



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

**CARE STANDARDS
[2014] 2172.EY**

Heard on 7 and 8 July at Birmingham, Temple Court

BEFORE

**JUDGE MELANIE PLIMMER
MS HEATHER REID
MR GRAHAM HARPER**

BETWEEN

**DARLASTON COMMUNITY ASSOCIATION
T/A CATHERINE'S CROSS NURSERY**

Appellant

-v-

OFSTED

Respondent

DECISION

Representation

The Appellant was represented by Ms Chute (Counsel)
The Respondent was represented by Ms Birks (Solicitor).

Reporting order

1. There shall be a Restricted Reporting Order under Rule 14(1)(b) of the Tribunal Procedure Rules (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 ('the 2008 Rules') prohibiting the publication (including by electronic means) in a written publication available to the public, or the inclusion in a relevant programme for reception in

England and Wales, of any matter likely to lead members of the public to identify any child or its family mentioned in the appeal.

The appeal

2. This is the appeal of Darlaston Community Association ('DCA'), trading as Catherine's Cross Nursery ('the nursery'). This appeal is against a decision of Ofsted dated 14 January 2014, to cancel its registration. In that decision Ofsted set out its reasons why the Appellant no longer meets the prescribed requirements for registration at the nursery and that continued registration would place children at risk of significant harm and seriously compromise their welfare and development.
3. The parties have helpfully agreed a detailed 'Scott Schedule' comprising 27 allegations ('the Schedule'). This sets out Ofsted's allegations against the Appellant, cross-referenced to the relevant evidence Ofsted relies upon together with the Appellant's very detailed cross-referenced responses. In summary, Ofsted contends that the nursery is no longer suitable to provide early years provision. The allegations against the Appellant are wide ranging but a number of general themes can be identified from the evidence and the Schedule: there was very poor leadership, management and communication; there was inadequate training in and implementation of safeguarding requirements; the learning and development for children was inadequate; there is insufficient evidence that the Appellant has put in place sufficient changes or systems to remedy past failings so as to avoid further failings.

Hearing

4. The appeal was heard over the course of two full days.

Appellant's applications

5. At the beginning of the hearing Ms Chute made an application to strike out a number of allegations contained in the Schedule on the basis that they are historic or insufficiently particularised. The basis for the application was set out in a helpful document prepared by Ms Chute described as 'Applicant's Response to Allegations'. We declined the application. The background to the more recent allegations is relevant in that it provides the Tribunal with greater context and a clearer picture of how the nursery has reacted to issues of concern in the past. Any alleged lack of particularity should more properly form the basis of closing submissions. We considered it helpful to know which allegations had been made in the past but were no longer on going. We therefore made it clear to Ms Chute that we would consider her submissions on what weight should be attached to each allegation but these should more properly be made during closing submissions.

6. Ms Chute also applied for further time to adduce supplementary witness statements from two witnesses. We decided that the Appellant had sufficient time to adduce its own evidence as well as its evidence in response to Ofsted's evidence within the timetable set out in agreed directions. As it turned out at the beginning of the second day Ms Chute and Ms Birks were able to agree that two supplementary witness statements with exhibits should be submitted to the Tribunal. We accepted this evidence because it assisted in the efficient management of the hearing – we have no doubt that this written evidence reduced the amount of oral evidence we needed to hear. We wish to make it clear that Ofsted took a pragmatic approach to the new evidence in this case but that parties should ensure that directions for the submission of evidence are strictly adhered to. We permitted the Appellant to adduce the new evidence very late because of the particular circumstances of the case but will generally be very slow to do so.

Evidence and witnesses

7. The parties worked well together to prepare two helpful and carefully prepared bundles of extensive documentary evidence.
8. We heard live evidence from a number of witnesses. On the first day we heard from Ms Yvonne Johnson, a Regulatory Inspector at Ofsted before hearing from the decision-maker in the case, Ms Susan Will, a Senior Officer at Ofsted.
9. During the course of the second day we heard from five witnesses for the Appellant: Ms Susan Lawrence, Ms Kimberly Orchard, Ms Diane Lewis, Ms Sarah Lawrence and Ms Sally Milne. We were also provided with a witness statement from a supporting parent, Mr Paul Fellows, which we have read and taken into account.
10. We have considered all the evidence in the round, both written and oral.
11. Both parties greatly assisted the Tribunal with their thorough preparation for the hearing. All the witnesses conducted themselves at the hearing with the appropriate degree of seriousness and professionalism.

Submissions

12. At the end of the evidence we heard helpful submissions from Ms Birks and Ms Chute. We reserved our decision, which we now provide with reasons.

Legal Framework

13. Section 34(1) of the Childcare Act 2006 provides that a person may not provide early years provision on premises in England which are not

domestic unless registered in the early years register in respect of those premises.

14. Schedule 2, Part 1 of the Childcare (Early Years Register) Regulations 2008 sets out the prescribed requirements for registration. This requires inter alia that the applicant is suitable to provide early years provision, that the provision meets and complies with the Early Years Foundation Stage ('EYFS'). Section 68(2) of the 2006 Act states that Ofsted may cancel a person's registration if it appears that these requirements cannot be satisfied.
15. Section 74(1) of the 2006 Act provides a right to appeal to this Tribunal. The legal burden remains vested in Ofsted, which must establish the facts upon which it relies to support cancellation. It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary. The standard of proof to be applied is the balance of probabilities. We must make our decision on the basis of all the evidence available to us at the date of the hearing and we are not restricted to the matters available to Ofsted when the cancellation decision was taken.
16. The powers of the Tribunal can be found in section 74(4) of the 2006 Act. Essentially the Tribunal may either confirm Ofsted's decision to cancel or direct that it shall not have effect. If the Tribunal decides that cancellation should not have effect, it may impose conditions on the appellant's registration, or vary or remove any of the current conditions.

Background facts

17. The background history to this case can be summarised. Much of it is accepted between the parties. Where matters are disputed we have considered the evidence and reached our findings, which we set out below.
18. The nursery has always been managed by DCA, which is run by Directors who meet from time to time as a committee. The building for both the nursery and the DCA is leased from Walsall Metropolitan Borough Council.
19. The nursery was registered with Ofsted on 3 June 2005 and had a good inspection in 2006. By 2009 there were serious deficits, which resulted in a large number of notices to improve ('NTI'). Some had to be repeated with welfare requirement notices ('WRN'). WRNs set out the actions the provider must take to comply with the welfare requirements in the EYFS. Failure to take the relevant action can lead to a criminal prosecution, and they must therefore be taken very seriously. The concerns regarding the nursery in 2009 were numerous and wide-ranging. The concerns included those relating to learning and development, safeguarding and supervision of staff. There was an inadequate inspection on 13 July 2009.

20. The majority of the deficits appear to have been addressed but during 2011 the nursery was issued with two notices to improve ('NTI'). One of these included improving the safeguarding policy and procedure including the need to ensure that all members of staff understand the safeguarding policy and procedure and that it is fully implemented.
21. On 7 January 2013 the nursery achieved a good inspection. It is perhaps convenient to pause here to understand the individuals concerned with the nursery and DCA at around this time. Mrs Susan Lawrence described herself as Principal Officer for DCA with a level 3 in childcare. She was also the Nominated Individual. As the DCA head office was in the same building as the nursery she says she was able to spend quite a bit of time at the nursery. She had been involved in DCA and the nursery for about 28 years. The people with responsibility for running the nursery on a day-to-day basis were Ms Hunt, the nursery manager and Ms Sarah Lawrence, the deputy manager. Ms Hunt was an agency worker but had been working at the nursery since 2010. Ms Sarah Lawrence had worked at the nursery since 2006 and became the deputy manager in 2012. Ms Kimberly Orchard was a nursery nurse who had been working at the nursery since 2010. The Directors of the DCA included four members of the Borland family, Ms Lewis and two others. Mrs Sandra Borland, a Director of DCA became the Nominated Individual in May 2013.
22. On 7 January 2013 child A registered with the nursery and attended on nine occasions. Her key worker was Ms Orchard. She kept a log of several bruises she noticed on child A. She accepted the mother's explanations for these bruises as being linked to a medical condition. Ms Orchard did not tell anyone about the log because she did not suspect there was any cause for concern. On 16 March 2013 child A was severely assaulted by her mother's partner, who has been sentenced to two years imprisonment for assault and child cruelty. She is now in care.
23. On 26 July 2013 the nursery received an inadequate inspection. This described the promotion of learning and development and the leadership and management as inadequate. Following that inspection the nursery was served with four actions within a WRN. These included the need to provide car insurance cover, the better use of sun hats, the need for regular appraisals and the development of a culture of support, coaching, teamwork and continuous improvement. In addition the nursery was issued with NTIs regarding learning and development and information to parents. These were contained in a letter dated 21 August 2013 and posted to the Nominated Individual.
24. At a monitoring visit on 6 September 2013 Ms Johnson found the nursery was making inadequate progress. At an Ofsted case review on 17 September 2013 it was observed that leadership and management needed to be explored in more detail because it seemed

to be the root cause of the failings. A decision was made to have a further monitoring visit but it was made clear that there was sufficient evidence “to move to cancellation” at that stage. On 1 October 2013 Ms Johnson conducted a further monitoring visit and found that the nursery was still making inadequate progress.

25. Ofsted became aware of child A for the first time on 16 October 2013 when they were invited to a professional abuse strategy meeting by social services. At the meeting on 18 October 2013 Ofsted became aware that the nursery had kept a record of a catalogue of injuries / bruises noticed on child A, yet they had failed to make any referral to social services. Ms Borland, who was still the Nominated Individual, attended that meeting. After this meeting Ofsted convened a further case review that day and a decision was made to suspend the nursery and cancel its registration. Ms Johnson attended the nursery to serve the suspension notice and observed Ms Sarah Lawrence slap Mrs Borland across the face and threaten her.

Findings of fact

Approach to evidence generally

26. The Tribunal has been assisted by the Schedule and have taken it fully into account. Although we have not found it necessary to set out each allegation in turn in this case, our findings of fact have been reached by reference to the Schedule. We have already set out the important themes that have emerged from the evidence available to us and from the matters set out in the Schedule. We shall set out our findings by reference to those themes.

27. Before turning to those themes we set out our broad assessment of the witnesses who appeared before us. The professional witnesses provided honest and straightforward evidence supported by contemporaneous notes and meeting notes. Where they did not know an answer or were unsure they were candid in making that clear. Where there is a conflict in account we prefer the evidence of the professional witnesses. We accept that Ms Orchard provided us with honest evidence. She regretted that she had not shared the information she had on child A. She genuinely (but wholly incorrectly) saw no reason to do so at the time. We also accept the evidence from Ms Milne who gave an honest appraisal of the nursery’s mistakes and the need to make changes. We found the evidence provided by the other three witnesses less reliable. Ms Lewis provided confusing and inconsistent evidence on straightforward issues such as her knowledge of the July 2013 inspection and the progress of her DRB check. Ms Sarah Lawrence and Mrs Susan Lawrence tended to focus on blaming others without acknowledging their own failings. We deal with the witnesses’ evidence in more detail below.

28. We now turn to the concerns held by Ofsted that we consider

significant.

Poor, unclear and ineffectual management and leadership

29. Having considered all the detailed evidence in the round we find that during the course of 2013 the management and leadership from DCA to the nursery lacked: overall direction; clarity of roles and responsibilities; any proper structure for accountability and control; any monitoring of operations or dealing with issues before they became problems; any adequate systems for managing staff in terms of communication, supervision and appraisal; a staff training programme to support the development of competence (including for nursery managers); a constructive and open partnership approach to working with families and external agencies; proper internal and external communication; cohesion amongst key individuals and an appointment system based on ability to meet role requirements (for example, the nominated individual). We were provided with a note of a DCA meeting in June 2013, but were provided with very little evidence of any follow up meetings. We were provided with very little evidence that DCA properly provided meaningful oversight of the nursery. Indeed the evidence before us indicated that during much of 2013 the management committee of DCA was in disarray and they had very little accurate knowledge of the nursery's affairs. We note that Ofsted at one stage identified problems in management and leadership as being at the root of the difficulties at the nursery. Having considered all the evidence in the round we consider this to be an accurate analysis.

30. We accept that during 2013 there was woefully inadequate communication on the part of those responsible for managing the nursery and driving change. We provide a few examples. First, we accept that Mrs Borland as the Nominated Individual did not even know there was an inadequate inspection on 26 July 2013 until Ms Johnson told her about this during a telephone call on 21 August 2013. We accept Ms Johnson's evidence regarding this. She provided a contemporaneous telephone note, which was not challenged during cross-examination. We also accept her evidence that Mrs Borland had no contact with Ms Hunt, the manager of the nursery. We accept that Ms Johnson was justified in being concerned about the lack of communication and leadership within the setting. In addition, we were provided with very confusing evidence from Ms Lewis on when she first became aware of the July inspection. In her oral evidence she varied between accepting that she had not read the inspection report to stating that she had read it the week after the inspection to saying she did not know when she had read it. We accept Ms Johnson's evidence that when she was at the nursery on 18 October 2013 Ms Lewis told her that she was unaware of the nursery's July 2013 inadequate inspection. This is entirely consistent with the toolkit, which was prepared at the premises that day. We have concluded that DCA knew very little about what was happening at the nursery at the time and this extended to as important an event as an inadequate inspection.

31. Second, Mrs Borland raised issues with Ofsted regarding the behaviour and approach of staff at the nursery during September without raising this in an appropriate manner with DCA or the staff themselves. We accept there was no adequate management structure in place to address difficulties that arose between Mrs Borland and others involved in the nursery during this time. Mrs Susan Lawrence told us that she tried to raise the difficulties caused by Mrs Borland with the DCA but they were unwilling to listen at the time. The situation was allowed to drift and then deteriorate with no meaningful attempt to investigate Mrs Borland's allegations or the concerns of others. The situation became so bad that on 18 October 2014 Ms Sarah Lawrence was witnessed by Ms Johnson to assault Mrs Borland at the nursery albeit not within sight of children. We accept that Ms Johnson has provided us with an accurate description of what happened. This was recorded in her tool kit, which she typed whilst at the setting. Ms Sarah Lawrence slapped Mrs Borland across the face and called her a "fucking bitch" and stated it was "all your fault" and threatened to "do more than rip your face off". Ms Sarah Lawrence accepted that she slapped Mrs Borland but denied threatening her. She asserted that Ms Johnson manufactured that aspect of the evidence. We do not accept this. We could see no reason for Ms Johnson to do this. The assault was already serious enough without the threats. We note that Ms Lewis supported Ms Sarah Lawrence's recollection but as we have said, her recollection of events was not good and she gave confusing evidence. This assault highlights the extent of the deterioration in relations between senior individuals at the nursery and DCA.
32. Third, no one at the nursery or DCA knew Mrs Hunt notified Ofsted that she ceased to be the manager of the nursery on 24 September 2013. Communication between senior staff at the nursery seems to have broken down at this time. The Principal Officer and the Nominated Individual did not know about this at the relevant time and neither did DCA.
33. Fourth, DCA failed to notify Ofsted of the repossession of the nursery's premises. This was a significant event that DCA was obliged to disclose, yet the relevant individuals concerned were confused about whose responsibility this was. Mrs Susan Lawrence told us that she thought the Nominated Individual should tell Ofsted yet Mrs Borland and then Ms Lewis failed to do so.
34. We also accept that it is very concerning that DCA / the nursery have not sought to provide Ofsted with an indication of what type of investigation / process was initiated regarding Mrs Borland's allegations against Ms Sarah Lawrence or the assault at the nursery premises. Ofsted sought to obtain information about this but none has been forthcoming. We were told at the hearing that Ms Sarah Lawrence has been spoken to but the evidence was vague and unparticularised. We find that the failure to properly investigate issues

that have been clearly identified by Ofsted and others is of continuing concern. It adversely reflects upon the current management and leadership and their willingness or ability to openly engage with Ofsted.

35. We also accept that there was an absence of any meaningful supervision and appraisals during the course of 2013. Ms Orchard told us that she did not discuss any individual children with her line manager. We set out below our serious concerns at the absence of supervision regarding Ms Orchard and child A. Ms Johnson identified the need for appraisals and supervision to be in place at the July 2013 inspection. This was then issued as a WRN in August. It was noted that the manager did not even know about the requirement to provide supervision for staff. At the monitoring visit on 6 September 2013 Ms Johnson was justified in observing an absence of any effective system for managers to check what support staff may need to undertake their roles and responsibilities because there were no appraisals. We accept Ofsted's evidence that the informal verbal appraisals said to have taken place and the appraisal forms prepared during September were wholly inadequate. Although this fell during the August holiday period, it was an important task that needed to be prioritised. It was not prioritised and when action was taken to complete forms, it was wholly inadequate.

Child A / safeguarding

36. We have no doubt that the nursery was provided with and retained pivotal evidence regarding bruising to Child A that should have been referred to social services. It is highly regrettable that this information was not shared at an early stage. Most of the witnesses were in agreement about this. This must be acknowledged and is to their credit. Child A attended the nursery on nine occasions from 21 January to 15 March 2013. We have identified a number of failings relevant to safeguarding at the time:

- (i) Child A's key worker, Ms Orchard was not sufficiently trained in safeguarding;
- (ii) Ms Orchard was not adequately supervised or appraised;
- (iii) Due to a combination of (i) and (ii) together with Ms Orchard's inexperience, Ms Orchard missed obvious warning signs that child A may have been the victim of sustained and serious physical abuse;
- (iv) Ms Orchard failed to log the bruising and mother's explanation in the incident book or in a place that would be available to all staff;
- (v) Ms Orchard failed to bring the bruising of child A to the attention of her line manager, Ms Hunt (who was also the safeguarding lead);
- (vi) Ms Orchard discussed some aspects with Mrs Susan Lawrence but only because she happened to be present at the time;

- (vii) Concerns regarding child A and mother's explanations were not referred to social services;
- (viii) When the full details came to light no real effort was made to talk to Ms Orchard as part of a learning experience on safeguarding;
- (ix) When the full details came to light no real effort was made to acknowledge the significance of the omissions and to devise action plans and systems to ensure they would not be repeated.

37. We find that if Ms Orchard had been properly trained and supervised it is very likely that she would have understood the significance of the bruising that she noted on Child A. Ms Orchard did not appreciate the need to make a referral on the basis of the information she was provided because she naively accepted mother's explanations when they manifestly called for further examination in light of the following: numerous, unexplained bruises were identified; mother explained that the child (a 2 year old) was "constantly telling lies"; mother said that the child had a condition over and above one that manifested itself in bruises – her hair fell out in clumps; mother explained that if the child "says man and puts her hand on the side of her face its because the doctor held her face to put a mask on"; the nature and extent of the bruising over the nine days the child attended combined with the child's extended absences from nursery.

38. The Appellant has sought to argue that the nursery cannot be blamed for these failings because Ms Orchard did not provide anyone with the necessary detail and she took all reasonable steps to note issues of concern (albeit she did not share the majority of these with anyone). It is also submitted that other statutory agencies should have provided the nursery with more information that mother and child were known to them and had this taken place they would have reacted differently. We do not accept these arguments, although we agree that it would have been helpful for the nursery to have been told about any previous child protection concerns. We do not accept that this was a 'one off' incident, which will never be repeated. We find that Ms Orchard's failings are directly attributable to the failures in management and leadership at DCA and the nursery. Had there been effective management and leadership Ms Orchard would have been appropriately trained and supervised. She did not deliberately hide the log that she was keeping. She simply did not comprehend its significance. Indeed, when the police and social services asked for relevant information she promptly handed over her log.

39. It was also argued that the decision to suspend was made without Ofsted obtaining full details from the nursery regarding their understanding of child A. Mrs Borland as the Nominated Individual was present at the safeguarding meeting on 18 October 2013 and could have put forward the nursery's point of view. In any event Ms Will confirmed that even if she had available to her all the information that

the nursery has now put forward to mitigate the failure to refer to social services, she would have made the same decision to suspend at the time. Ms Will also highlighted and we accept that Ofsted were very close to cancelling the nursery's registration even before they found out about child A. This is reflected in Ofsted's case review notes.

40. Mrs Borland was tasked with informing the nursery about the meeting. We have been told that this never happened. This is consistent with our findings on the lack of communication at the time. Mrs Susan Lawrence told us that she did not see Ms Orchard's log of the incidents until much later on when preparing for this Tribunal. We find that difficult to accept. She explained that Ms Orchard told her about bruises on three occasions only and she recorded this in the 'incident book'. When she wrote a letter concerning child A on 11 April 2012 she said "we have been keeping a log of the bruises...please find attached a photocopy of the diary we have been keeping the log in". During her oral evidence she repeatedly referred to her own three entries as having been made in the 'incident book'. However she was unable to explain why she referred to this as a 'log of bruises' and 'diary' in her letter. We accept that Ms Orchard did not share the details of the log before child A was seriously assaulted. However there continued to be a long and unexplained delay in investigating the nursery's approach to child A even after the assault. No one from the nursery or DCA spoke to the child's key worker, Ms Orchard, save that a director has spoken to her about possible disciplinary action. We do not accept Mrs Susan Lawrence's oral evidence that she spoke to Ms Orchard and "got nothing from her". This is inconsistent with her witness statement in which she says she had no reason to check any concerns with Ms Orchard. We find it very concerning that there were no systems in place to encourage the nursery to speak in detail to a key worker of a child that had been seriously harmed the day after she stopped attending nursery. Mrs Susan Lawrence also indicated to us that the purpose of the incident book was to protect the nursery from allegations made by parents of physical harm. She, and it appears the nursery as a whole, failed to appreciate the nursery's role in safeguarding children from abuse and how that could be achieved in practice.
41. Even when all of the information became available in October 2013 DCA took no meaningful steps to investigate the matter. Ms Orchard told us that she was told that she might be disciplined if the nursery re-opened but there is no cogent evidence that DCA or the nursery has reflected upon the lack of supervision / appraisals / communication that contributed to Ms Orchard not sharing vital information. We regard this failure as a significant one that continues.
42. We note that the issue of safeguarding was raised as an NTI in 2011. It remains an outstanding and serious concern. Mrs Susan Lawrence accepted that the nursery staff had not been on sufficient training for safeguarding. It has been said that this is because the local authority refused to permit the nursery staff to attend training after the nursery

was suspended. No efforts have been made to source alternative training in the private sector.

Learning and development

43. Ofsted identified extensive concerns regarding children's learning and development during 2009. We find that the nursery has been unable to sustain the improvements that they made after this time. We accept that during visits between May and September 2013 Ofsted was justified in identifying concerns in learning and development. The inadequate promotion of children's learning and development was partly responsible for the inadequate inspection in July 2013. There was insufficient improvement after this and we accept Ms Johnson's evidence that serious concerns remained when she visited on 1 October 2013. We note that staff attended further training in September and October 2013. We were therefore surprised to hear that the nursery considered it appropriate for there to be no scheduled adult-led activities in the afternoon. This fails to take into account that those children who only attend in the afternoon would not benefit from any adult-led activity. Children should be provided with a range of activities throughout the day that are tailored to meet their individual learning needs. We accept Ms Johnson's description of the deficiencies in learning and development when she visited on 1 October 2013, as accurate.

Recent events

44. We are very concerned that by the date of the hearing before us there was no clear indication of how the previous organisational and management failures had been addressed or how it was proposed they would be resolved. We entirely appreciate that the nursery was suspended in October 2013 and has not been functioning since that date. We therefore accept that it would be difficult to demonstrate operational changes. The Appellant however sought to argue before us that things had changed, the management structure was different and more organised now. We note that Mrs Borland ceased to be the Nominated Individual on 20 November 2013 and that role was taken over by Ms Lewis. It has been argued that this, together with a complete change to the Directors at DCA means that the difficulties that took place when the Borlands were on the committee shall not be repeated. We simply have insufficient evidence that the mistakes of the past have been adequately reflected upon or that tangible plans for the future have been put in place. We heard evidence of well-intentioned aspirations held by DCA from Ms Milne. She conceded that DCA had not yet decided on an action plan to remedy the defects in the running of the nursery.

45. Ms Lewis conceded there was no real plan in place as to how the nursery would be overseen. She was unsure about the role of the Principal Officer. She did not believe that there needed to be any further

investigation into the assault committed by the deputy manager at the nursery premises. She accepted that she had no evidence that the nursery could improve and sustain improvement.

46. Although Ms Lewis became the Nominated Individual and was therefore required to produce an enhanced DRB check as far back as November 2013 Ofsted have still not been provided with this information. This is notwithstanding the fact that Ofsted have repeatedly requested this information particularly during January and February 2014. This is one of the most basic requirements yet the Appellant has demonstrated an unwillingness or inability to comply.

Conclusion

47. We have no doubt that the Appellant was unsuitable to provide early years provision when a decision was made on 18 October 2013 for reasons relating to a combination of management / leadership concerns, safeguarding inadequacies and unsatisfactory learning and development for children. We also have no doubt that those concerns remain, albeit with even more force at the date of the hearing. The Appellant has failed to take the opportunity over the last few months to devise an action plan / systems / plans for the nursery. We have been told about aspirations but have not been provided with any tangible cogent evidence. We conclude that the Appellant is unsuitable to provide early years provision on the basis of all the evidence before us at the date of the hearing.

Proportionality

48. In considering whether the sanction imposed by Ofsted was proportionate we have regard to the duration and breadth of the concerns and the failure to demonstrate sufficient insight into their significance by some of the key individuals still involved at the nursery and DCA. We conclude that the sanction imposed was and is appropriate and proportionate.

Decision

49. We dismiss the appeal and there shall be no order as to costs.

Judge Melanie Plimmer
First-tier Tribunal Judge (Health, Education and Social Care)
11 July 2014

