

## Care Standards

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

Considered on the papers on  
Wednesday 30 June 2016

Before

Tribunal Judge Melanie Lewis  
Specialist Member Ms Susan Last  
Specialist Member Ms Heather Reid

**BETWEEN**

Joyce Blanchard

Appellant

-v-

Ofsted

Respondent

[2016] 2725.EY-SUS

### DECISION

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 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 2002 working with her husband as her assistant, with five children on role. In the papers we read, there no mention of concerns being raised about her care during this 14 year period. At her most recent inspection on 5 June 2013 she was rated as 'good'.

### The Appeal

4. The Appellant appeals against the suspension dated 6 June 2016 which lasts until 18 July 2016.

5. The purpose of the suspension was to allow circumstances to be investigated and eliminate the risk of harm to children in her care. There are ongoing investigations and family court proceedings in relation to Child X who sustained fractures to her right and left fibula. Mrs Blanchard is an intervener in the family court care proceedings and part of the pool of five perpetrators, because Child X was in her care and others during what has been identified as the likely injury period.

6. The Grounds set out the Appellant's comments on each of the reasons given for suspension. Essentially she states that she made Ofsted aware that Child X was the subject of proceedings, that she has co-operated with all enquiries and was not suspended at the time the child was taken to hospital in January 2016. She was only suspended when she came into the pool of perpetrators. She has not been interviewed by the police. She hoped we would see the medical evidence as she believed it would show that there was no obvious bruising or pain that at the very least should have alerted her to the child having suffered an injury. Her care has not been called into question by the parents of Child X.

### Background:

7. It is necessary to set out the background in some detail as there have been some delays and as is often the case in this type of case Ofsted is the junior partner in the investigation and has to rely on other bodies for information, which has not always been forthcoming

8. The incident occurred sometime in November 2015. The Appellant notified Ofsted on 18 January 2016 that Child X (then 18 months old) had been taken into care on 15 January 2016 and that her childminding adviser had told her to advise Ofsted.

9. Ofsted telephoned the Appellant on 19 January 2016 and she told them that she cared for the child Wednesday and Thursdays but it was the Nursery where she went on Mondays and Tuesdays who had sent the child home as she was complaining of a sore leg. The GP and the first hospital doctor who saw her in A & E on 10 November 2015 did not have safeguarding

concerns although by then X rays had confirmed a fracture of the left fibula. It was only the full skeletal survey in January 2016 which confirmed another fracture of the right fibula that triggered a section 47 Children Act 2008 investigation. The child was removed from home under an Emergency Protection Order.

10. Ofsted visited the Appellant on 11 February 2016. The notes record that she satisfied them by her answers 'that the provider is meeting the EYFS requirements in terms of safeguarding and that they remain suitable to be registered'.

11. On 1 March 2016 the Appellant stated that she had been requested to attend a family court hearing on 9 March 2016. The Nursery has also been asked to attend.

12. Ofsted acted promptly to try to talk to the relevant Social Worker but only got a response on 15 March 2016. It confirmed no more than the Appellant and others were in the pool of perpetrators as they had had the care of the child in the relevant period. No specific allegations were made against her.

13. Ofsted wanted to know if there was any basis for suspicion against the Appellant and contacted the LADO. They spoke with them on 18 March 2016 and chased a response on 6 and 29 April 2016. Only on 29 May 2016 did they speak to a newly appointed LADO. They voiced their concern about a lack of information. We saw the email sent by the LADO Children's Services setting out that Ofsted were concerned that 1) they assumed the child was in distress in her care and she had not picked it up at nappy changes etc and 2) they needed confirmation that Children's Services had no concerns that she was the perpetrator.

14. Only on 2 June 2016 did Children's Services reply and explain that the Appellant was in the pool of identified perpetrators and that the difficulty was that the family court had indentified the relevant timeframe as being 1 October until 11 November 2016. The medical evidence suggested that the child would have been distressed.

15. Ofsted held an urgent case review on 3 June 2016 with a key concern being the extent to which other children would be at risk of harm if the Appellant continued to operate. The fact finding case was due to be heard on 26 September 2016 and until that happened the Appellant could not be ruled out The Appellant was suspended.

16. On 7 June 2016 Ofsted attended a multi-agency strategy meeting. Neither the LADO or Ofsted had been invited to previous meetings on 26 November 2015, 7 January 2016 and 18 January 2016. The police attended and confirmed that the Appellant had not featured as a suspect so they would not take a statement from her or interview her under caution. They appeared to accept an explanation being put forward by the mother that she had backed the drivers seat back very fast and crashed into he child's legs.

17. On 24 June 2016 directions were given in the family court and with the leave of the Judge the solicitor for the Local Authority set out that the proceedings were confidential but the Appellant remained in the pool as she had had the care of the child at the relevant time. The Nursery had been released as an intervener but no reasons are given. At this point the medical evidence was unclear whether the injuries could be accidental or non-accidental,

18. On 28 June 2018 Mallett Solicitors applied for an adjournment of this hearing on behalf of the Appellant as directions had been given on 24 June 2016 in the family court for Children's Services to set out the grounds against each Respondent in the case. That should give a greater understanding of how the evidence did or did not implicate the Appellant.

19. Having taken account of objections raised by Ofsted Judge Khan refused the applicant. We had to look at the evidence at the date of decision and Ofsted would keep the case under review.

### The Law

20. We have reminded ourselves of the law as clarified in Ofsted v GM and WM [2009] UKUT 89 (AAC). The test for suspension is that the Chief Inspector and the tribunal on appeal 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.

21. Harm must be "significant harm". 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.

22. 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.

23. GM v Ofsted directs us to look at whether there is a real possibility that evidence sufficient to support enforcement action would emerge from the investigation, what investigations remain outstanding and the strength of the evidence against the Appellant;

### Evidence:

24. We were assisted by the detailed Response by Ofsted from which the background is taken.

25. The background history, steps taken by Ofsted and supporting documentation is set out in witness statements by Alison Tranby EY Regulatory Inspector and Elaine White Early Childhood Senior Officer.

26. There was no witness statement from the Appellant but she made clear in the grounds that she had not injured the child, the evidence did not support she had and that she had been invited to intervene in the family court proceedings on the basis that she could possibly have caused injury, but not probably. She relied on medical evidence from the first GP consultation on 23 October 2015 that 'child well in herself' and that the first hospital doctor on 11 November 2015 had not been concerned as to how the injury occurred. We do not have any medical evidence which in her grounds she anticipated we would.

### Consideration

27. We have reminded ourselves of some basic principles of suspension namely that we must apply the least restrictive option and balance proportionality and necessity. We must not fact find at this stage. That is the task of the family court at the full hearing to be held in September and October 2016 but this date may be subject to change.

28. We have balanced a number of factors. The Appellant has been a childminder for about 14 years. No concerns have been raised about her. When spoken to in February 2016 she displayed a good knowledge of safeguarding.

29. Whilst there was some delay in reporting these matters to Ofsted she sought help from her child minding adviser. The evidence supports that she has been co-operative with Ofsted and other agencies.

30. The parents in this case have raised no concerns about her and she has had no concerns about their care of their child.

31. The Appellant continued to mind children until 3 June 2016 and no concerns were raised. Initially Ofsted saw no grounds to suspend her.

32. We are satisfied that Ofsted got on with investigating this case but that the history shows drift set in and there was not always a model of collaborative working. It appears that the investigations are nearly complete. They are the junior partner but their case does not identify further work to be done save for the final hearing in the family court which is not until September and October 2016. The police are not concerned that the Appellant is a possible perpetrator. Children's Services in their response dated 2 June 2016 could only say the Appellant could not be ruled out as she had care of the child but no more specific reason for why any child may be at risk of harm in her care. Child X is now cared for elsewhere.

33. Whilst it might be thought a toddler with two fractures would be in some distress, the response from Children's Services is simply that it is impossible to say if the Appellant failed to observe any injuries. There is reference to medical evidence that suggests the child would have been in some distress at the time of injury, but we read no evidence that the child would subsequently or that there was obvious bruising etc. We note that when the child was seen by both the GP and first doctor neither were concerned that this was a non accidental injury. An acknowledged difficulty in the case is the wide time frame for the injuries when the Appellant only minded the child two days per week. We are not aware why the nursery was discharged as an intervener, although we note they had noticed the child had a sore leg.

### Conclusion

34. On the evidence before us we do not conclude that enforcement action against the Appellant is likely. Applying the relevant test we conclude that Ofsted have not established that there is a risk of harm to any child and that a suspension is both necessary and proportionate. If the Appellant has to wait for the outcome of either the evidence that is produced by the direction of the family court on 24 June 2016 or the full hearing then she cannot work nor possibly can families who rely on her services to look after their children whilst they go to work.

35. We make it clear that we are not usurping the jurisdiction of the family court who will find facts and make a decision based on all the evidence. If further evidence is made known to Ofsted and the likely source will be evidence which the family court permits to be shared, they can of course issue a further suspension against the Appellant will have a further right of appeal.

36. This decision is a public document save for restrictions on identifying the child and our expectation is that the parties will send it to the applicant authority in the care proceedings who will no doubt draw it to the attention of the family judge in the care proceedings.

### Decision

1. The appeal against the interim suspension is allowed. The suspension is discharged

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

**Date Issued: 4 July 2016**