

Care Standards

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

Considered on the papers on Wednesday 25 October 2017

[2017] 3151.EY-SUS

BEFORE

Tribunal Judge Melanie Lewis
Specialist Member Denise Rabbetts
Specialist Member Wendy Stafford

BETWEEN:

Susan Margaret Manchester

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. There appears to be no dispute that aspects of the historic complaint incidents (2003, 2004, 2011 and 2014), and this key incident, happened. What is in dispute is that Mrs Manchester on this and the other occasions reacted in the way reported. We note that Mrs Manchester 'wants the allegations dropped'. We are not making finding of facts at this stage and deciding what is the more likely version of events. We are looking at risk.

2. We were concerned that the Respondent gave the Appellant an address for the Tribunal that was incorrect and has been for some years. The Respondent should take immediate steps to rectify this error. We accept that the Appellant stated that she wished to appeal in time and that this caused her additional difficulty in understanding the appeal process.

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 4 October 2017 that lasts until 15 November 2017. The concerns were not set out in any detail in the Suspension letter, which Ofsted acknowledges was frustrating for the Appellant. However, it is clear that she subsequently learnt the detail of the allegations. She has set out a response to the key incident and historic issues

5. The key event leading to the imposition of a statutory suspension was preceded by an incident at the school gates on 19 September 2017. A parent had advised the head teacher that they had witnessed the Appellant hit Child P in their care, on the back of the head. The parent had reported the incident to the Multi--Agency Safeguard Hub (MASH) and the police. .

6. Ofsted issued the Notice of Suspension on 4 October 2017, which was the first day on which they knew of the case. Prior to that, the involvement of been with the Local Authority Designated Officer (LADO) and MASH.

7. It was confirmed to Mr Good Ofsted Early Years Regulatory Inspector that the child had repeated the allegation to the social worker and police.

8. Mr Good telephoned the Appellant on 4 October 2017 and then visited her to explain the suspension. She put the phone down and was still angry when he visited. She did not moderate her response, when reminded that minded children were present.

9. Mr Good telephoned again on 5 October 2017, when the Appellant said that the concerns are malicious.

10. When Mr Good telephoned again on 6 October 2017, the Appellant said she knew the details of the concerns as the child's parent had told her. It is part of her case that they are very supportive of her and the suspension is 'stupid'.

Background

11. Mrs Manchester, who was registered in 1988, has been a child minder for 29 years. Inspections in 2003, 2005, 2009, 2015 and April 2017 all resulted in 'good' outcomes. It is part of her case that she has a very good relationship with Child P, whom it is alleged she hit on the back of the head, and with their parents, whom it appears have used her services for some years.

12. It is common ground that there have been historic complaints that were investigated by Ofsted and no action taken. The Appellant accepts some aspects of every complaint.

13. There was a complaint to Ofsted in 2003, that the Appellant had announced others in the playground that she had bitten a child and smacked children in her care. The Appellant agreed, that with the parents permission she had bitten the child on the hand to show that such behaviour was not acceptable. The child did not repeat the behaviour. Ofsted state that it is highly likely that had the same issue arisen in 2017 instead of in 2003, cancellation action would have followed.

14. There was a further complaint in 2011, when it was reported that the Appellant had called children names. Ofsted put the details to the Appellant but they were denied and no further action was taken.

15. In 2014, a further complaint was received which included an allegation that the Appellant had been seen (amongst other things) to be dragging children by their hands. Again the allegations were put to the Appellant who denied them.

Issues:

16. The main concern to justify the suspension was that agencies should properly investigate the allegations.

The Law

17. 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.

18. 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.

19. 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 are independent and must weigh the evidence as at the date of the hearing. We must look at whether the condition of suspension is both necessary and proportionate.

Consideration

20. We have balanced a number of factors. The Appellant is under active investigation. She denies smacking the child. She asserts the allegation is

malicious. She points out that there would be a number of witnesses who were at the school gate. She accepts she reprimanded the children she was minding as they went outside the gate, without her, which they knew they must not do.

21. She has been a child minder for many years. She has asserted she could retire. Parents depend on her services. The suspension has caused disruption for children, some of whom it appears been with her for some years. We have no statement from the parents of Child P, which may be key.

22. There is an ongoing investigation which is active and which Ofsted have taken steps to speed up. On 11 October 2017, Mr Good told the multiagency meeting, when it was originally suggested by the police agencies reconvened January 2018, that this timescale was not appropriate given that a suspension was in place. We agree. Clearly witnesses should be talked to close to the event in question so that information they provide is fresh in their mind, and not reflecting what may well have been the subject of talk.

Conclusion

23. We have looked at the strength of the evidence around the Appellant but we are not making any findings at this stage. The Appellant has put her case in outline and denied the allegations. .

24. Ofsted have moved quickly investigate this case. These concerns cannot be seen as 'one-offs', because they come in the context of a history of complaints, one of which concerned smacking.

25. We identify the risk to the children minded by the Appellant, as that they are at risk of physical chastisement and aggressive treatment. We stress the test is that such risk is reasonably likely.

26. 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 November 2017 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.

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

Date Issued: 31 October 2017