First-tier Tribunal Care Standards

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

[2022] 4578.EY-SUS
[2022] UKFTT 206 (HESC)

VKinly Hearing by video-link on 15 June 2022

BEFORE
Siobhan Goodrich (Tribunal Judge)
Maxine Harris (Specialist Member)
Dorothy Horsford (Specialist Member)

BETWEEN:

Barney Bears Nursery's Ltd

Appellant

-v-

Ofsted

Respondent

ORDER

1. By notice dated 24 May 2022 the Appellant appeals against the Respondent's decision made on 10 May 2022 to suspend registration to provide childcare at Barney Bears Nursery in Chigwell, Essex (the nursery/setting) on the compulsory and voluntary parts of the Childcare Register, for a period of six weeks to 20th June 2022.

2. The right of appeal lies under regulation 12 of the Childcare (Early Years and General Childcare Registers (Common Provisions) Regulations 2009, ("the Regulations"). The Applicant seeks a direction that the suspension shall cease to have effect. The Respondent resists the appeal and requests that the decision to suspend registration be confirmed.

Restricted Reporting Order

3. The Tribunal makes a restricted reporting order 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 the children or parents. In the hearing and in this decision we have anonymised the names of children and parents.

The Background and Chronology

4. We set out below a summary of the broad circumstances:

a) The matters that led to the suspension order being made on 10 May 2022 relate to unexplained injuries sustained by two children: Child L (then 22 months old) and Child M (then three years old).The alleged injuries included bruising to the ears of each child which a consultant paediatrician, Dr Solebo, has apparently described as impact injuries, not caused by another child. It is alleged that there were also bruises to the legs and thighs and scratches to the legs, thighs, and bottom of each child.

b) Both children attend the nursery albeit in different rooms.

c) The matter first came to the attention of Ofsted when the mother of child M telephoned and sent emails to Ofsted on 4 May 2022.

d) The provider also notified Ofsted on 4 May and provided a lengthy account of the past history regarding M in particular.

e) The sequence of events regarding the hospital appears to be that Dr Solebo referred M to social services because of what he considered to be unexplained injuries to M. Dr Solebo was then involved in the care of L and made a similar referral.

f) As is usual, there have been a number of meetings convened and attended by the various agencies. The police have decided to conduct an investigation. DC Baig of the Child Abuse Investigation Unit (CAIT) has said in a statement dated 9 June 2022 that:

    i. Initially the police had received a referral from social services about child 1 who was currently in hospital.

    ii. Child 1 (M) had sustained multiple injuries, to name a few there was a large bruise on the upper thigh, a very large bruise on the upper back which looked like a hand print and severe bruising to the child's ear, both outside, inside and on the skull behind the ear.

    iii. DC Baig attended the nursery a few days later, along with another colleague and a social worker from Havering social services. While at the Nursery the social worker received a phone call from the consultant paediatrician Dr Solebo saying that there was another child (Child 2) (L) admitted into hospital who had sustained very similar, almost identical injuries as Child 1 (child M in these proceedings) and Child 2 (child L in these proceedings) also attends the same nursery. Both injuries that the children had sustained were unexplained and nobody had witnessed or knew how they had sustained them.

    iv. DC Baig states: "With this new information, the focus of the investigation changed initially from looking primarily at parents/carers of the children to the nursery as it was too much of a coincidence that two children from completely different families who did not know each other had the

exact same injuries. Due to this I requested a large number of documentation from Barney Bears nursery which included accident forms, nappy changing records, employee records so that I can use these to create my own timeline to see if a pattern was occurring when the children received unexplained injuries."

Applications to Admit Late Evidence

5. Prior to the hearing Ofsted had made applications to admit the statements from DC Baig and Ms Kamande which had been served late. We were informed that whilst DC Baig had intended to give evidence he had since been advised by the police legal department that he should not do so because this might prejudice the ongoing police investigation. Mr Gilmour made clear that whilst he would have wished to ask DC Baig questions he could not realistically oppose the reception of the statement. Having considered the overriding objective we decided that the written statements of DC Baig and Ms Kamande were relevant and it was fair to receive them in the context of an appeal against suspension. In the event Ms Kamande attended the hearing and was cross examined. We bore in mind in general terms that the weight we attach to DC Baig's statement is capable of being affected by the fact that the Appellant has not been able to ask questions of him.

The Respondent's position

6. Ofsted contends that the Appellant is the subject of a serious allegation which involves physical abuse on more than one child at the setting. Child L and Child M have both attended the nursery and over the same period and have incurred similar unexplained non – accidental impact injuries. There is currently a live police investigation looking into how the children have been harmed which includes investigating the nursery. Relying on the principles set out in *Ofsted v GM & WM [2009] UKUT 89 (AAC),* as there is an ongoing police investigation there is a reasonable prospect of the investigation showing that further steps are needed to reduce or eliminate a risk to children. The police and the Local Authority Designated Officer (LADO) have raised concerns about:

i. the high levels of accidents and unexplained injuries sustained by children attending the setting.
ii. the provider's systems for recording accidents, the content of the information gathered and the lack of sufficient risk assessment or analysis following an accident to reduce the risk of it happening again.
iii. the provider not acting promptly enough to notify the relevant safeguarding agencies in the correct way regarding concerns about children.

The Appellant's position

7. In summary, the Appellant contends that it is an experienced provider at four settings and has a good record. Although the Ofsted judgment at the last inspection at the nursery in Chigwell was "requires improvement" this did not relate to any safeguarding issues. The Appellant strongly disputes that the injuries found at the hospital were caused to either child L or M whilst at the nursery in Chigwell. It is a coincidence that both children were seen and treated at the hospital. It is a coincidence that both children had bruising, said to be similar, to their ears. There is evidence that supports that children may suffer and/or these children have suffered bruising to the ears for other reasons. The evidence to support that the other bruising or marks to each child were similar is unclear. Only one child is said to have bruising indicative of a hand mark. There is evidence that the grandmother of L was overheard at the hospital to say to L's father to "stick to the story."

8. The Appellant has cooperated in the investigations by providing records to the police, has responded to the allegations and has provided statements which show the steps taken to provide to improve record-keeping, to conduct further safe-guarding training, to install CCTV and ensure that nappy changes are conducted by two members of staff.

9. The Appellant submits that the threshold test under regulation 9 has not been met by the Respondent. Even if the panel were to conclude that it has, it is disproportionate to suspend registration given that there is no indication/evidence as to when the police may conclude their investigation. In other words, it is submitted that the Respondent has not met the persuasive burden as to necessity, justification, and/or proportionality.

Legal Framework

10. The statutory framework for the voluntary registration of childminders is provided under the Childcare Act 2006. Section 69(1) of the Act provides for regulations to be made dealing with the suspension of registration: see regulations 8-13 of the Regulations.

11. When deciding whether to impose suspension, the test is set out in regulation 9 of the 2008 Regulations as follows:

> "that the Chief Inspector **reasonably believes** that the continued provision of childcare by the registered person to any child **may expose** such a child to **a risk** of harm."
> (our **bold**)

12. It is not necessary for the Chief Inspector, (or the Tribunal), to be satisfied that there has been actual harm, or even a likelihood of harm, merely that a child may be exposed to a risk of 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 including, for example, impairment suffered from seeing or hearing the ill treatment of another".

13. The immediate duration of a suspension under Regulation 9 is for a period of six weeks. It may, however, be extended to 12 weeks under Regulation 10. Suspension may be lifted at any time if the circumstances described in regulation 9 cease to exist. This imposes an ongoing obligation upon the Respondent to monitor whether suspension remains necessary.

14. The powers of the Tribunal are that it stands in the shoes of the Chief Inspector. The first issue to be addressed by the panel is whether, as at today's date, it reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm (the threshold test).

15. The burden of satisfying us that the threshold test under regulation 9 is met lies on the Respondent. The standard of proof 'reasonable cause to believe' falls somewhere 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 possessed of the information, would believe that a child may be exposed to a risk of harm.

16. We are further guided by **Ofsted v GM and WM** [2009] UKUT 89 (AAC) at [21]

> "Although the word "significant" does not appear in regulation 9, both the general legislative context and the principle of proportionality suggest that the contemplated risk must be one of significant harm. "

17. Even if the threshold test is satisfied by the Respondent, that is not an end of the matter because the panel must be satisfied that the decision is necessary, justified in terms of the public interest, and proportionate in all the circumstances. The Respondent bears the persuasive burden in these respects.

18. In *Ofsted v GM & WM* the Upper Tribunal (UT) provided the following guidance.

> "a suspension imposed on the grounds that there is an outstanding investigation can be justified only as long as there is a reasonable prospect of the investigation showing that further steps to reduce or eliminate a risk might be necessary".

19. In that case this was also said:

> **"37. We stress that the exercise of the judgment required by regulation 8 will turn very much on the facts of a particular case. If Ofsted wishes to resist an appeal against a suspension on the ground that further investigations need to be carried out, it needs to make it clear to the First-tier Tribunal what those investigations are and what steps it might wish to take depending on the outcome of the investigations. It may well be, for instance, that the fact that a child has suffered a non-accidental injury that may have been**

caused by a childminder will prompt a detailed examination of the childminder's records and interviews with other parents, conducted by Ofsted itself after the police have released any records they have seized and said they will not be interviewing such witnesses themselves. If that be the case, Ofsted should explain that to the tribunal, because the tribunal must consider whether any continuation of the suspension has a clear purpose and therefore is capable of being proportionate having regard to the adverse consequences not only for the childminder but also for the children being cared for and their parents."

Attendance

20. The hearing was attended by:

- Mr Gilmour, counsel for the Appellant
- Ms Kandola, counsel for the Respondent
- Sarah Hawkings, the nominated person for the setting and co-owner and co-director Leah Anne Clarke.
- Daisy Evans, manager of the setting.
- Julia Crowley, Early Years Regulatory Inspector (EYRI)
- Caroline Preston, EYRI
- Helen Curtis, the Local Authority Designated Officer (LADO) for Redbridge
- Gillian Joseph, the Early Years Senior Officer who made the decision under appeal
- Laeticia Kamande, Social Worker, London Borough of Redbridge

The Hearing

21. We had read the indexed e-bundle in advance. We need not relate its contents in detail. We were assisted by the parties' skeleton arguments.

22. At the start of the hearing the judge summarised the legal framework and, in particular, that the Tribunal is not concerned with fact-finding, but with the assessment of risk in the context of Regulation 9 and in the context of nature of the allegations made.

The Evidence

23. We heard evidence from the Respondent's witnesses who gave evidence before the evidence for the Appellant: Mrs Hawkins and Ms Evans. Each witness gave evidence on oath and adopted her statement and were cross-examined.

24. We need not relate all the evidence given but summarise some of the evidence before us.

25. In answer to Mr Gilmour Ms Crowley said that she had been told at the first meeting that similar impact injuries to the ears of each child and similar bruising and marks to both children. The consultant paediatrician was not at the first meeting but DC Baig was. She had not spoken to any medical

professional herself. She had referred to “non accidental injuries” in her statement. During the meeting the discussion was that the injuries had the appearance of injuries administered with intent. That was not a quote: it was part of the discussion. She did not know how strongly that view was expressed: she just knew that the doctor considered that he needed to make a referral to social services. She agreed that so far as M was concerned the Appellant’s notification had documented other incidents of bruising and that explanations had included low blood iron, M biting herself, itching and scratching leaving brown marks and, specifically, bruising to M’s ear in January 2022 as shown at Exh. BB15. She was taken to evidence regarding Ms Evan’s contact with the LADO where she was asking for advice. Ms Crowley said that this needed to be explored as part of the inquiry. In her view there should have been an earlier safeguarding referral. It appeared to her that the waters had been muddied and there were issues regarding the quality of safeguarding practice and procedure at the nursery.

26. Ms Preston, (the assigned EYRI who took over from Ms Crowley) confirmed that the section 47 investigation regarding each child had now been completed regarding L by the London Borough of Havering and by the London Borough of Redbridge re M. in answer to Mr Gilmour she confirmed that she was liaising with the police. In terms of her own role it is an ongoing live police investigation and she has to be mindful not to prejudice any investigation. The suspension will be reviewed on Monday 20 June 2022 and a decision made as to the next steps. The Appellant has been complying with the suspension as confirmed by the fact that there were no children present when she made an unannounced visit. She considered that there had been a previous safeguarding incident at the nursery but she had had no direct involvement.

27. Ms Curtis, the LADO for Redbridge said that the nursery had sent emails to the MASH (Multi Agency Safeguarding Hub) regarding M but did not complete a referral to social services which would have included all the information that social services needed to take action. Regarding the March 2020 episode she had sent an email re A (another child who sustained injury at the setting in March 2020). From her perspective the March 2020 incident did not meet the LADO criteria because there was no issue of intention. It was a very unfortunate accident. If there is an allegation that a member of staff has harmed a child the LADO is involved. The MASH is involved when there is a more general concern about a child’s safety. There was no allegation against a staff member re the injury sustained by A. She has not seen any record of her colleague making a referral to the MASH.

28. So far as M was concerned Ms Curtis agreed that some injuries had been reported by the nursery to the LADO. There were no wider concerns regarding practice and procedure. Ms Gilmour suggested that Ms Evans had asked for advice and had been told by the MASH to do what she felt best. Ms Curtis said she believed that Ms Evans had been asked to make a formal referral to social services prior to February 2020. Ms Curtis agreed that Ms Evans was highly concerned but she (Ms Curtis) questioned whether the referral was done in a way that was useful for the agencies. She said that they had not found out that there had been a number of injuries

to M until May. So far as she is aware there is no time scale for completion of the police investigation. Asked if she would wait as long as it takes, Ms Curtis said It is a very complex case that is taking time to work through. DC Baig has said throughout that the investigation is likely to take some time. She is in weekly or fortnightly contact with DC Baig.

29. Ms Kamande, social worker for Redbridge, said that the section 47 inquiry regarding M concluded that M has sustained unexplained bruising - which is significant harm- but they concluded that the risk was not in the home. Early help, support and intervention via a Family social worker was in place because of the need to have a team wrapped round the child. In answer to Mr Gilmour she said that a paediatric consultant was present at the strategy meeting on 5 May who said that all organic causes for M's injuries were excluded. The outcome of the section 47 inquiry was that the bruising to M was unexplained. There were no concerns about the family home. A support worker had been appointed because it is an ongoing matter and they had to put in preventative safety measures. No reports of bruising had been made by M's new nursery which she has now attended for nearly five weeks.

30. Mrs Joseph, the senior officer who made the decision, said that her current view was that there is a risk of harm to children if the nursery is not suspended. At the present time Ofsted has not yet established that the risk of harm has been mitigated. She would want to review all information and work with the police so that they can determine when it would be appropriate for Ofsted to interview and make further inquiries. She believes that suspension is proportionate because the nursery has not been ruled out and the police have ongoing lines of inquiry that they cannot disclose.

31. Mrs Joseph said that a decision to suspend is not taken lightly because of the impact on the provider and other families. She was mindful of the overall current financial difficulties in the context of recovery from Covid. If she had felt that there was any alternative to mitigate or minimise the risk of harm she would have done so. As of today, there is still an ongoing police investigation and the outcome of the section 47 inquiries in essence ruled out the families as suspects. Ofsted will make its own enquiries once the police investigation is concluded. She has been informed of the steps taken by the Appellant such as further training, improved record keeping and CCTV but Ofsted will need to establish the impact of any action taken. If Ofsted receive any emerging information that eliminates the nursery the suspension would be reviewed. She was aware from DC Baig that he had spoken to the grandmother and father of L about the alleged conversation in hospital and is satisfied with the responses he received. DC Baig has confirmed that since L and M have not suffered any further injuries since they went to different settings.

32. Mrs Joseph said that she had not been informed of any specific delay or a specific timescale for the police inquiry. As soon as it is safe for Ofsted to conduct its own inquiries without potential compromise to the police it will do so. She agreed that CCTV is a positive step but such actions by themselves do not necessarily mitigate risk. CCTV is not a panacea. The

installation of CCTV does not mean that the risk of harm has been alleviated. She was a little concerned by the assertion that there had been no previous safeguarding incidents at the nursery. The March 2020 incident (re A) was not an allegation of deliberate harm but the child sustained injury warranting a surgical procedure. There were safeguarding elements in that the nursery acknowledged that it would need to consider staff deployment. It was an accident due to poor supervision so that was a safeguarding risk. Ofsted decided that there was no need for further action because the nursery had acknowledged the need to take action re staff deployment- see the published summary.

33. After the midday break Mrs Joseph said that the information shared with her by DC Baig was that the paediatrician who saw each child considered that each had suffered unexplained injuries indicative of impact (i.e. the use of force). She has to rely on information provided by medical professionals and respect their professional opinion. In answer to Mr Gilmour, she said that the consultant had said the injuries involved significant force. It was suggested to Mrs Joseph that nobody else had said that the consultant had said the injuries were "intentional". Mrs Joseph said that that is what she believes she was told. Her understanding was that the injuries were impact injuries and with intent i.e. non accidental. The information that the injuries were similar came from the paediatrician and DC Baig. The common denominator was that each child attended the same nursery.

34. Mrs Joseph was aware that the Appellant had shared a document regarding some 37 injuries to M over 20 identified dates, some documented and some less documented. Dr Baig has discussed this with the Appellant and had sought further information. Ofsted is concerned that despite the high number of incidents there has not been a rigorous risk assessment undertaken by the nursery. DC Baig is working his way through high levels of accidents in general. Asked if, apart from March 2020 incident (re A) there had been no safeguarding issues Mrs Joseph said that there had been: she had identified March 2020 as an example. She could give other information. Understandably Mr Gilmour declined to go through other incidents given that he did not have the opportunity to take instructions. So far as the March 2020 incident is concerned A's parents had referred to a broken jaw. The apparent position from the hospital records currently available was that the injuries required stitches and the teeth were repositioned. (We note from the consent form that this was a significant trauma and treatment was to be under general anaesthetic). Mrs Joseph agreed that the 2020 incident was an unfortunate accident but it was the case that the supervision had not been adequate. Like Ofsted, the nursery had identified this as an issue and had addressed it.

35. Mrs Curtis said that DC Baig had been provided with hundreds of pages of records six days ago. She did not know how far he had since got in terms of his investigation of the time-line. She could not say when it will be completed. She had seen the information provided by the Appellant regarding the doubling up re nappy changes, improved recording, CCTV and training. She said that she will only be able to assess how effective

these steps are when it is agreed that Ofsted investigation will not prejudice the ongoing police investigation.

36. Ms Evans, the manager, said that she thought the information regarding the alleged conversation between L's grandmother and father came from a consultant who said that a nurse had overheard the conversation. She could not remember if this information had been overheard by the consultant present at the meeting or another consultant.

37. In answer to Ms Kandola Ms Evans agreed that the allegations regarding L and M were serious, and sufficiently serious to warrant police investigation. Asked if the lifting of the suspension could lead to a risk of harm to children at the nursery Ms Evans said that the 2 cases are complex. Lots of work had been put into caring for the children. She agreed that if the provider is a suspect there may be a risk of harm to children. She did not agree that it was proportionate to suspend the setting. If there is any risk the steps taken regarding reviewing accidents more thoroughly, CCTV, training by area managers and two members of staff at nappy changes are sufficient.

38. Mrs Hawkings said that she attended the Strategy Meeting on 3 May 2022 and understood that a nurse had overheard L's grandmother saying to L's father to "stay calm and stick to the story". This information was provided by DC Baig. She said also that the nursery has a robust records system and want to make sure that staff complete records to the required standard. Further safeguarding training had been undertaken. The setting had been working towards the installation of CCTV to help monitor the HR ("human relations") side and this was the time to implement this. Staff are now more aware of how important record keeping is. She believed that right from the beginning staff had monitored and recorded anything they had seen. CCTV will give an extra level of safeguarding and enable staff to be reassured.

39. In answer to Ms Kandola Mrs Hawkings agreed that staff, if needed, can go from one room to another. She agreed that the allegations being investigated by DC Baig are very serious. She accepted that there is a live police investigation. She acknowledged that nursery staff are in the pool of investigation and that the police are trying to get to the bottom of what happened. She said that she strongly believed that children at the nursery are not at risk because the setting is complying with standards. Asked if she thought children may be at risk of harm she said that Ofsted had made it clear that "we are a low risk threshold". The Appellant support the investigation but do not see why there are grounds for other children to be suffering in terms of their development.

The Tribunal's consideration

40. We will not refer to every aspect of the material before us or the skeleton or oral submissions. We have taken all the information before us into account.

41. We are not today involved in finding facts. Our task is essentially that of a risk assessment as at today's date in the light of the nature of the allegations before us, which are firmly denied, and in circumstances where the evidence is necessarily incomplete because a police investigation is underway.

42. We add that whilst reference is drawn from case law to our "placing ourselves in the shoes of the Chief Inspector", we are an independent panel making a risk assessment against the threshold set out in paragraph 9, and on the basis of the evidence available as at today's date.

43. In our view, the nature of the allegations before us give rise to significant cause for concern that child L and M may have been abused whilst in the care of the Appellant. We consider that the serious nature and apparent substance of the allegations made is such that suspension is necessary and justified in order to protect other children from risk of harm, pending further investigation by the police and by the Respondent (when permitted by the police to do so).

44. The Respondent has satisfied us that:

a) the continuation of the suspension at the present time has a clear purpose, namely to enable the police to conduct its ongoing investigation. There are hundreds of pages of records to assess to form a timeline. There is no reason to believe that the police are not investigating the matter timeously.
b) Ofsted is unable to conduct its own investigations (for example, by interviewing staff at the setting and/or parents) until the police consider that this will not risk prejudice to the police investigation.
c) In these circumstances the position is that a police investigation is underway in relation to the injuries found at hospital. It is notable that the consultant paediatrician/medical professionals made a referral to social services re one child before the other had been seen. There may well be issues as to the extent to which the injuries are similar and/or whether such injuries as may be proved are consistent with non-accidental or accidental injury. In our view in the face of professional opinion that the injuries sustained by each child are consistent with non-accidental injury and that a police investigation is underway, the threshold test for a suspension order was plainly met.
d) Is the threshold test met today? The Appellant relies on steps taken to improve safeguarding and other measures which have been described to us. In our view it is extremely difficult to assess whether such steps are or may be sufficient to mitigate or address risk given that the cause of the injuries to M and L is disputed.
e) it is extremely difficult to see how the regulator can reach a view as to whether steps have been, or could be taken, to sufficiently reduce or eliminate risk until the police investigations have been completed or have reached the stage where the police are satisfied that the regulator's investigations will not prejudice their inquiry. We consider that there is a reasonable prospect of the investigation showing that further steps to reduce or eliminate a risk might be necessary.

45. The Respondent has satisfied us that the threshold test under regulation 9 (and applying the guidance on **Ofsted v GM and WM** [2009] UKUT 89 (AAC)), is met.

46. Applying **GM,** we reminded ourselves that Regulation 9 sets a low threshold. However, the mere fact that the threshold has been met does not necessarily mean that the power of suspension in regulation 9 should be exercised.

47. In our view the real issue is proportionality, having regard to the serious consequences of suspension of the setting pending further police investigation – and which may very well take considerable time.

48. There is no provision under Regulation 12 to enable this panel to impose conditions instead of suspension. The Tribunal's power on appeal against a suspension decision is to confirm the decision or to direct that the suspension cease to have effect. Consideration of the prospects that any perceived risk might be capable of being mitigated in some way is, however, a means by which it is possible for this Tribunal panel to mentally cross-check the proportionality of suspension. We considered this.

49. In our view, in the overall context of the allegations, it is not realistic for conditions to be considered by Ofsted until further investigations by the police and by Ofsted (when permitted by the police) have been completed. It is also important to recognise that, irrespective of the outcome of the police investigation, Ofsted will have to investigate a broader range of issues than those which are the immediate focus of the police investigation. For example, it is apparent that the issues regarding M, in particular, are very complex. There is a long and documented history of bruising and marks to M. The action taken by the nursery in response to these, as well as the involvement of the relevant LADO, will require analysis in the context of the welfare requirements under the Regulations and, in particular, the ability of the setting to safeguard children in its care. We are satisfied that Ofsted is unable to conduct its own investigation until the police reach the view that the regulator can do so without prejudicing their ongoing investigation.

50. We considered the impact of the suspension. We recognise that, if the suspension order is confirmed, it is likely it will be extended for another six weeks and may very well extended thereafter until such time as the police have completed their investigation and/or allow Ofsted to conduct its own investigations so as to consider whether conditions might mitigate risk in a manner sufficient to address any reasonable safeguarding concerns. We recognise that, once the police permit agency investigation, the obtaining further of information from the various agencies will take time. We are satisfied that the Respondent is far from complacent about the impact on the Appellant and all concerned and will do all that it can to investigate in a timely fashion once it is permitted to do so.

51. Suspension is always a very serious matter because of the adverse impact on the livelihood, professional reputation and standing of the Appellant, and the consequent effects upon its employees, as well as families wanting to use the service. We recognise that any period of

suspension will have a very serious impact upon the finances and reputation of the Appellant. It is also very serious because it affects the families of children at the setting who had to find alternative placements or make other arrangements when the suspension was imposed, and are awaiting the outcome of this appeal. We take into account also that suspension of the setting reduces the nursery facilities available in the locality to parents and children. We recognise that nursery places can be very hard to find and that a nursery is a much-needed resource, especially in the current economic circumstances. We take fully into account the real difficulties that may be caused in this regard. We have also taken full account of the personal and professional impact upon the Appellant, its staff and all those who will be affected by this decision.

52. We balanced the harm to the Appellant's interests against the risk of significant harm to children who might be looked after at the setting whilst these allegations are investigated. We are not deciding disputed facts. Our assessment is that the allegations appear to have sufficient substance to show that there are very serious concerns regarding what happened whilst child L and M were in the care of the Appellant. We consider that the serious nature and apparent substance of the allegations made is such that suspension is necessary and justified in order to protect other children from risk of harm, pending further investigation by the police and by the Respondent (when permitted by the police to do so).

53. The real issue is proportionality. We have carefully considered all the matters raised by the Appellant. We have balanced the Appellant's interests against the need to safeguard children from risk of harm. In our view that the need to protect the health and welfare of children clearly outweighs the adverse impacts of suspension on the Appellant and those affected.

54. We consider that it is fair, reasonable and proportionate to the public interest in the safety and well-being of children that the Appellant's registration at the setting at 406 Manfold Way, Chigwell, Essex is suspended pending further investigation.

Decision

The decision to suspend registration is confirmed and the appeal is dismissed.

Judge Siobhan Goodrich

First-tier Tribunal (Health, Education and Social Care)

Date Issued: 20 June 2022