

Care Standards

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

Considered on the papers on
Thursday, 16 February 2017

Before
Tribunal Judge Melanie Lewis
Specialist Member Mr Michael Cann
Specialist Member Ms Maxine Harris

Between

Mrs Debra Tina Kydd

Appellant

-v-

OFSTED

Respondent

[2017] 2937.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 dispute that the key incidents happened. What is in dispute is that Mr Kydd in particular reacted in the way reported. We are not making finding of facts at this stage and deciding what is the more likely version of events.

2. The Tribunal was informed that a solicitor had telephoned the administration during the morning of 16 February 2017. They were told the hearing would be determined on the papers at 2 PM. No details were given and no application was made. We therefore proceeded to decide the case.

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 31 January 2017 which lasts until 13 of March 2017. The concerns were not set out in the Suspension letter, but are set out in the subsequent papers.

5. The key event leading to the imposition of a statutory suspension was preceded by a self-reference by the Appellant on 16 January 2017. This involved a child being left with her assistant, her husband Robert Kydd, whilst she was out on the 'school run'. Mr Kydd went into the kitchen to get a drink and when he came back into the other room, he saw a two-year-old child with a bottle containing Olbas Oil which was half opened. He contacted Mrs. Kydd who had access to parent details, which were in her office. He contacted the emergency line who advised him to take the child to Accident and Emergency. In the meantime Mrs Kydd spoke to the parent, who happened to work at the school and who was content to monitor the situation. A decision was made later for the parent to take the child to the hospital where the child was hooked up to a heart monitor as a precaution. The Appellant later received a call from a social worker who said that there was a concern that the child had not been taken to A & E within the correct amount of time.

6. This concern had already been allocated to Inspector Christy Davy so a visit could be made to the child minding setting. Further concerns arose. On 30 January 2017, Ofsted received a concern from a member of staff at a dental practice. One issue related to the Appellant taking minded children into the surgery and allegedly asking whether they wanted to "see her tooth being ripped out and to see blood everywhere". The other issue related to Mr Kydd who stayed with four children in the waiting room. He does not accept he spoke aggressively towards a child, taking the phone from them saying he didn't want them to sit on him but to sit on a chair. He denies paying very little attention to the children or that he roughly pushed into a pushchair. The child cried and he is alleged to have blasphemed. Therefore he accepts he was at the Surgery with the minded children but does not accept things happened in the negative way reported.

Background

7. The Appellant has been a registered childminder since 17 September 2006. She received "good" inspection judgements in 2007 and 2010. Her husband joined her as her assistant in 2014. On 14 June 2016, a full inspection was carried out, resulting in a judgement of "requires improvement". A full inspection followed on 8 December 2016 this time the outcome was "inadequate". The overall concern was that the Appellant and husband spent a lot of time supervising, rather than interacting and extending children's learning

8. The contemporaneous note of the inspection in December 2016 records Mr Kydd was very quiet during the inspection. He was not directing any conversation towards the Inspector and was having limited conversations

with children.

Issues:

9. The main concern to justify the suspension was that whilst an investigation was made into the failure to go to A&E promptly, further concerns were reported against a background of a setting that had been compliant but was most recently judged “inadequate”.

10. Mr and Mrs Kydd have prepared two Statements each. They deny any wrong behaviour. They point out the difficulty of explaining themselves when they at least initially did not know what was alleged. They have lost their income. Parents who use their services may not be able to work. Parents contacted by Ofsted were positive about the couple’s care.

The Law

11. 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.

12. 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.

13. 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

14. We have balanced a number of factors. The Appellant is under active investigation. Childminding is her livelihood. Parents depend on her services. The suspension has caused disruption for children.

15. There is an ongoing investigation which is active. Ofsted stepped up their own investigation, when police and the Local Authority Designated Officer only offered a meeting on 20 February 2017. They arranged to meet with Mr and Mrs Kydd on 15 February 2017, which we conclude was a proportionate response as there was a need to get on and investigate. They had the referral and needed to talk to Mr and Mrs Kydd.

Conclusion

16. 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 a manner that is strongly defensive rather than reflective.

17. There is no explanation of why having had two satisfactory inspections in 2007 and 2010 the setting did not improve in 2016, resulting in a judgement of “inadequate”. The fact of being at the dentist is not denied. No ulterior reason has been advanced why a member of staff should make the referral.

18. Ofsted have moved quickly to investigate this case. These concerns cannot be seen as ‘one-offs’, because they come in the context of the history that there was a sharp decline in standards the setting. No explanation has been put forward as to why that might have happened or what was going to be done to remedy the situation.

19. We identify the risk to her minded children is that they are at risk of harm due to a lack of adequate supervision, stimulation and aggressive treatment. We stress the test on a suspension is only that they may be are at risk.

20. We do have the power to limit the suspension period but consider that it is necessary and proportionate that the suspension should run the full course, but that by 13 March 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: 20 February 2017