

Care Standards

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

Considered on the papers on
Wednesday 18 December 2013

Before

Tribunal Judge Melanie Lewis
Specialist Member Ms Marilyn Adolphe
Specialist Member Ms Linda Redford

MRS CH

Appellant

-v-

OFSTED
[2003] 2136.EY.SUS

Respondent

DECISION

1. The matter was listed for consideration on the papers. Both parties have consented as required under Rule 23 of the Procedure Rules. We are satisfied that we can consider the matter without a hearing. We have a good picture of the background, the allegations made and the risk. There appears to be no substantial factual dispute which might affect our decision.

2. 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 children or their parents, not previously identified in the press so as to protect their private lives

Background

3. The Appellant has been a registered childminder since 31 July 2003. She has been awarded a number of accredited qualifications. Her care has been judged 'outstanding' by Ofsted. She has strong support from parents, both on a website and via the Appellant's own internal self-reflection review procedure. A number of parents wrote to Ofsted in connection with the appeal, speaking warmly of the care that the Appellant has provided for their children.

Issues

4. The issues in this case are allegations that arose in relation to the Appellant's son, C, aged 14. Two 9 year old girls attending the Appellant's childminding service disclosed that they had been kissed by C. There is only one toilet in the house on the upstairs landing. They said he waited outside the bathroom when they used the toilet and kissed them. After investigation, the police took no further action. The Appellant modified her safeguarding policies so that all children, including her own, would only go upstairs to use the one toilet in the house on an individual basis, unless they needed supervision. Ofsted concluded that whilst there were concerns, there were not grounds for a suspension.

5. Matters then escalated. A minded child made a disclosure to a teacher of a far more serious nature, namely that she had been sexually assaulted by C on at least 2 occasions, which may have included sexual intercourse. The police have re-opened their investigation.

6. That triggered the suspension which was served by email on 29 November 2013.

The Appeal

7. The Appellant appeals against the suspension dated 29 November 2013 which lasts until 10 January 2014.

The Law

8. The test for suspension is that the Chief Inspector has grounds to conclude that continued provision of child care by the registered person to any child may expose such child to a risk of harm. That is set out in Regulation 9 of the Child Care (Early Years and General Child Care Registers), Provisions Regulations 2008.

9. 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, for example impairment suffered from seeing or hearing the ill treatment of another".

10. The burden of proof is on the Respondent to show that 'there is reasonable cause to believe' is established. The standard lies somewhere between the balance of probabilities and 'reasonable cause to suspect'. Belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information believes that a child might be at risk. We must look at whether the condition is both necessary and proportionate.

Consideration

11. We have balanced a number of factors. The Appellant has been an exemplary childminder for a number of years. She is the breadwinner for her family. She describes how shocked she has been at these allegations.

12. The Respondent's evidence accepts that the Appellant took action in relation to the first set of allegations. She was described when interviewed as upset and concerned that there may have been gaps in her safeguarding procedures. She amended her safeguarding policy restricting the use of the one toilet/bathroom upstairs. .

13. In relation to the second more serious allegations she has also taken steps to safeguard and mitigate any potential risk of harm. She put in place a regime where her son is not sleeping at the family home and entering only early in the morning to prepare for school and have his evening meal, providing two parent are present. He is not at the family home at any time a minded child is there. He sleeps at another relative's house accompanied by his father.

14. When interviewed the Appellant provided answers to issues such as parents being late or her own child being sick when they were put to her. She stated that at no time would minded children be allowed to come into contact with her son.

Conclusion

15. We have looked at the strength of the evidence around C. The son C did not deny that he had kissed the girls who were aged 9. The allegation emerged in the form of a disclosure to a teacher. The second allegations are of a much more serious nature and more investigation is needed to establish their extent and how they were able to happen to minded children.

16. We identify the risk is that the appellant's arrangements to safeguard her minded children are not sustainable, as there are no time limits on the investigation. She has undoubtedly sought to safeguard her minded children's interests as best she can but she also has to support her son who is still a child and because of these allegations is having to live out of the family home. Whilst it is to be hoped that investigations will be concluded as quickly to be possible, this is likely to take some time. In those circumstances, we cannot be satisfied that there is an adequate safeguarding system in place for a sustainable period of time.

17. We well understand the decision will have an impact upon the Appellant and her family and those who use her services. We have taken that into account.

Decision

The appeal against the suspension is dismissed. The suspension continues.

**Judge Melanie Lewis
Tribunal Judge Care Standards**

Date Issued: 20 December 2013