

Care Standards

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

[2016] 2678.EY-SUS

Considered on the papers on
Wednesday 18 May 2016

Before

Tribunal Judge Melanie Lewis
Specialist Member Mr Michael Flynn
Specialist Member Ms Wendy Stafford

Jillian Louise Mills

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, the stage that the investigation has reached and the risk. There appears to be no substantial factual dispute which might affect our decision. .

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.

Background:

3. The Appellant has been a registered childminder since 2001. The Appellant was last inspected on 21 October 2010 and received an outcome of 'outstanding'. There has been no full inspection since this date.
4. The allegations arose in relation to 'Child 1' of Family X, members of whom have been minded by the Appellant for six years.

The Appeal :

5. The Appellant appeals against the decision of 22 April 2016 for a period of six weeks until 3 June 2016. Her sole ground of appeal is that she had not been told the reason for the suspension except what was written on the certificate which gives no detail other than Ofsted were taking steps to investigate concerns.

Issues:

6. The issues in this case arose on 19 April 2016 when the Local Authority Designated Officer (LADO) received a referral that 'Child 1' had told an unidentified person at his school that the Appellant had hit him on the head with a metal spoon the previous day. 'Child 1' is known to the Disabled Children's Unit so a social worker from the unit visited the family.

7. The social worker was concerned that the child identified where he had been hit and seemed upset. The parents tended to believe the allegation as 'Child 1' is fed via a gastrostomy tube and they informed that the Appellant had told them some weeks previously that she was frustrated with the child's eating difficulties.

8. That made a total of three times that the allegation had been repeated: at school, to their mother and now to the Social Worker. 'Child 1' also said that on an unspecified previous date the Appellant had banged his nose on the table and made it bleed. The Mother recalled a conversation about this when the Appellant said this had just happened but added 'I suppose you think I hit him'. The Deputy Head at school had spoken to the child after he told staff he did not like his childminder and she hit him.

9. On 24 April 2016 another parent who used the service called Ofsted and said that the child aged 3 did not want to go the house anymore.

10. A s.47 Children Act investigation was carried out and when the social worker and a police officer visited the child at home on 3 May 2016 at school the child said again about being hit with a spoon and hit in the face but they were not able to get an idea of when that happened.

11. By 9 May 2016 the position was that the child's parents did not wish to press charges. However the police have not yet made a decision as to what course they will take.

12. On 11 May 2016 the Appellant was interviewed under caution and

denied all allegations.

The Appeal

13. The Appellant appeals against the suspension dated 22 April 2016 which lasts until 3 June 2016.

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.

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

We do not know what the Appellant says about these allegations and in any event we are only looking at risk of harm at this stage not finding as a fact whether the Appellant did in fact hit the child in the manner alleged.

We have balanced a number of factors. The Appellant has been a childminder for 15 years, including looking after the children of the family concerned for some 6 years. This is the first time concerns have been raised and she achieved the highest grade on her last inspection in 2010.

The Appellant is now aware of what the allegations are as she has been interviewed by the police. She has denied them. We would expect the police to promptly move to a decision.

The social worker and police all took steps to promptly investigate the concerns. It was not just what the child said but the feeling with which they said it. We have noted the age of the child. The information available

suggests that the child's disability is not cognitive and the allegations do fit with the known issues around feeding.

Conclusion:

We conclude that at this point there is reasonable cause to believe that a child may be at risk of harm. Ofsted must now conclude their own investigations which will include but are independent of any decision the police makes. They do not say what their investigations are but we would expect them to include whether the child will return to the setting and whether the risk of harm can be eliminated by clarification of the regime around feeding by for example a Health Care Plan.

The suspensions lasts until 3 June 2016 and we would expect the investigation to be complete by then with a strategy agreed to eliminate risk.

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: 23 May 2016