthermore, the Agency was reminded that by taking on its role as a regulator, by registering a childminder agency, it must exercise its role in accordance with the relevant regulations and do so *"responsibly and professionally in accordance with the law and well-established principles of necessity and proportionality"* [90].

The Care Standards Tribunal described being "*assisted by both parties having the benefit of experienced and able representation*" [56]. Sunyana Sharma represented the Appellant, instructed by Martin Haisley of Stephensons, and Alice de Coverley, also of 3PB Chambers, represented the Respondent, instructed by DAC Beachcroft.

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