

## **Care Standards**

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

**Considered on the papers on Wednesday 31 August 2016**

**Before**  
**Tribunal Judge Melanie Lewis**  
**Specialist Member Ms Janice Funnell**  
**Specialist Member Ms Caroline Joffe**

**BETWEEN:**

**Julie Catherine Matthews**

**Appellant**

**-v-**

**Ofsted**

**Respondent**

**[2016] 2782.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. There appears to be no dispute that children did play outside - in the cul de sac area outside the child minding premises but the exact circumstances are disputed. We are not making finding of facts at this stage and deciding what is the more likely version of events.

2. 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

3. The Appellant appeals against the suspension dated 5 August 2016 which lasts until 15 September 2016.

4. The key event leading to the imposition of a statutory suspension was that on 29 June 2016 Ofsted received a call from a neighbour to say that she had a number of concerns including ratios not being met as the Appellant was caring for too many children, and that she and her husband had seen young children playing outside without supervision. Her husband had taken photographs of this and made videos on his mobile phone. This was not a one off and they had been concerned for some months.

5. Ofsted liaised with the Local Authority's designated officer who asked Ofsted to investigate. On 5 August 2016 Ann Flynn Early Years Regulatory Inspector went to see the Appellant and noted other concerns, notably that the attendance register was not accurate and there was no register available for 2016, getting the age of a child wrong by one year and not informing Ofsted that due to surgery on her eye her husband had had to drive for her and the children.

### Background

6. The Appellant has been a registered childminder since 25 June 2010.

7. The Appellant has a mixed inspection history. In June 2013 following an inadequate rating when a notice to improve was served, enforcement action followed. On 4 July 2013 Ms Flynn who provided a statement in this case, made a monitoring visit to monitor progress with the notice to improve and the many welfare requirements notices covering a number of areas, including record keeping, safety and safeguarding. These had not all been met, so on 8 October 2013 there was a further monitoring visit and as all the welfare requirements were still not met, a warning letter was issued. These requirements had all been met by 13 January 2014 and when re-inspected on 10 June 2014 the Appellant was rated 'good'.

8. When she made her visit on 5 August 2016 Mrs Flynn was concerned not just in relation to the allegations of leaving children unsupervised but that the Appellant gave varying accounts as to whether she had permission from parents for the children to play outside. Parents were contacted and the one who they were able to reach, said that she had not given verbal or written permission for her child aged 5 to play unsupervised. She raised some other concerns that had come to her attention via her child, which suggested that she may not have been supervised at all times.

9. The inspector spoke with the neighbour who had contacted Ofsted and who provided details of a number of occasions when she and her husband had seen children as young as possibly two playing unsupervised. The

neighbour had committed her concerns to a statement which we read.

10. The Appellant stated that she was made anxious by this unexpected visit and could not put her hand on her register. Mrs Flynn found that the Appellant was not meeting the requirements during the visit in relation to suitability: child supervision, food and drink, record keeping and information for each child.

11. The Appellant has produced letters from eleven supporters, not just parents, but teaching assistants from the school and a number of neighbours. They speak highly of her care and dispute that she leaves children unsupervised.

#### Issues:

12. The main concern to justify the suspension was lack of appropriate supervision on more than one occasion with the attendant risks given the age of the children.

13. The Appellant has clearly set out her case in her grounds of appeal. She describes that she and others had issues with the husband of the person who alerted Ofsted. She says that all children in her care when playing outside are always supervised (visually or audibly). She now has a procedure for written, not just verbal, consents from parents that the children can play outside with supervision. She accepts that she got one of the ages of the children wrong but explains that she was nervous. Following the enforcement action in 2013 she has kept her records up to date but on that date could not put her hand on the register due to nerves and changes she had made in the house but in future will have it in a visible place. She did not know she had to tell Ofsted that she had an eye operation but her husband was just helping out by driving, not childminding.

14. Mrs Matthews loves her work and is dependent on the income she gets from childminding. Parents referred to not being able to work due to the suspension and not being willing to arrange other care as they wanted their children to return to a familiar setting which they believe provides them with excellent care.

#### 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 balanced a number of factors. The Appellant is under active investigation. Childminding is her livelihood. Parents depend on her services.

19. A range of people have written strong letters of support for the Appellant but a number of them saw the allegations as malicious and unfounded. They have not seen the detail of the concerns raised with Ofsted and the time period that those concerns cover.

20. There is an ongoing investigation which is active. Ofsted need to talk to as many parents as they can and be clear what they have agreed to, and that children are kept safe. They need to make sure that all records are up to date and accessible.

### Conclusion

21. We have looked at the strength of the evidence around the Appellant. The neighbour is a childcare inspector and had been prepared to commit her concerns to a statement. She knows the geography of the area and explained why areas the children had been seen playing in e.g a side alley were not visible from the childcare setting. The witness gave a detailed account of occasions over the last 12 months when she has seen children as young as two apparently unsupervised and with the potential to move outside the immediate cul de sac area. She produced photographs of children playing further away and described how they could have moved off to where a main road is. From her near viewpoint she had been concerned at the length of time children had been left in the car, on occasions crying. The Appellant does not deny that the children went outside. These concerns are echoed by the parent Ofsted spoke to who whilst she responded positively to a photo of her child playing outside, did so thinking they were supervised.

22. We identify the risk to her minded children is that they are at risk of harm due to a lack of adequate supervision in a built up residential area with cars and other dangers and the lack of up to date accessible records.

23. We do have the power to limit the suspension period but consider that it is necessary and proportionate that the suspension should run but that by 15 September 2016 Ofsted should have completed their investigations and be in a position to decide what action to take.

Decision

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

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

**Date Issued: 1 September 2016**