

Care Standards

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

[2017] 3076.EY-SUS

Considered on the papers on Friday 28 July 2017

BEFORE
Tribunal Judge Melanie Lewis
Specialist Member Ms Caroline Joffe
Specialist Member Ms Heather Reid

BETWEEN:

Julie Halliday Limited (Phoenix Pre-School)

Appellant

-v-

Ofsted

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. The Appellant has given no detailed response to the allegations other than a bare denial, but we are not called on to make a finding at this stage.

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 runs the Phoenix Pre-school from a community room situated within a primary school. The pre-school provides full and part-time day care and is in receipt of funding for the provision of free early years

education for children aged two, three and four years. There are currently believed to be approximately 30 children on roll.

4. The setting was originally registered to Mrs Halliday on the Early Years Register and both parts of the Childcare Register on 6 July 2012. Subsequently the ownership of the provision transferred to the Appellant, as a limited company and a new certificate of registration was issued by Ofsted on 16 July 2014. The change was in form rather than substance as the business continues to be owned by Mrs Halliday as sole director.

5. The setting was inspected on 2 November 2015 and rated as good. Ofsted are not aware of any previous concerns being raised about the setting

The Appeal

6. The Appellant appeals against the suspension dated 13 July 2017 which lasts until 23 August 2017.

7. The Grounds are short. The Appellant denies that she carried out the alleged actions: i.e rough handling of children such as dragging, grabbing, yanking, pulling, swinging by the arm and forcibly sitting them down, and pushing a child causing injury and purposefully not assisting a child who fell from a chair. She states that they worked in a large open room. She accepted that at times the noise level was such she had to shout. No other evidence was submitted.

8. Ofsted submitted two witness statements from Caroline Clarke who conducted an inspection at the setting and Kathryn Bell the Senior Officer who has managed the enquiry.

Issues

9. On 28 June 2017 Ofsted received a referral from EB who had previously worked at the setting and is the sister of CB who still works at the setting. CB had called her that morning in tears stating that Mrs Halliday had assaulted her two-year-old daughter, who attends the setting. Mrs Halliday had claimed that the child had struck her and she responded by grabbing the child and dragging her across the floor of the community room to her mother CB. The child was then swung around and aggressively forced to sit down on the floor before being shouted at and threatened with expulsion if her behaviour did not improve. The child was very distressed as a result.

10. A particular concern was that the child had previously broken her collarbone, which Mrs Halliday was aware of. She disregarded CB's request that she did not grab the child by the arm.

11. EB stated that she had worked at the setting for four years, but stopped due to Mrs Halliday's attitude and behaviour and aggression towards the children, of which she gave a number of examples and said this was not an occasional occurrence.

12. Ofsted made an immediate referral to the Local Authority Designated Officer and thereafter made their own enquiries as well.

13. On 13 July 2017 Caroline Clarke, an EYRI went to the setting and spoke to staff members. CB continued to give her account, which she had also by then repeated to a social worker. Staff member JB gave the same account as CB of a child called M who had fallen off a chair and was left to get up by herself. She also spoke of Mrs Halliday pulling children's arms, rather than holding their hand and yelling in their face. While she had not seen the incident relating to CB's child, she had heard CB say 'don't do that you will break her arm'.

14. A new staff member HD was spoken to and denied seeing hearing anything of concern but did, when questioned confirm that she had heard CB shout 'no'.

15. The Inspector was also concerned to see a bruise the size of a twenty pence coin on the right side of a child's face, which had not been questioned or recorded by staff. This was put together with the concerns raised by staff members which had not been challenged or raised as safeguarding issues.

The Law

16. 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.

17. 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.

18. 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

19. 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 incidents did or did not happen.

20. We have only the barest of denials from the Appellant to consider. She admits that at times it has been necessary to shout. She relies on the fact that no accident form exists, which ignores the fact that she would have had to prepare it. She denies purposefully not assisting a child falling out of a chair. She rather curiously states 'if a child falls off a chair and I had seen the incident I would be aware if they were injured and if they were not I would allow them to get up themselves'.

21. We have balanced a range of factors. Ofsted have moved quickly to investigate matters after an initial delay in the social work investigation. They must now interview the Appellant. They have also requested parents give their view, which may take some time due to families being on holiday in August, there are 32 of them. Whilst parents do not remain at the setting, this may give useful information. No previous concerns have been raised about either the Appellant or this setting. She must have a full opportunity to give her version of events. The purpose of the suspension is to allow time for investigation.

Conclusion

22. We have looked at the strength of the evidence around the Appellant's care coming from three different witnesses. Two are related to each other and the initial concern was in relation to CB's own child. All the witnesses support that something happened. However, the investigation showed that the concerns were much wider than that one incident, relating to CB's child.

23. We identify and agree with the initial judgement by Ofsted that there are grounds for thinking that there may be a risk to children of inappropriate physical handling and particularly so in the case of CB's child who had sustained a previous injury to their collarbone. There is also evidence of inappropriate behaviour management on a number of other occasions. Whilst the Appellant speaks of them all working in one room, there is some evidence that staff have not felt able to challenge her and take appropriate safeguarding steps.

24. At this point we find the suspension which will finish on 23 August 2017 to be proportionate and necessary, bearing also in mind that this is a holiday period which may cause some delay in gathering the evidence, and the setting is closed for the summer. Subject to any further developments, we would expect the investigations by Ofsted to be completed by then. We have balanced that this is the Appellant's business but that is outweighed by the other factors we have identified.

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: 31 July 2017