

**Care Standards**

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

**Considered on the papers on  
Wednesday 28 July 2016**

**Before**

**Tribunal Judge Melanie Lewis  
Specialist Member Mr James Churchill  
Specialist Member Ms Susan Last**

**Mrs Theresa Sharpe**

**Appellant**

**-v-**

**OFSTED**

**[2016] 2758.EY.SUS**

**Respondent**

**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. There appears to be no substantial dispute that an event involving a child did take place at a café. The details of that event are in dispute, but we are not called on to make a finding at this stage on that and other issues.

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 ('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.

Background:

3. The Appellant has been a registered childminder since 14 May 2009. Since registration, the Appellant has received inspections on 24 November 2009 and 23 November 2015 and her care rated as 'good' on both occasions. She refers to being involved in child care for 25 years. No previous concerns are recorded.

The Appeal

4. The Appellant appeals against the suspension dated 15 July 2016 which lasts until 25 August 2016. The Notice was reserved on 21 July to set out the additional information that had been received and correcting a typological error.

5. The Grounds were initially a 'holding' application, as the Appellant did not know the details of the allegations that had been made. Once it was clear that the police were to take no further action, Ofsted shared further details with her, which they added to as other witnesses came forward. On 22 July 2016 she set out a detailed response to the witness statement of Elizabeth Coffey Early Years Regulatory Inspector. By further response dated 26 July 2016 she set out a detailed response to the interview by Ofsted with witness S.

6. She supplied three testimonials from parents who use or have used her services and are very satisfied with her care and who gave examples of her good practice.

Issues:

7. The allegations related to two key incidents:

1) On 7 July 2016 the Appellant handling a child who was having a 'meltdown' in an inappropriate way. The child X was taken outside a local café, shouted at, handled roughly and left whilst the Appellant went back inside to collect things.

2) An incident in the same café in March 2016. The same child X had spilt a glass of water and the Appellant had hit the child on the hand.

Other reported incidents were:

3) A different occasion (not dated) when the Appellant's husband had threatened to smack a child.

4) Another incident outside the same café, (also on a date unspecified) when the Appellant had an altercation with a member of the public in front of the child and used foul language.

8. The evidence in the case has emerged in a piecemeal way. We have taken care to make sure we have understood the sequence of events. It is part of the context of the case that all the witnesses to the café incident who have now been identified are known to the Appellant.

9. On 8 July 2016 Ofsted received a call from a parent F to say that the school had had a report the previous day from another parent L, that her child had been shouted and sworn at by the Appellant ( Incident 1 above). The parent F removed the child X from the Appellant's care.

10. The school made a referral to Social Services and a Strategy meeting was held. By then the school advised that parents L and G had come forward, reporting Incidents 1) to 4) and were willing to give statements.

11. On 15 July 2015 Ofsted spoke to workers at the café who knew the Appellant but none of them had witnessed the events in question as they were busy working in the kitchen or serving. They had heard other customers talking about incidents.

12. A further Strategy meeting was held on 20 July 2016 when the police confirmed that they would not be taking any further action and the LADO handed the matter over to Ofsted to investigate, so that the information they had could be shared with the Appellant.

13. On 20 July 2016 Ms Gaff spoke to another parent S. Witness S said she had seen the tail end of 'Incident 1' on 7 July 2016 from her car parked on the opposite side of the road. She said passers by were shocked and she could hear shouting from inside her car. She said she heard the Appellant shout and quoted the words she said. The Appellant then crossed the road and walked past her care looking angry. Again she knows the Appellant, but not well.

### The Law

14 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.

15. 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.

16 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. We make no findings of fact.

### Consideration

17 We have reminded ourselves of the lower threshold for confirming the suspension and reminded ourselves that at this stage we are not finding facts. We have set out only the bare chronology for that reason. Our task is not at this point to decide whether an incident did or did not happen, the motives of witnesses who have come forward, the level to which they may or may not have discussed matters and whether the witnesses perceptions about what they saw were in fact correct, or whether there is a reasonable explanation.

18 The Appellant describes how shocked she has been at these allegations. Her current position is that she no longer wishes to be a Child Minder. We note that once she knew of what was alleged she has set out a detailed response. Ofsted will need to give detailed consideration to the points she makes. Child X was removed by the parent from the Appellant's care, once the school told her what Parent L had told them. Child X had told his mother the Appellant did shout at them. The Appellant agrees the child had a 'meltdown' but states she dealt with it in a firm, but not in any sense aggressive way. The Appellant sought appropriate advice from her insurers as she was unsure what to do and an issue arose over whether notice had to be given and payment had to be made. She sets out a background of concerns she had had about Child X (including recording an incident of concern in November 2015) and had arranged to meet with the mother on 16 July 2016 to discuss these behavioural issues.

19 The Appellant points out that the three witnesses are all known to each other. Parent G was a witness to events in the café and she told Parent L who then reported it to the school. The Appellant has provided a Google picture of the 'A' road where the café is situated and to the personal knowledge of two of the panel members, this is a very busy main road. She queries how Witness S could have seen and heard what she alleges.

20. We have balanced a range of factors. Ofsted have moved quickly to investigate matters in which they became the lead investigator. All that now remains is for witness statements to be taken and for the allegations to be discussed in detail with the Appellant. It is clear that at least the first incident happened in that the child had a tantrum. The issue in dispute is how the Appellant responded. The Appellant must be given a full opportunity to explain her concerns around Child X and no doubt Ofsted will consider any documented issues in her records. The purpose of the suspension is to allow time for investigation.

### Conclusion

21. We have looked at the strength of the evidence around the Appellant's care coming from three different witnesses. She has made no admissions and promptly provided a detailed response, which is not just a bare denial, but

a careful explanation of her knowledge and previous dealings with each witness (one of whom had used her services) and her attempts to manage the challenging behaviour of Child X.

22. We identify and agree with the initial judgement by Ofsted that there are grounds for thinking that there may be a risk to her minded children in that physical chastisement may have been used and/or behaviour management strategies used which were not appropriate for young children and, on another occasion, inappropriate language may have been used which may affect their wellbeing.

23. At this point we find the suspension which will finish on 25 August to be proportionate and necessary, but subject to any further developments, we would expect the investigations by Ofsted to be completed by then. Child X is no longer in the Appellant's care, but the issues raised are of wider relevance. The Appellant is on holiday, so she is not losing income. Ofsted should be in a position to discuss these issues when she returns.

### **Decision**

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

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

**Date Issued: 1 August 2016**