

Care Standards

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

Considered on the papers on Thursday 5 November 2015

Before

Tribunal Judge Ms Melanie Lewis
Specialist Member Mr Jeff Cohen
Specialist Member Ms Susan Last

MRS KN

Appellant

-v-

OFSTED

Respondent

[2015] 2530.EY-SUS

DECISION

1. The matter was listed for consideration on the papers. Both parties have consented as required under Rule 23 of the Procedure Rules. We are satisfied that we can consider the matter without a hearing. We have a good picture of the background, the concerns raised and the risk. There appears to be no substantial factual dispute which might affect our decision.

2. The Tribunal 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**, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify children or their parents, not previously identified in the press so as to protect their private lives

Background:

3. The Appellant has been a registered childminder since 24 May 2011. She minds three children aged between 11 months and 3 years at her home. Also living at her home are her husband, her son aged 11 who is agreed to be displaying behaviours consistent with a child who is autistic and her 14 year old daughter.

4. At her last inspection on 28 April 2015 the Appellant's childminding service was graded as "requires improvement" with specific deficiencies identified in the area of the Learning and Development requirements of the early years Foundation Stage.

5. The local Childcare Officer visited more regularly to put a Focussed Action plan in place to work to a 'Good' outcome at the next inspection. She became increasingly concerned that the son's behaviour was having a detrimental effect on the minded children. The Appellant agreed that her son who had a diagnosis of autism was challenging, but felt it did not have a negative impact on her minded children. She visited on 25 September 2015 and on 5 October 2015 which lead to the referral to Ofsted.

Issues:

6. The issues in this case therefore arose when on 5 October 2015 Ofsted received a referral from the Early Years manager at the Local Authority which in summary suggested that the Appellant's care for her own son was directly impacting on her provision of care for the minded children, which at times fell to her 14 year old daughter. There was concern about the frequent absence of both her children from school and whether the daughter was being used as an unauthorised assistant. The son was fixated by routines which meant he needed to finish the previous day's routines, which could mean he was up at night which meant the Appellant was also up. He decided if he would go to school or not. There were concerns around the Appellant's mental health as her son appeared to control her and her way of managing him was to give in to him immediately.

7. Those concerns were confirmed by visits by Ofsted on 8 October 2015 and a social worker on 15 October 2015. Ms Burt the Early Childhood Regulatory Inspector who has a background of working with children with special needs including autism, more precisely identified concerns relation to the minded children as a result of what she observed. She was concerned that the house was cluttered with limited space for them to play and smelt of urine, due to the son refusing to go to the toilet and wetting himself. Outings with the minded children were dependant on whether the son had gone to school that day, which required a lot of effort on the Appellant's part to get him there. The son emitted high pitched noises and appeared to control his mother. The two year old minded child present did not re-act which suggested to Ms Burt that they were desensitised to the distressing sounds and behaviours, which included throwing things. The Appellant appeared pale and exhausted and when Ms Burt came, was on the phone to her GP trying to

access help for her son but in discussion appeared to feel helpless as to how to manage the situation.

8. The son is now 11 years of age. There has been no formal diagnosis of autism by a multi disciplinary team only a private doctor of Pathological Avoidance Dis-order which the Appellant feels may be the true diagnosis. Ofsted were concerned that his needs were such that the family needed support and advice on strategies.

9. A social worker visited the home on 15 October 2015 who confirmed Ms Burt's observation in that they saw the son shouting, screaming, unsettled and spitting. They were unable to engage with him.

The Appeal

10. By Notice dated 16 October 2015 the Appellant appeals against the suspension dated 9 October 2015 which lasts until 19 November 2015

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.

'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health.

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. The Appellant in her grounds of appeal and the parents whose children are minded and who have all written strong letters of support, all see her as being 'punished' in some way because her own child has special needs. The issue for us is whether there is reasonable grounds to conclude that a minded child might be at risk.

15. There is a lack of clarity about the special needs of the Appellant's son, the provision needed to meet them and the strategies needed at home to manage him and questions round why he behaves differently in school. There has as yet been no formal diagnosis of Autism, which as a specialist tribunal were aware must be confirmed by a multi-disciplinary team. There are issues about why his behaviour has become more challenging this year.

16. The concerns about the impact of the son have been on going since at least April 2015. There is a consistency in the evidence presented by Ofsted about his behaviour and the impact on the minded children and on the household. That evidence comes from three different professionals. Each on separate days observed the son's unpredictable and demanding behaviours. Each gave examples of how the Appellant attended to her son whilst minded children looked on or where for example they were not supervised to eat. At home his behaviours have regressed and he is now presenting with behaviours normally attributed to a baby which are markedly different from his presentation at school. This could present a physical or emotional risk to children, whilst the Appellant attends to the needs of her son. The physical environment is also a risk, due to the son urinating and throwing things. Of particular concern was that the son's state dictated whether the minded children could be taken out for outdoor activities.

17. The concern is that as expressed by the agencies who have worked with the family namely that the needs of the son at this time require a high level of support from his family who are understandably upset, exhausted and anxious about him. The Appellant's case is that the families who use her services did so on the basis that her son had special needs, but this ignores the fact that in recent months his behaviour at home at least has become increasingly challenging, which places greater pressure on her as his mother.

18. We must look at the evidence at the date of the hearing. The Appellant has still not submitted the requested assessment of her own health. We have noted that the Local Authority sought an urgent referral to CAMHs but that the appellant was unable to get her son to go to the appointment on 25 October 2015, so the family are still without advice from appropriate expert professionals. She has submitted no plans to minimise the risks.

19. A suspension is temporary. Once there is a clearer diagnosis and an appropriate plan is in place for the son, Ofsted acknowledges that the identified risk to minded children may be reduced and the Appellant can resume her childminding.

Conclusion

20. We conclude there is a reasonable cause to believe that a minded child may be exposed to risk of harm.

21. We have read the detailed letters from each of the parents who use the Appellant's services. They and their children are all happy with the Appellant's care and each has faced real difficulties not being able to use her services. She has lost her income. Nevertheless we are satisfied that it is both proportionate and necessary at this time for the suspension to remain.

Decision

The appeal against the interim suspension is dismissed. The suspension continues until 19 November 2015.

**Judge Melanie Lewis
Care Standards
First-tier Tribunal (Health Education and Social Care)**

Date Issued: 6 November 2015