

First-tier Tribunal Care Standards

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

[2023] 5147.EY-W-SUS
[2023] UKFTT 980 (HESC)

Hearing by video-link on ~~15~~**14** November 2023
and with panel deliberations on ~~16~~**15** November 2023

BEFORE

Tribunal Judge Iman
Specialist Member Mrs L Jacobs
Specialist Member Dr D Cochran

BETWEEN:

Little Bloomers Nursery Ltd

Appellant

-v-

Care Inspectorate Wales

Respondent

AMENDED REASONS FOR THE DECISION ON APPEAL AGAINST SUSPENSION

The Hearing

1. The hearing took place on 15 November 2023 as a remote video hearing (CVP). There was no objection to the hearing taking place as a video hearing. In the Tribunal's view, all issues in the appeal could be dealt with effectively at a remote hearing, given the nature of the decision under appeal and the test the Tribunal was required to apply.
2. The documents that we were referred to are in the electronic hearing bundle provided in advance of the hearing (440 digital pages). Some participants were working from hard copy bundles and some from digital bundles during the hearing. We received skeleton arguments from each party before the hearing.
3. There were no connectivity issues that could not be resolved. Miss Price initially joined by video but then later joined the Tribunal by telephone so that she could view the bundle and other relevant documents whilst giving her evidence. There was no objection to this and the Tribunal were content to accommodate the witness so that she

was able to refer to the documentation with ease through the duration of her giving evidence.

4. The Tribunal were aware that several of the Appellants witnesses joined intermittently throughout the hearing as they had other parental responsibilities to attend too in the day. The Tribunal had no difficulties with this and accommodated the parents so that were able to give their evidence without distraction.
5. The Tribunal also assisted Mr Bhatia who was self- represented by explaining the proceedings and taking regular breaks.
6. The hearing concluded after 5pm and therefore the parties were in agreement with the Tribunal that it would be in the interests of justice and fairness to provide written submissions by 11:30am 16 November 2023. The Tribunal therefore adjourned its deliberations until the 16 November 2023 once the written submissions had been received.

Attendance

7. Mr Bhatia attended in his capacity of Director and represented the Appellant.
8. The Respondent was represented by Mr Edwards, Counsel. Mr Drew and Miss Davies from Legal Services, Welsh Government were also in attendance as observers.
9. The witnesses all made their respective oaths and affirmations to the Tribunal. The witness statements that were contained within the bundle were admitted as the Evidence- in-Chief of the witnesses that attended to give oral evidence to the Tribunal. In respect of Miss Nicholls, Miss Matthews and Miss Meredith they explained that the contents of their statements were true and accurate and had been authored by them save for the references to their addresses which had not been inputted by them. They explained that they had sent emails to the nursery but these emails had not contained a preamble with an incorrect address. They all confirmed that they had authored and electronically signed the remaining text. Therefore, the Tribunal accepted their statements into evidence save for the preamble referencing the addresses.
10. The Respondent called one live witness: Mrs New, Regulation Inspector. The evidence of Mr Eyre, Senior Manager – Registration and Enforcement, was agreed and therefore admitted into evidence.
11. On behalf of the Appellant, Mr Bhatia, Director, also gave oral evidence at the hearing. He further called evidence from Miss Jones, Responsible Individual and Person in Charge, Miss Price, Deputy Manager, Ms Nicholls, Parent, Ms Matthews, Parent, Ms Meredith, Parent.

Preliminary issues

12. At the beginning of the hearing, the Tribunal made an order pursuant to Rules 14(1)(b) of the Tribunal Procedure Rules 2008, prohibiting the disclosure and publication of any matter likely to lead members of the public to identify children involved in this case.
13. On 13 November 2023, the Respondent submitted an application to admit a second statement from Ms Elaine New as late evidence in the appeal. Mr Edwards submitted that the documents were highly relevant to the context of the appeal. He explained that the evidence was late with good reason, given that it related to a recent complaint that had been submitted in relation to the setting with new information relayed to the CIW on the 13 November 2023. The information related to concerns that had been raised anonymously in respect of the hygiene and cleanliness, safety concerns, the behaviour of the Responsible Individual, and the falsifying of records in respect of the safeguarding concerns.
14. He explained that this new information would require further urgent investigation and would also be relevant considerations for the Tribunal around insight and the likelihood of improvement, and therefore would also be relevant information for the decision in respect of upholding of the current suspension.
15. Mr Bhatia objected to the admission of the statement. He explained that having read the contents of the document, he considered that he was able to identify the individual who had made the recent complaint. In his opinion, it was an individual that they had recently asked to leave from the setting and therefore submitted that this was a malicious complaint.
16. The Tribunal considered the application carefully, applying Rules 5 and 2 of the Tribunal Procedure Rules 2008. The Tribunal reminded itself of the role it undertakes in an appeal of this kind – it steps into the shoes of the Respondent. The Respondent is under a duty to continuously review its decision to suspend. The duty of continuous review must necessarily involve consideration of any material change or update in information available to the decision maker. Not only that, but the nature of the test is one which requires the Tribunal (the decision maker) to assess relevant information as part of its risk assessment. The Tribunal, in exercising the power to continue a suspension order, is considering a precautionary and preventative response to risk. As such, the Tribunal concluded that the evidence was relevant to its decision. In applying Rule 2 of the 2008 Rules, the Tribunal had regard to the requirement to deal with the case in ways which are proportionate to the importance of the case and the complexity of the issues, amongst other factors. The Tribunal considered it fair and proportionate to admit the second statement of Miss New, and reminded the parties that it is matter for the Tribunal to attribute an appropriate level of weight to the evidence having regard to the circumstances in which it was obtained.

17. Mr Edwards also made a further application for the Tribunal to conclude that the document submitted by Mr Bhatia on 10th November, purporting to be a skeleton argument was not a skeleton argument and was in fact a witness statement and therefore should be considered as late evidence. He further submitted that it should not be admitted into evidence as it would require Mr Bhatia to be cross examined which due to time estimates would create a real risk that the hearing may go part-heard. He reminded the Tribunal that the appeal needed to heard due to the suspension expiring on the 21 November 2023. Mr Bhatia explained that he had not understood that he was inadvertently submitting a witness statement but that he had no issue being cross examined if that would assist the Tribunal.
18. The Tribunal considered the document carefully and considered that it did amount to a witness statement due to the evidence contained within it. It was also electronically dated and signed. We considered that Mr Bhatia was unrepresented and accepted that he had not intentionally sought to serve a witness statement as late evidence and was genuinely seeking to submit a skeleton argument to the best of his understanding.
19. Mr Edwards had explained that he did not consider that he had any questions for the Appellant's parental witnesses and therefore we considered that there would be sufficient time for Mr Bhatia's evidence to be heard. As such, the Tribunal concluded that the evidence was relevant to its decision. The Tribunal considered it fair and proportionate to admit the evidence, knowing that it is the Tribunal that will attribute a level of weight to the evidence and that it was in the interest of justice that the Mr Bhatia was afforded an opportunity to present his evidence to the Tribunal.

Background

20. Lakeshy Bhatia and Rajesh Bhatia are the Directors of Little Bloomers Nursery Limited, 63 Ninevah Road, B21 0SU ('the Appellant).
21. The Appellant is currently registered by the Welsh Ministers to provide full day care for 41 children aged 0 – 12 years. Registration was granted with Care Inspectorate Wales ('CIW') as a day care provision on 07 December 2018.
22. The Care Inspectorate ("CIW") has now exercised its power on 10 October 2023 under the Child Minding and Day Care (Wales) Regulations 2010 to suspend Appellant's registration. The Appellant company appeals against the Respondent's decision to suspend its registration.
23. The parties supplied an agreed chronology and due to the parties referring to the inspection history and historical background leading up to the suspension we have repeated aspects of it here;

- 23.05.23 Inspection
- 23.05.23 CIW issues a NoD to impose suspension of registration following noncompliance with regulations resulting in poor outcomes for children with effect from 24.05.23.
- 02.06.23 Decision to lift the imposed suspension following provider assurances and the provision of requested information relating to staffing and qualifications/training records.
- 06.07.23 RI reports to CIW that the nursery is being closed temporarily due to an insufficient number of qualified staff on duty and inability to meet staff: child ratios.
- 07.06.23 Inspection second visit
- 06.07.23 Inspection
- 14.09.23 Inspection
- 15.09.23 CIW receives a staff feedback form detailing concerns relating to hygiene arrangements, lack of appropriate resources, staff: child ratios not being maintained, and issues around the conduct of the RI with staff.
- 10.10.23 Inspection second visit
- 10.10.23 CIW Improvement and Enforcement ('I&E') panel convenes and decides to issue a NoD to suspend the registration due to continued noncompliance of regulations and concerns relating to the RI's competence to sufficiently deal with safeguarding matters.
- 10.10.23 CIW issues a NoD to impose suspension of registration with effect from 11.10.23.
- 11.10.23 CIW receives an appeal to the NoD to suspend registration from the Appellant.
- 13.10.23 CIW Regulation Senior Manager – Registration and Enforcement, John Eyre issues a NoD to uphold suspension.
- 24.10.23 Appellant submits appeal against the decision to suspend registration to the First Tier Tribunal.
- 31.10.23 CIW issues NOI to cancel the registration of Little Bloomers Nursery

24. Since 29 July 2021 Ms Rebecca Jones was registered as Person in

Charge at Little Bloomers Nursery Limited. She further became the Responsible Individual on 31 March 2023.

25. The breaches immediately giving rise to the suspension decision on the 10 October 2023 were Regulation 9 and 20 namely that:
26. On the 10 October 2023, during an inspection it was brought to CIW attention that an allegation made against a staff member for inappropriate handling of a child in the w/c 25 September had only been reported internally on the 05 October and by the 10 October 2023 had still not been reported to the Local Authority and therefore there had been a failure to comply with the nursery's safeguarding policy which required immediate reporting.
27. CIW was not satisfied that the Responsible Individual, Miss Jones, is sufficiently competent in her understanding of safeguarding matters nor that she would take appropriate action should further safeguarding issues arise.
28. During the inspection, CIW was also not satisfied that suitably discernible improvements had been made relating to staff interactions with children and the nursery environment.
29. The Respondent has also subsequently decided to cancel the Appellants registration; cancellation has yet to take effect. **This appeal is an appeal against the suspension decision only and the Tribunal made this clear at the outset.**
30. 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 is confirmed.

Legal Framework

31. Regulation 9: Registered person: general requirements

- (1) The registered person must, having regard to—
 - (a) the statement of purpose, the number and needs (including any needs arising from disability) of the relevant children, and
 - (b) the need to safeguard and promote their welfare, act as a child minder or provide day care (as the case may be) with sufficient care, competence and skill.
- (2) Where a person in charge has been appointed, the registered person must ensure that the person in charge fulfils the requirements set out in paragraph (1).
- (3) Where a registered person acts as a child minder or is an individual providing day care, the registered person must undertake from time to time such training as is appropriate to ensure that he or she has the experience and skills necessary for acting as a child minder or providing day care, as the case may be.
- (4) Where the registered person is an organisation providing day care it must ensure that the responsible individual undertakes such training as is appropriate to ensure that he or she has the skills necessary for providing day care or, where a person in charge has been appointed, for supervising the provision of day care.
- (5) Where a person in charge has been appointed the registered person must ensure that the person in charge undertakes such training as is appropriate to ensure that he or she has the skills necessary for providing day

care.

32. Regulation 20 Safeguarding and promotion of welfare;

(1) The registered person must act as a child minder or provide day care, as the case may be, in such a way as to—

- (a) promote and make proper provision for the welfare of relevant children; and
- (b) make proper provision for the care, education, supervision and, where appropriate, treatment, of relevant children.

(2) The registered person must ensure that every person who has attained the age of 16 and who—

- (a) lives on the relevant premises;
- (b) works on the relevant premises (other than a person mentioned in [regulation 28](#)); or
- (c) is otherwise present on the relevant premises and has or is likely to have regular contact with relevant children, [is suitable to have contact with children] [1](#).

(3) For the purposes of paragraph (2), a person who works on the relevant premises includes a person who works on a voluntary basis.

(4) The registered person must confirm to the Welsh Ministers that in respect of each person mentioned in paragraph (2) —

- (a) [where appropriate,] [2](#) an enhanced criminal record certificate has been issued; and
- (b) where appropriate [3](#), the person is registered with the [DBS] [4](#) and that the person has provided their [DBS] registration number to the registered person.

(5) If the registered person is not entitled to receive, in respect of a person referred to in paragraph (2) the information or documentation upon which to base the confirmation required by paragraph (4), the registered person must ensure that any such person is appropriately supervised at all times when he or she is in contact with a relevant child or children.

(6) The registered person must, for the purpose of providing care to relevant children and making proper provision for their welfare, so far as practicable, ascertain and take into account their wishes and feelings.

(7) The registered person must make suitable arrangements to ensure that while relevant children are in the care of the registered person—

- (a) their privacy and dignity is respected;
- (b) due regard is paid to their sex, religious persuasion, racial origin, cultural and linguistic background and any disability affecting them.

33. Regulation 40.— Power to suspend registration

(1) The Welsh Ministers may, in accordance with regulations 41, 42, 43, 44 and 46(8), suspend the registration of any person acting as a child minder or providing day care for children if—

- (a) they have reasonable cause to believe that the continued provision of such care by that person exposes, or may expose, one or more of the children cared for by that person to the risk of harm; and
- (b) the purpose of the suspension is for one or both of the purposes set out in paragraph (2).

(2) The purposes of the suspension are—

- (a) to allow time for the circumstances giving rise to the belief of the Welsh Ministers to be investigated; and
- (b) to allow time for steps to be taken to reduce or eliminate the risk of harm.

Issues

34. The questions for the Tribunal are therefore:

- (1) Was there reasonable cause to believe that continued provision exposes (or exposed) children at the setting to the risk of harm?
- (2) If so, have steps been taken to reduce or eliminate that risk?

35. Further the Respondent bears the overall burden of persuading the panel that the decision under appeal is justified in terms of a legitimate public

interest objective, and is proportionate in all the circumstances.

Evidence

36. We have summarised some of the evidence before us and we wish to make it clear that the following is not intended to be a transcript of the hearing.
37. The Tribunal heard evidence from Ms New, Regulation Inspector. Ms New in her evidence explained that she has visited Little Bloomers Nursery on 11 inspections since June 2021. She accepted that there had been some improvements over that time and that some Priority Action Notices (PANs) had been closed but that there had been insufficient progress made overall and that there had been repeated breaches in respect of some regulations. She explained that there had been an inability to demonstrate sustained improvement where improvements had been made.
38. She carried out a full inspection of Little Bloomers Nursery on 6 July 2023, she found improvements in areas highlighted by the PANs issued at the previous inspection and was able to close some of the PANs.
39. However, on 10 October 2023 she also observed other concerning practices, namely that the staff, including Ms Jones, did not follow policies and procedures relating to hygiene, health and safety. She also noted that staff failed to report an allegation of rough handling of a child by a member of staff. Miss Jones was, in her view, dealing with this incident as a disciplinary matter rather than through the setting's safeguarding policy which Miss Jones did not appear to fully understand. She found record keeping extremely poor. She also explained that at no time did Ms Jones share with her any kind of list of actions she intended to undertake that day.
40. She explained that though there had been some changes and improvements over time, some breaches had also worsened and were repeated. She further went on to explain that despite their being improvements on some occasions they were not necessarily sustained.
41. In cross-examination she explained that she would expect to see areas such as nursery, kitchen and toilets and where children are playing to be clean and this was not always the case. She explained that she saw that microwaves, toasters and fridges had not been cleaned. She explained that the uncleanliness was to an extent that the microwave and toaster had to be replaced and she explained that it should not have got to such an unclean state that they needed to be replaced.
42. In her evidence in respect of Miss Jones, she stated that in her view the provider, as in the Appellant company and those responsible, had not taken steps to ensure Miss Jones was able to fulfil her role with the

requisite knowledge and understanding. She accepted that Miss Jones cares about the children but was clear that Miss Jones did not have the knowledge and understanding of the Responsible Individual to carry out the role with consistency.

43. She gave examples of how a child that was known to have a dairy allergy was given buttered toast and the record keeping and communication around this was inadequate. She explained that, in that situation, it was not life threatening but in other circumstances that it could have been catastrophic. She explained that those systems were still not in place to adequately deal with child specific individual allergies.
44. In respect of the remediation she explained the situation was now irrevocable. She explained that it would only be possible with a lot of time and a lot of training available to the staff members. It would be difficult to learn whilst carrying out the role of RI and being responsible for risk assessing and safe guarding in the setting whilst training.
45. She explained that, in respect of the failure to report the safeguarding incident in October, she was concerned that Miss Jones had not considered that the allegations were a safeguarding matter that required immediate reporting. She explained that Miss Jones had advised her that she would not refer the matter to social services because "Donna" had not advised her too. She explained that Miss Jones was clearly not following the policy and that she had to explain the acronyms to her, which was a concern. She went on to explain that her expectation was that at the most basic level if an allegation was made about staff that you would follow the policy and report it to the local authority immediately.
46. The Tribunal also heard from Ms Jones who in cross examination maintained that she had intended to inform social services about the safeguarding incident. She also maintained that on 10 October 2023 she had shown Ms New the list of the actions that she proposed to undertake which included informing social services. She explained that she was in hospital when she was advised by Miss Price (Deputy Manager) in respect of the allegation of rough handling. She explained that she required time to clarify the position and ensure that she had witness statements from the staff members who were not in until the Monday. She explained that those statements were only obtained on Monday after the school run. She explained that there was a history of "he said she said", and therefore she wanted to be sure that it was absolutely true before she passed the information on. She also had initially given a verbal warning to staff for not reporting the allegations sooner but that this was later changed to a written warning.
47. She explained that she had been with Bloomers for 4 years, and that she loved working there. She explained that she was competent in her roles and that she would not have signed up for anything if she considered that she wasn't able to do carry out the role. She accepted

that she had been kept extremely busy whilst working there but stated that she loved being busy. She explained that her tasks also included invoicing but that she did not involve herself with school runs anymore.

48. She explained that she considered that there had been improvements in the nursery and that there were more staff now at the nursery and that all staff had undertaken safeguarding training recently.
49. In respect of the incident with the buttered toast, she explained that the child went from the door to the chair after the parent explained that the child could now have small amounts of dairy as they were giving that to the child at home, but that she didn't have time to inform or update anyone regarding the parent's comments around the ability to give the child dairy.
50. Miss Jones considered that the Nursery is doing very well now. She considered that all the issues as identified in previous inspections had been addressed. In hindsight in respect of the safeguarding incident, she considered that she had acted properly and would not have done anything differently as she had to collate the relevant information.
51. We also heard from the parents, Miss Matthews, Miss Nicholls and Miss Meredith who all explained that they did not have any safeguarding concerns in respect of the nursery and were satisfied with the level of care provided to their children.
52. Miss Price in her evidence also maintained that she considered that she and Miss Jones work well together and communicate well together. She explained that in her position as Deputy Managers she had just started to find her feet. In respect of the safeguarding allegation, she considered that she had discharged her duty as she had reported it to her manager Miss Jones.
53. She did however accept that, by only reporting something to social services when you considered it was absolutely true was not following the safeguarding policy.
54. The Tribunal also heard from Mr Bhatia. He explained to the Tribunal that he had been involved with the business since June of this year. He explained that he had no direct experience or specific childcare knowledge. He went on to state later on in his evidence that he had very recently reduced his working pattern to part time so that he would be able to dedicate more days to the nursery. He explained that he had fallen in love with the nursery and was committed to its development. He explained that he enjoyed working with Miss Jones.
55. In respect of the Child Minding and Day Care (Wales) Regulations, he stated that he had read them and considered that he had a better understanding of them but accepted that he needed to become more familiar with them.

56. In his evidence he explained that he had taken administration tasks from Miss Jones so that she could focus on her managerial and RI role. He explained that they had been in talks with a consulting company whose services they would like to secure longer term in assisting them in the management of the nursery. However, he clarified that they had not entered into formal agreements as they wanted to await the outcome of the appeal to establish whether the nursery would still be operating. He didn't accept that he exaggerated the steps taken in putting in place support. He explained that in respect of the consulting firm he had taken steps in that he had obtained advice but had not secured their services in the longer term.
57. He also considered that it was unfair for Mr Edwards to suggest that he had no understanding of the duties of childcare providers. He accepted that he had a brief understanding and that it was slowly embedding as he was gaining more experience.

Tribunal Conclusions with Reasons

58. We reminded ourselves that we are not today involved in making any findings of fact. Our task is essentially that of a risk assessment as at today's date in the light of the nature and substance of the information before us. We would like to place on record our thanks to all the witnesses including the Appellant who gave evidence at the hearing.
59. We will not refer to every aspect of the material before us, the oral evidence or the skeleton or oral submissions. We have taken all the information before us into account. We will refer to key aspects when giving our reasons. If we do not refer to any particular piece of evidence or any particular submission it should not be assumed that these have not been considered.
60. We have reminded ourselves that breaches of Regulation 9 and Regulation 20 are relied upon in the Notices of Decision to Suspend Registration.
61. The Tribunal found Miss New to be a credible and reliable witness. We considered that her evidence was fair and reliable and straightforward. Both her witness statement and her oral evidence acknowledged positive practice from the Nursery when she had observed it. She demonstrated a detailed expertise in her understanding of the setting and remained consistent in her evidence. We were impressed with her balanced evidence and we accepted her evidence without hesitation.
62. In respect of the evidence from Miss Jones, the Tribunal considered that she demonstrated a significant lack of insight into the concerns raised by CIW. She did not accept that there were ongoing difficulties at the nursery, in her oral evidence she stated that "I think we were in a good place".
63. The Tribunal were particularly concerned about her inability to

understand the concerns raised by CIW in respect of the failure of staff and herself in following the safeguarding policy and the delay in informing the Local Authority in respect of the safeguarding incident.

64. Miss Jones made it clear in her evidence that following safeguarding training and the benefit of hindsight she still did not consider that she would have changed the way she had dealt with the safeguarding incident. She would not have changed any of her actions and that she was correct in wanting to report the allegation having obtained witness statements and when she was "*absolutely sure it is true*". We considered that this demonstrated a failure in understanding the importance of following the safeguarding policy which required an immediate report to the Local Authority, and a misunderstanding around the purpose of reporting safeguarding allegations promptly.
65. The Tribunal also considered Miss Jones's evidence unreliable and we considered that she was often defensive during her evidence. We considered that she presented with fixated and entrenched views regarding the reporting of the safeguarding incident. She was unable to understand matters from the regulators perspective and we were not reassured that she had an comprehensive understanding of her duties in respect of the Responsible Individual and her managerial role for the setting.
66. In respect of Miss Price, we considered that Miss Price clearly looked to Miss Jones for guidance in her role, but that she failed to understand her own duties and responsibilities in following the safeguarding policy. The Tribunal considered that she was also defensive in some of her answers, considering that she was potentially being blamed for the failures despite having reported the matter to Miss Jones.
67. Miss Price unfortunately did not instil confidence in the Tribunal of her managerial ability going forward, she also accepted that she was new to the role and was only just finding her feet. Further, the Tribunal also retained concerns about Ms Prices inability to understand the failure in respect of following the safeguarding policy and reporting the matter immediately, but instead conferring with Miss Jones who was at hospital with her son. We noted that this evidence was given after the staff had received safeguarding training. We considered that her evidence showed her to be ill-equipped for the role of deputy manager. Despite being the manager on duty when staff raised the allegation, she did not make an immediate report as required by the Nursery's own policy, and failed to demonstrate insight into her own duties and/or failures in this regard.
68. In respect of the parental witnesses, the Tribunal was grateful to the parents for their attendance, but we attached very limited weight to their evidence as they were unable to assist the Tribunal with the issues that the Tribunal had to determine.
69. The Tribunal also found Mr Bhatia's evidence to be unreliable. We

considered that he lacked clarity in his evidence. We considered his evidence was changeable in parts and we accepted that it was exaggerated to promote more confidence in the Directors' actions. Initially referring to the fact that he was working full time, he later went onto to say in his evidence that a few weeks ago he had moved to working part-time.

70. We considered that his answers provided little understanding and little insight into the Nursery's previous shortcomings, and that he was unable to reassure the Tribunal that that any sustained improvement could or would be made at the setting.
71. Despite discussing his commitment to learning more of the regulatory requirements, it was unclear to us why he attended an English safeguarding course when it is the Welsh system in which his company operates.
72. He failed to demonstrate sufficient insight, commitment or understanding to ensure he was a suitable individual to ensure that sustained improvement would be made.
73. Having considered all of the evidence before us, we were satisfied that there were reasonable grounds to suspect that continued provision of care by the Nursery would give rise to a risk of harm to children attending the Nursery, and that the Nursery was in breach of Regulations 9 and 20.
74. In respect of the regulatory breaches that led to the suspension, we accepted that there was unreasonable delay regarding the safeguarding incident witnessed by staff during w/c 25 September, which was not reported internally until 5 October, nor reported to the local authority until after CIW's inspection on the morning of 10 October. We accepted that the staff members failed to follow their own policy and were still not aware of their own reporting duties that were engaged, hence our concerns regarding reporting of any future incidents were not addressed. Though Mr Bhatia in his evidence explained that he understood that mistakes had been made, he was unable to explain that despite safeguarding training, why Miss Jones and Miss Price stated to the contrary. Further, when we asked if he had communicated his view clearly to his staff, he explained that he understood that mistakes had been made but also understood the matter from the perspective of Miss Jones and Miss Price and the circumstances that unfolded. We considered that this an inadequate response given the matter related to safeguarding of children.
75. We have also borne in mind that this setting has poor regulatory history. The setting had been found in breaches of a number of regulations of the course of the years which has on previous occasions included Regulation 9 and 20. We therefore consider that the nursery should have ensured that staff had a sound understanding regarding their own duties. There has been ample opportunity to demonstrate

that improvements can be made and sustained. We do not consider that the sustaining of improvement has been sufficiently evidenced. We considered that there was distinct lack of detail both in the written and oral evidence to demonstrate an awareness around risk assessment and sustaining improvement.

76. We also note that the nursery were accessing support from their local authority and from Early Years Wales. Ms Jones' evidence accepted she had drawn on support from EYW for many months prior to the suspension decision; however it appears that the support was not ensuring that there was sustained improvement in the setting. Though we accept Miss New's evidence that there were some improvements in some areas, we also accepted that some areas worsened and in others improvement was not sustained. She referred us to hygiene that was neglected, children were inadequately supervised and stimulated, staff training and development was insufficient to address issues.
77. We considered that the answers from Miss Jones in respect of the circumstances of dairy being given to a child with known allergies was very concerning. She demonstrated extremely limited understanding and insight into the importance of ensuring policies and procedures are followed, and the catastrophic consequences that may occur if communication and risk assessments around a child's specific allergy needs is not managed appropriately.
78. We therefore have concluded that after careful consideration that suspension is appropriate in this case, and action short of suspending the Nursery's registration would be inadequate in order to safeguard the welfare of children who may attend the Nursery pending steps to reduce or eliminate the risk of harm. We are satisfied that there is reasonable cause to believe that continued provision at Little Bloomers Nursey exposes or may expose children at the setting to a significant risk of harm. We are not satisfied that the setting has or will take appropriate steps to mitigate that risk.
79. Further, we are not satisfied that the Appellant has taken steps to ensure that staff are adequately trained and have the sufficient skills to ensure that children are safeguarded and their welfare is promoted. We do not consider that the RI has been sufficiently trained to perform her role appropriately.
80. We accept that the failure by the Appellant to sustain improvements in the past also calls into doubt its ability to demonstrate the capability to maintain standards in the future.
81. Separately, we note that there has been a further recent concern raised with the CIW on the 13 November 2023. Though this has been a recent complaint and we therefore make no determination as to the nature of allegations raised therein, we do accept that the CIW will need to investigate those concerns and as they relate to safety and welfare of children in the setting, we consider that this also supports

the requirement for the suspension to continue.

82. In considering risk, the Tribunal has applied the principle of proportionality, carefully weighing, the seriousness of the breaches and taking into account the Appellant's previous regulatory history, as well as the impact continued suspension will have on the Appellant's staff and their professional and personal circumstances. The Tribunal have considered the nature of the breaches, which concerned a failure to follow the safeguarding policy, reporting safeguarding allegations promptly and other concerns around sustained improvements in hygiene, safety and welfare for which the nursery staff have failed during the evidence to provide clear explanations and reassurance that learning and understanding has occurred from previous failures and how they will ensure such incidents do not reoccur. These has led the Tribunal to conclude that risk of harm remains of such a significance that it would be proportionate to continue to impose suspension.
83. We are aware that a final decision to cancel registration can take effect no earlier than 30 November 2023, our decision relates only to the suspension decision. We make no observations on the merits or otherwise of any other proceedings.

Decision

- 1. The appeal is dismissed**
- 2. The suspension is upheld**

Judge S Iman

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

Date Issued: 20 November 2023

Amended Under Rule 44 Date Issued: 20 November 2023