

Care Standards

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

[2014] 2298.EY-SUS

Miss Lorane Clare Taylor

Appellant

-v-

Ofsted

Respondent

Tribunal Panel:
Judge John Burrow
Susan Last – Specialist member
Richard Beeden – Specialist member

DECISION

The hearing on the papers was on 5 November 2014.

Hearing

1. In her application to appeal Ms Taylor indicated she wished the case to be considered on the papers. Ofsted, in their response also indicated their wish for a hearing on the papers. We considered the matter pursuant to Rule 23 of the 2008 Rules and concluded the matter was suitable for a hearing on the papers, and proceeded to hear the matter on the papers without oral evidence.

Reporting Restrictions

2. A Restricted Reporting Order was made 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 any child or family member mentioned in the Appeal.

Evidence

3. The bundle contained documents relating to the case of both parties, submissions, orders, notices, appeal application and response and witness statements of Karen De-Lastie and Mandy Mooney. Additional information was received before the hearing, including two statements from the appellant, an updating note from Ofsted, a witness statement from the informant, an email from the respondent's solicitor and a document referred to by the appellant as a "permission form to administer medication", dated 15 October 2014.

The Appeal

4. Ms Taylor appeals against the decision of Ofsted on 17 October 2014 to suspend her registration to provide early years child-minding and general child-minding. Ms Taylor is registered in the Early Years and both parts of the General Register. Notice of Suspension under Regulation 8 of the 2008 Regulations was served on 17 October 2014, suspending all registrations until 27 November 2014. Ms Taylor appealed against this decision on 21 October 2014, and Ofsted submitted its response on 24 October 2014.

The law

5. Regulation 9 of the 2008 Regulations sets out the test for suspension which is where;

“The Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to risk of harm.”

6. “Harm” is defined in Section 31(a) of The Children Act 1989 as “ill treatment or the impairment of health or development including , for example, impairment suffered from seeing or hearing the ill treatment of others.”

7. Regulation 12 of the 2008 Regulations provides for an appeal to the First Tier Tribunal against the Chief Inspector’s decision to suspend. The FtT may confirm the Chief Inspector’s decision to suspend or direct that the suspension shall cease to have effect. On appeal the FtT steps into the shoes of the Chief Inspector and remakes the decision. Accordingly evidence of events after the decision is admissible, and the question for the Tribunal is whether, at the date of the Tribunal’s decision a child may be exposed to risk of harm.

8. The burden of proof is on the respondent. The standard of proof is;

“reasonable cause to believe” which lies 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 the relevant information, would believe a child may be at risk. The decision must be proportionate and necessary.

9. The Notice of Suspension states the purpose of the suspension is to allow time to investigate whether a child may be exposed to a risk of harm.

The Case for Ofsted

10. On 17th October 2014, a member of the public (‘the informant’) contacted Ofsted. She described an incident she had seen on 15th October 2014 at Kinsey Abbey Park, involving two females, now known to be the appellant and her assistant childminder. She said the two had been looking after 6 children. She said they had not been properly managing, supervising or controlling the children at the playground where some of the equipment was “challenging”. Two of the children were throwing sand and others were playing on a carousel without proper supervision. She said one of the women

shouted at the children in the sand pit to stop from 10 meters away, but did not further intervene. She said in her witness statement that the shorter dark haired woman, who appeared to be in charge was drinking from a bottle (it was not specified what). She said in her witness statement that the two women were deep in conversation. She said the other taller blond woman had a mobile phone in her hand the whole time. Her recollection was that the blond lady was texting and that neither of them were looking properly at the children.

11. One of the children was in a buggy and he started crying and screaming for up to 40 minutes. He was slipping down the harness of the buggy seat in a manner which the informant considered could be dangerous. One of the females was shaking or jiggling the buggy at arm's length without looking at the child. This went on for some 15 minutes.

12. The female then began shaking the buggy 'rigorously' or 'violently', thereby causing the child's head to shake. She was at arm's length and not looking at the child. The child became distraught, distressed and beside himself; really crying. His nose was running and he was red in the face. After the shaking stopped the child continued to scream uncontrollably for about half an hour, and neither female tried to comfort him or take any interest in him. The group subsequently left the park. The informant was upset and could not watch any more. She did not confront the women because she was concerned at a possible aggressive reaction.

13. The informant, who had noticed a logo on the shirts of the child-minders, Googled the name when she got home, and subsequently reported the incident to the local authority and to Ofsted. The informant did not know either woman or the childminding organisation. She was not a child minder herself. She was a home-based mother with three children. There was nothing to suggest any preconceived animosity towards or knowledge of the child-minder or her assistant.

14. Subsequent investigation have raised concerns about lack of knowledge on the part of the assistant regarding safeguarding procedures , meeting the individual needs of the child and the possibility of minding too many children. Ofsted have also expressed concerns about the child-minder administering nurofen to child T without the permission of the parent and without medical justification.

The Case for the Childminder

15. Both Ms Taylor and the assistant child-minder have given accounts of the incident. Ms Taylor was registered on the Early Years and General Childminding Registers. An inspection of this child-minder's service was carried out by Ofsted as recently as May 2014 and graded "good".

16. In respect of the incident in the park she described how one child, T, had screamed all day on 13 and 14 October 2014, the two days preceding the incident. He was checked, but he had no temperature and no obvious signs of pain. On the 14th October 2014 she contacted the parents and asked them

to collect T early, which they did. Although the parents indicated they had experienced similar difficulties with T, on the evening of 14th October, he was fine at home.

17. The parents dropped him off at the childminder on 15 October 2014 and he was soon screaming again. The other children became upset and the group left for the park, partly to give the other children a break. At the park T again began to scream. He was in a buggy, and the other children ran over to the play equipment. Ms Taylor says she and her assistant remained watching and supervising the children on the equipment, including the carousel at all times. At one stage she was chatting to the children on the roundabout and took a photograph. At another stage the assistant walked towards the two in the sand pit and told them to stop throwing sand.

18. T remained in the buggy, and it was accepted the assistant was rocking the buggy to see if it would help T sleep. Ms Taylor said this was done in an appropriate manner. He continued to scream. At one point the assistant took T out of the buggy and pushed him on the swing which calmed him for a short while. She gave him a cuddle when she put him back in the buggy. It is denied he shifted down in his buggy putting him a risk from the restraining straps. Both Ms Taylor and the assistant deny any violent or vigorous shaking of the buggy or of T. Ms Taylor says the other children were supervised during the periods the children were on the equipment. She denies they were chatting or in deep conversation and ignoring the children. She said she drank from a bottle of water at one stage. She also said that during the time in the park she used her phone to take pictures of the children playing on the equipment to show to their parents, something she usually did on such trips. She questions why the informant did not approach them in the park, as they are both friendly looking people.

19. The group subsequently returned home with T still screaming in the car. Ms Taylor texted the mother, who again collected T early that afternoon. Ms Taylor gave T two tablets of Nurofen that afternoon. Ms Taylor has produced a document which apparently suggests the parent of T had given permission to administer Nurofen for teething problems on the 15 October 2014, although part of this document has been obscured in the photocopy provided to us, and the date appears to have been altered. We never the less accepted that prima facie the parent had given permission to administer Nurofen.

Decision of the Tribunal

20. We considered the evidence. While there is some agreement between the accounts of Ms Taylor and her assistant and the complainant, important elements of the complainant's account are contested. It is denied the children were unsupervised on the play equipment. It is denied the buggy or T were shaken inappropriately or violently or rigorously in a way to make his head shake. It is denied T was ignored or no effort was made to comfort him.

21. However, this hearing is in the context of a suspension order. As such it is not for us to seek to resolve these conflicts. This is for the investigation

and any subsequent appeal hearing to do. We cannot at this stage make findings of fact or resolve conflicts between the witnesses.

22. The primary allegations against the childminder are that there was a lack of supervision while engaged with challenging equipment including a carousel, and rigorous or violent shaking of a child in a buggy which caused his head to be shaken. In our view such activity by the child-minder or the child-minder's assistant, who should have been supervised by the child-minder, if true, may place a child at risk of harm. There are reasonable grounds to believe such matters may have occurred, based on the evidence of an independent observer, who reported what she saw to both the Local Authority and Ofsted. We reiterate that this is not a finding that such incidents did occur, merely that there are reasonable grounds to believe they may have occurred.

23. We accepted Ofsted has pursued the investigation diligently, bringing forward the interviews of the various parties as early as they could, despite being requested by the Local Authority to delay interviews until after the completion of the Section 47 inquiry. At the time of the hearing the investigation was not concluded and it continues.

24. Although Ofsted has now interviewed Ms Taylor and her assistant, transcripts of the interview are not yet available. Ofsted has also interviewed the complainant and her statement has been served. However they have not yet managed to interview the complainant's friend who is said to have witnessed the events, although Ofsted expect to interview her shortly. The Local Authority is in the process of carrying out a Section 47 investigation which is not yet complete, but is expected to be completed shortly. Ofsted have said they wish to be aware of the results of the Section 47 investigation before they are able to complete their own investigation. It appears the police may also be awaiting the results of the Section 47 investigation.

25. We conclude the suspension of the child-minder's business is a necessary and proportionate measure for a period while the allegations are being investigated. However, we would expect Ofsted to review the case as soon as the investigation has been completed, which should be soon. Ofsted have powers to either lift the suspension (Regulation 11) or proceed to cancel the registration which triggers a right of appeal so the matter can be fully heard and findings of fact made. We expect Ofsted to consider its options at the earliest possible occasion once the investigation is complete.

26. Pending completion, however, we accept there is reason to believe currently the continued provision of childcare by Ms Taylor to any child may expose the child to a risk of harm. Suspension is necessary and proportionate.

27. **We dismissed the appeal**

Judge John Burrow
Judge Primary Health Lists/Care Standards
First-tier Tribunal (Health Education and Social Care)

Date: 10 November 2014