

Care Standards

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

Considered on the papers on
Thursday 28 April 2016

Before

Tribunal Judge Melanie Lewis
Specialist Member Ms Denise Rabbetts
Specialist Member Ms Linda Redford

Alicia Blades

Appellant

-v-

Ofsted

Respondent

[2016] 2663.EY-SUS

DECISION

1. The matter was listed for consideration on the papers. Both parties have consented as required under Rule 23 Tribunal Procedure (First tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 ('the Procedure Rules 2008'). 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.

2. We note that on 27 April 2016 Ofsted issued a Notice of Intention to cancel registration. The letter sets out that the Appellant may set out her objections and has 14 days to do so after which the Respondent may issue a Notice of Decision. The Appellant will have a right of appeal. It will be at that point that the merits of the case will be looked at and findings of facts made as to what happened. At this point we are weighing up whether a child is or may be exposed to risk of harm.

3. The Tribunal also 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 ('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.

The Appeal

4. The Appellant appeals against the suspension dated 7 April 2016 which lasts until 19 May 2016.

Background

5. The Appellant has been a registered childminder since 10 November 2015. There is some evidence that she was providing care for two children since July 2015. They had been minded by her sister who had left the country for family reasons initially for a six week period and then for an extended period. The sister stayed away longer than originally intended and remains out of the country.

6. On 22 March 2016 the Appellant notified Ofsted that the parents of a three year old child (Child X), who was minded by her, had said that she had slapped him in the face. This allegation was during a meeting that she had with the parents to discuss the child's challenging behaviour on 18 March 2016.

7. The case was allocated to Ms Whitelaw, Early Years Inspector, Ofsted, on 5 April 2016. On 23 March 2016 the parents of Child X made a complaint to Ofsted. The mother said the Appellant had told them the child had spat in her face and had to be restrained. On 21 March 2016 the child told his parents that she, the Appellant, had slapped him and he did not want to go back. He had never previously been reluctant to go. The mother had asked the Appellant about this on 22 March 2016 when the Appellant said she had put her hand over his mouth to stop the child spitting.

8. A strategy meeting was held by the Local Authority Designated Officer (LADO) on 6 April 2016 which Ms Whitelaw attended.

9. Ms Whitelaw visited the setting on 6 April 2016. This was an announced inspection but the Appellant was concerned at the lack of notice. She had not been inspected before.

10. Given the very large number of concerns regarding Child X's presentation Ms Whitelaw formed the view that this was a clear case where a referral should have been made to Children's Services. Suffice to say that there was a wide and long standing range of concerns about his behaviour and development including feeding, toileting, language development, mobility and sensory issues. His behaviour was very challenging at times and his father said that 'smacking him had not worked' which should have alerted the Appellant to safeguarding issues which needed to be referred.

11. Further, the Appellant had not informed Children's Services when the child arrived at her setting with what the parents said was a burn on his hand, failing to see this was a safeguarding issue and should have been recorded.

12. The visit lasted 4 hours. Ms Whitelaw was concerned that documentation was not available to give basic information on the children in the Appellant's care. The contracts for care had been made with her sister.

13. Another issue arose that an unchecked male was allowed to collect two children, Y and Z, from the setting and take them to and from school. The children's mother had agreed this with the Appellant's sister but the concern was the Appellant only knew his first name and he had no DBS check.

Issues:

14. Ofsted state that the risk arises from three factors 1) failure to make a referral to Children's Services on more than one occasion 2) insufficient records were maintained to ensure children are safeguarded and 3) a male adult whose full name was unknown and whose suitability had not been checked was taking children to and from school.

The Law

15. 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.

16. 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.

17. 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

18. We have carefully considered the written evidence.

19. The Appellant has set out a very full justification of her actions. In short she discussed concerns relating to Child X with the parents and did not see the need to make a referral to Children's Services. The Appellant was undertaking some behaviour management training to assist her in managing Child X. The Appellant stated the burn was only a small mark.

20. The Appellant was concerned that Ofsted have not considered the detailed explanations she had given as to how the children came to be minded by her having originally been minded by her sister who had had to stay away. She has made a complaint about the inspector. The male who took the children to school was an arrangement made via her sister and the children's mother. The Appellant's responsibility was to care for the children once they came into her setting. However the information from the mother was that he was paid as part of the childminding arrangement not by her personally and directly.

Conclusion

21. We have looked at the strength of the evidence relating to Ms Blades. Ofsted have decided to move to cancellation but we are only considering whether they have made out the case for suspension.

22. Whilst not relied on by Ofsted we have an overarching concern about the Appellant's compliance with the legal requirements, including possibly minding before she was registered so not having the required suitability test or insurance placing children at potential risk of harm.

23. We have read the detail of the behaviours and developmental delay exhibited by Child X. They are considerable. The risk is that the Appellant did not see a possible risk of harm to Child X until the possibility of neglect and welfare issues were pointed out to her by the inspector. She then agreed that she should have referred the case to Children's Services. She knew the parents were struggling to manage the child but said she was trying to support them.

24. The potential harm to children of not having accessible relevant information relating to them could have caused harm. It appeared that the Appellant did not have information and documentation for the most basic information such as children's surnames, contact details and GP nor was it in her head or on her phone. The risk is self evident particularly if an emergency arose, when such information needs to be quickly accessed.

25. There is evidence that the parent did not employ the male escort. There was a risk that the Appellant was using an assistant who was not DBS checked. Again there was a lack of detailed recording such that she did not know the male escort/assistant's last name.

26. We have balanced a range of factors including that the Appellant may have inherited an arrangement from her sister who confirmed that she had

intended to return to the country earlier. Child minding is the Appellant's livelihood and her services are relied on by parents. The parent of Children Y & Z when spoken to by the Inspector was confident in her care. Child X has not returned to the setting. We concluded that it is both necessary and proportionate at this point to uphold the suspension.

27. The Appellant will have a full right of appeal against a Cancellation Notice. Given that the bulk of the evidence appears to be complete it should be possible to case manage that so that any appeal can be heard quickly. That will be the Appellant's opportunity to fully put her case and for the Tribunal to make findings of fact

Decision

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

**Judge Melanie Lewis
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 3 May 2016