

## **Care Standards**

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

**Considered on the papers on Thursday 23 July 2015**

**Before**

**Tribunal Judge Melanie Lewis  
Specialist Member Ms Denise Rabbetts  
Specialist Member Ms Heather Reid**

**MRS MKK**

**Appellant**

**-v-**

**OFSTED**

**Respondent**

**[2015] 2467.EY.SUS**

### **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 substantial factual dispute which might affect our decision.

2. The Tribunal has anonymised the Appellant so as to prevent the identification of children who have been cared for by her. 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 1 January 1998. Since registration, the Appellant has received six full inspections: five judgements were 'satisfactory' and one 'inadequate'. A number of parents wrote to Ofsted in connection with the appeal, speaking warmly of the care that the Appellant has provided for their children both in the past and currently. Some have used her services for a number of years.

#### The Appeal

4. The Appellant appeals against the suspension dated 22 June 2015 which lasts until 3 August 2015.

5. The Grounds are short and rely on her length of service, the effect on her family and those who use her services, the belief that she had done nothing wrong and that her son was only going to be cautioned by the police.

#### Issues:

6. The issues in this case are allegations that arose in relation to the Appellant's son aged 24. On 22 June 2015 the Appellant notified Ofsted that her son had been arrested by the police for an offence of causing or initiating a child to engage in sexual activity.

7. The allegations related to an earlier period, but the Appellant became aware when the police searched the family home which is where the child minding is carried out, on 20 June 2015. The allegations relate to an inappropriate conversation with someone purporting to be a girl who said she was 14 years old, with the son saying he was 16 years old. The computer was seized and the content is being analysed as part of a wider investigation.

8. The police confirmed to Ofsted that three different sorts of drugs that appeared to be Class A and B were found in the son's bedroom.

9. Ofsted raises questions about the Appellant's probity or at the very least her insight, in that she told the Regulatory Inspector in a telephone call on 24 June 2015 that she had a letter from the Chief Police Officer saying there was nothing else on the computer and nothing else to worry about. She was asked to produce that letter but was unable to do so; instead saying it was what the police had told her husband. Similarly she said the police had told them her son was 'not a threat' which the police do not support.

10. Children's Social Care has been involved. There is a young child living in the house. A social worker visited on 22 June 2015 to make a 'risk assessment' and the Appellant made no mention of the drugs being found.

11. The social worker visited again on 30 June 2015 and when asked a direct question as to whether the police were investigating anything else, her husband asked if she was referring to the drugs. He said that he thought the appellant had overheard them talking, but her position is that she did not know until that time.

12. The Appellant's son is still living at the house. There was an arrangement whereby he was living, but not sleeping at the premises. The Appellant wanted him to be able to sleep at the premises as she was concerned that the arrangement whereby he slept at a friend's house where there was no bed for him during the week and in his car at weekends, was not satisfactory and affecting his health. The alternative suggestion she proposed was not acceptable to Children's Services and would have included him being locked in his room and having to phone downstairs to be let out to use the toilet. This is located on the upper floor and is used by minded children. It is next to the son's bedroom.

13. A further concern was that the Appellant had given her son a USB stick with pictures of minded children on it, which now cannot be found. She said that she had done this as her computer was not working.

### 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.

16 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

17 We have balanced a number of factors. The Appellant has been a childminder for she says 25 years, but registered since 1998. It has been her livelihood for many years. She employs three other people.

18 She describes how shocked she has been at these allegations. She has told Ofsted that she is not very knowledgeable about IT but will attempt to learn more. She accepted that she needed to expand her knowledge of drugs, but did not believe her son was a habitual user.

19 We have taken into account the Appellant's wish to support her son at a time when as far as we are aware he is facing a police investigation for the first time. We have taken into account that the Appellant is not only shocked, but having to deal with unfamiliar issues and without any obvious source of guidance. We do have concerns though that she has failed to be objective and to show insight into the risks these issues may pose to the children she minds.

20 The investigation is ongoing and the police have confirmed that it can take 3-4 months for an analysis on the computer to be made Her son is alleged to have posed as a 16 year old boy making overt sexual suggestions to someone he believed to be a girl aged 14. She may hope this will be dealt with as a minor matter but that cannot be confirmed until the outcome of what we understand to be a wider investigation is known. She has expressed anger with her son, and suggested anything said was meant in a 'jokey' way but does not demonstrate she can identify risks to minded children.

21 Three different sorts of drugs were found, including possibly cocaine, a Class A drug. She confirmed in a pre-arranged interview with the Regulatory Inspector on 13 July 2015 that she had only found out about the drugs later. We agree with Ofsted that it is concerning that she either did not find out about the drugs until 2-3 weeks after his arrest or if that is not correct , then it raises issues that the Appellant was not being wholly frank in her initial notification to Ofsted. As a childminder she needs to know what is going on in her own household and to be transparent in her dealings with Ofsted.

22 The Appellant's son has made no admissions to the police and made a 'No comment' interview. No charges have been made. From what he said to the Appellant, one of the drugs could have been on the premises for one year, which poses a risk.

23 The Appellant has not proposed that her son will not live at home during the police investigation. He was there during the day but sleeping elsewhere for a period but she wished for him to return to sleep, when she became concerned that sleeping a friend's house in the week was affecting his health. She has made no proposals that he should not be on the premises whilst minded children are present. Such suggestions as she has made were rejected by Children's Services as unworkable, including locking her son in his room and only letting him out to use the bathroom, by prior phone call.

### Conclusion

24 We have looked at the strength of the evidence around the Appellant's son. He has made no admissions but this is part of a wider enquiry and we

note other complainants about the girl who claimed she was 14, with threats of blackmail.

25 The police have evidence of the one sexualised conversation and the issue is whether there are more. The police enquiry is ongoing and appears to be of a nature that it may take some time to investigate. Ofsted are not simply waiting for that to conclude but also making investigations with Children's Services. They have acted promptly and kept matters under review.

26 Drugs-both Class A and B were found in the Appellant's son's room.

27 The Appellant's second point in her Grounds of Appeal is that she has done nothing wrong. What we have to look at is how she has responded to allegations made about a member of the household where she child minds.

28 We identify the risk to her minded children is that she has taken no robust steps to recognise the risk or taken steps to minimise it. Whilst it is to be hoped that investigations will be concluded as quickly to be possible, this is likely to take some months. In those circumstances, we cannot be satisfied that there is an adequate safeguarding system in place for a sustainable period of time.

### **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: 27 July 2015**