

Care Standards

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

**IN THE MATTER OF AN APPEAL
BETWEEN:**

Ms Christie Mensah

Appellant

V

Ofsted

Respondent

[2014] 2237.EY-SUS

DECISION

1. This matter was listed for consideration on the papers. That is permissible under rule 23 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('2008 Rules') however not only must both parties consent, which they have in this case, but the Tribunal must also consider that it is able to decide the matter without a hearing. In this case we have sufficient evidence regarding the allegations made and the conclusions reached after investigations, and there appears to be no substantial factual dispute which might affect our decision. In the circumstances we consider that we can properly make a decision on the papers without a hearing.
2. The appellant appeals to the Tribunal against the respondent's decision dated 2 July 2013 to suspend her registration as a childminder on the Childcare Register for six weeks to 13 August 2014 pursuant to section 69 of the Childcare Act 2006 ('2006 Act') and the Childcare (Early Years and General Childcare Registers) Common Provisions) Regulations 2008 ('2008 Regulations').

Restricted reporting order

3. The Tribunal makes a restricted reporting order under Rule 14(1)(a) and (b) of the 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.

Events leading to the issue of the notice of statutory suspension.

4. The appellant is a registered childminder since May 2007. On 20 May 2014 Ofsted received a referral from the relevant Local Authority Designated Officer ('LADO') in relation to child E, a seven year old girl. The appellant is the paternal great aunt to E and has helped to look after her since she was a baby. The appellant is referred to as E's great grandmother in the papers before us but we understand that this has been clarified and it is accepted by all that she is her great aunt but they have a relationship more akin to a grandmother and that is how E sees the appellant. E has also lived for periods of time with the appellant. E disclosed to her school that she had been beaten with a cane and her cheeks had been held very tightly by the appellant. On 21 May 2014 Ofsted made a decision to suspend the appellant's registration until 2 July to allow time for police and local authority investigations to continue.
5. The police investigation concluded on the basis that the appellant accepted that she had pinched E's cheeks (but that she had not used a cane in any way) and the police issued her with an informal verbal warning.
6. On 26 June 2014 the local authority completed its investigation. It was concluded that E had suffered significant harm by the appellant twisting her cheeks but that she is sorry and regrets her actions. The social worker noted that E speaks warmly of the appellant and would like to continue to see her regularly. The case was closed with no further action.
7. On 2 July Ofsted again suspended the appellant's registration in order to visit the appellant to discuss the outcome of the police and local authority investigations. On 24 July Ofsted visited the appellant. She again admitted squeezing E's cheeks too hard and expressed remorse for this. The appellant accepted she had not received training in managing behaviour and had not read the relevant Early Years requirements at paragraph 3.51.

8. This is therefore a case in which the relevant investigations have now been completed. However in her witness statement dated 29 July 2014 Ms Troop, a Senior Officer with Ofsted indicated that she has decided to take steps to cancel the appellant's registration on the basis that there appears to be no appropriate understanding of behaviour management combined with the appellant's action toward child E.

Legal framework

9. The statutory framework for the registration of childminders is provided under the 2006 Act. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of a registered persons' registration. The section also provides that the regulations must include a right of appeal to the tribunal.
10. When deciding whether to suspend a childminder, the test is set out in regulation 9 of the 2008 Regulations as follows:

“that the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm.”
11. “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 including, for example, impairment suffered from seeing or hearing the ill treatment of another”.
12. The suspension is for a period of six weeks. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes an ongoing obligation upon the respondent to monitor whether suspension is necessary.
13. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector and so in relation to regulation 9 the question for the tribunal is whether at the date of its decision it reasonably believes that the continued provision of child care by the registered person to any child may expose such a child to a risk of harm.
14. The burden of proof is on the respondent. The standard of proof ‘reasonable cause to believe’ falls somewhere between the balance of probability test and ‘reasonable cause to suspect’. The belief is to be judged by whether a reasonable person, assumed to know the law and possessed of the information, would believe that a child might be at risk.

Findings

15. This is a case in which the allegations made have been fully and finally investigated. It has been concluded, and the appellant accepts, that she caused child E significant harm by twisting her cheeks. It also appears to be accepted that the appellant is genuinely remorseful and child E wishes to continue to see her regularly.
16. We bear in mind that the appellant has been childminding since 2007 and appears to have an unblemished record. She is genuinely sorry for her actions toward child E. We must consider whether there is sufficient evidence to justify a reasonable belief that a child may come to harm at this stage.
17. We find that the appellant has not demonstrated sufficient knowledge of appropriate behaviour management. She admitted that she did not know about the relevant Early Years requirements in this regard and that she has not been trained in this area. We are concerned that the appellant may not have developed sufficient insight into implementing appropriate behaviour management and this may have been reflected in her approach to child E. Until she undertakes further training and appraisal in this area there is reason to believe that the continued provision of childcare by the appellant to any child may expose such a child to a risk of harm. It is for this reason together with what is accepted to have happened to child E that we consider that the respondent has displaced the burden and the appropriate test is met.
18. The decision to cancel is a matter for Ofsted but the appellant is likely to appeal any such decision and we consider that it is helpful to make an observation at this stage. Ofsted's decision to proceed to cancellation appears to be based on two matters. First, the infliction of harm to child E. This must be considered in context. There is no evidence that this was anything other than a 'one-off' incident. The appellant has been honest in admitting this and has expressed genuine regret. Child E wishes to continue to see the appellant and the local authority have closed the case having conducted a thorough investigation. Second, the appellant has not been able to implement appropriate behaviour management and is unlikely to do so going forward. On the evidence available to us it does not seem that it can properly be said that going forward the appellant will be unable or unwilling to implement positive measures of discipline. She employs the use of treats and rewards for good behaviour and gave examples of this when interviewed on 24 July 2014. She was also able to distinguish between approaches to younger and older children. The appellant may also be uncertain about appropriate behaviour

management because she has received indications from the police, the local authority and Ofsted that may not be consistent. By way of example, she thought that the local authority did not disapprove of her use of the 'naughty step' yet Ofsted considers this negative and potentially humiliating. In all the circumstances, it seems to us that the appellant would benefit from further training in the area of appropriate behaviour management. She has told Ofsted that she is willing to attend a course in this area. We note that Ofsted have indicated that she regularly attends training with the local authority. We consider that it is premature to assess the appellant as having no understanding of behaviour management without giving her an opportunity to be trained and if appropriate assessed in this area. The proportionality of cancellation may need to be reconsidered having reflected further on these matters.

Decision

19. The appeal is dismissed and the notice of suspension served is confirmed.

Judge Melanie Plimmer
Lead Judge Care Standards & Primary Health Lists
First-tier Tribunal (Health Education, Social Care)
Date Issued: 4 August 2014