

Care Standards

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

Petrona Sylvester
[as the sole member of the Chatterbox Preschool Committee]
The Chatterbox Pre-school Committee (which at the material date comprised
Petrona Sylvester as a committee of one)

Appellant

v

Ofsted

Respondent

[2013] 2119.EY

DECISION

Heard on 27 – 28 March 2014 before:

Judge Meleri Tudur,
Ms Bridget Graham, Specialist Member
Ms Wendy Stafford, Specialist Member

Mr Ronald Bostwick, counsel, represented the Appellant, Ms Sylvester.

Mr Gordon Reed, solicitor, represented the Respondent.

The Tribunal also heard oral evidence from Ms Shannon Headd, Ms H Stanciu, Ms Julie Whitelaw, Reverend Trevor Stevenson and Jacqueline Reed

APPEAL

1. The Appellant appeals under section 74 of the Childcare Act 2006 against the decision of Ofsted (the Respondent) made on the 26 October 2013 to cancel the registration of the Chatterbox Preschool Committee under section 68 of the Childcare Act 2006.

THE LAW

2. 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 premises unless he is registered in the early years register in respect of the premises.

3. Schedule 2, Part 1, paragraph 1 of the Childcare (Early Years Register) Regulations 2008 requires that applicants for registration be suitable to provide early years provision, that the applicant will secure that the proposed early years provision meets the Early Years Foundation Stage (EYFS) learning and development

requirements, will comply with the EYFS welfare requirements and has carried out an assessment to identify any risks to the health or safety of children for whom provision is to be provided and has appointed an individual to manage the provision which is suitable to care for young children.

4. Where the applicant for registration is an unincorporated association, the applicant must nominate an individual who is a member of the governing body of the applicant to be responsible for dealing with matters relating to the applicant's application for registration and subsequent registration and oversee the management of the early years provision. The individual is referred to as "the nominated individual" and in the appeal, the Appellant was at all material times, both the nominated individual and was the sole member of the Chatterbox Preschool Committee.

5. Section 68(2) of the Childcare Act 2006 provides that the Chief Inspector may cancel the registration of a person if it appears that the prescribed requirements for registration have ceased or will cease to be satisfied.

Background

6. The Appellant was employed as a Playgroup Pre-school Leader from the 2 September 2002 by the Chatterbox Management Committee. She had been involved with the organisation since 1999.

7. The constitution of the Chatterbox Preschool states that it was adopted in May 1984, but was signed by the Chairperson, Secretary and Treasurer as adopted in July 2007 and November 2008. The constitution identifies that the organisation has the power to employ and pay staff but specifies that staff cannot be members of the committee. Minutes of the committee were produced in evidence up to December 2006, but there were no minutes produced then until 2013.

8. Since 2006, the Appellant has been the nominated person for the Chatterbox Preschool and accepted that she was operating without the support of a committee as required by the constitution since that time.

9. On 21 June 2013, a child was left in the Chatterbox Preschool when all of the staff and other pupils went on an outing to a nearby park. The child's absence was not discovered until a student on work placement enquired of the whereabouts of the child of a member of staff. The alarm was raised and the group returned to the Chatterbox Preschool to find the child locked inside and asleep on some cushions.

10. The Appellant did not significantly dispute the facts but maintained that the incident was not one which should lead to the cancellation of her registration.

11. The Appellant had subsequently enlisted the support of three members of the current parental cohort to join the committee. They had agreed, but joined the committee after the date of the action taken by Ofsted in respect of the incident. They were not therefore members of the committee at the material time, and having initially been joined as a party in the appeal, were removed as a party following a preliminary decision by Judge John Aitken issued on the 24 March 2014.

12. Inspections by Ofsted following the incident on the 21 June 2013 led to the service of a notice of intention to cancel dated 6 August 2013, which the Appellant opposed. Her objections were considered and a notice of cancellation issued on the 26 October 2013 under section 68 of the Childcare Act 2006.

13. On the 8 November 2013, the Appellant submitted an appeal to the Tribunal against the decision to cancel.

Preliminary matters

14. Both parties made preliminary applications for submission of late evidence. The Respondent sought permission to adduce in evidence a second statement from Ms Carla Roberts following her interviews of the new committee members and a copy of the parent, Ms N Khan's covert recording of her meeting with the Appellant on the 24 June 2013 which it was suggested should be played in the hearing, and Ms Khan's summary notes of the conversation.

15. The Appellant objected to the second statement of Carla Roberts and to the application for Ms Khan's notes of the meeting.

16. The Tribunal considered the applications and concluded that Ms Roberts' record of the interviews of the new committee were not relevant to the matters for consideration by the Tribunal and refused the request.

17. In view of the Appellant's agreement to the recording of the meeting of the 24 June 2013 being heard, the application was allowed.

18. The Appellant sought permission to adduce late evidence in respect of a statement from Ms Ann-Marie Peters and Natalie Allen, a petition by members of the local community and a statement by Ms Kamara. The Appellant further requested permission to call a further two witnesses namely the Reverend Trevor Stevenson and Ms J Reed. Mr Reed did not oppose the applications, and the applications were allowed.

19. The Appellant made an application for the Tribunal to make a restricted reporting order to prevent the publication of the Appellant's name because to do so would prejudice any future application for work in the child care industry.

20. The Tribunal refused the application on the basis that the proceedings were public and the grounds set out in Rule 16 for making a restricted reporting order were not satisfied.

21. Mr Reed made an application to extend the restricted reporting order in respect of naming any child in Chatterbox Preschool to apply to the decision in the appeal. The Tribunal allowed the application and extend the order to the decision in the appeal.

22. At the start of the second day of the hearing, both parties renewed the application to have the second statement of Carla Roberts admitted, and the Tribunal accepted the statement in evidence.

23. Also produced in late evidence was a copy of an EY3 form that the Appellant had found setting out the names of committee members and a blank copy of the EY3 in use by the Respondent since 2012. Both documents were admitted as late evidence.

24. A further request made by the Respondent was that the decision of Judge Aitken dated 24 March 2014 should be reviewed and amended under Rule 464 of the Tribunal Procedure Rules 2008 to correct an error where it stated that the Appellant had left the committee to be replaced with new member and to state that new members had subsequently joined the committee. He also requested that it should be recorded that the Appellant was the sole member of the Chatterbox Preschool Committee at the time of the action taken by Ofsted. It was further requested that the full definition be included in the heading of any further decisions or orders issued by the Tribunal for the avoidance of doubt about the position of the new committee members who joined after the action was taken. Mr Bostwick objected to the latter although he did not propose an alternative description.

25. The Tribunal concluded that at the time of the action taken by the Respondent, the Appellant was the sole member of the Chatterbox Preschool Committee and that the name of the case should clearly reflect that position in future orders and decisions **and that the wording proposed by the Respondent in closing submissions, and agreed by the Appellant's representative, should be adopted (as set out in the heading of this decision) to identify the correct description of the Appellant as "The Chatterbox Pre-school Committee (which at the material date comprised Petrona Sylvester as a committee of one)".**

The Evidence

26. The main precipitating incident leading to the consideration of cancellation was an incident which occurred on the 21 June 2013 and in respect of which there were minimal disputes of fact. On the afternoon of the 21 June 2013, the Appellant decided to take the 16 children present at the Chatterbox Preschool on an outing to the local park. The outing involved a walk to the bus stop, a short bus journey and a walk into the public park to play in an enclosed play area accessible to the general public. One of the children, A, was left behind at left unsupervised at the setting for over an hour whilst the Appellant and staff took the other 15 children to the park. There were no adults left with the child and it was not noticed that the child was not on the outing until a student on a work placement asked of his whereabouts after about 45 minutes. The Appellant had not taken the register with her on the outing and did not contact the police or the parent. The party returned to the Preschool by bus and found the child asleep there. The Appellant did not report the incident to the Respondent until the 1 July 2013 and following inspections revealing incomplete attendance registers on three subsequent occasions, the decision was taken to cancel the Appellant's registration on the 27 July 2013.

27. The evidence about the incident itself was set out in the unchallenged written statements of Saudha Patel, Norheen Khan and Fazila Patel, all present at the time of the incident and the evidence of Hazel Stanciu who discussed the incident with the Appellant on the 28 June 2014. Shannon Headd, who also prepared a statement and was present at the time of the incident, gave oral evidence at the hearing.

28. The Tribunal received in evidence from the parties a substantial bundle of documents which included statements from witnesses, other members of staff and at the hearing further documentary evidence from character witnesses called on behalf of the Appellant.

29. The basis of the cancellation decision was the inspection history since 2005, the compliance history since registration, including the most recent safeguarding concern in which a child was left unsupervised on the premises for over 45 minutes. The Respondent had taken into consideration a previous incident in 2006 when another child was left unsupervised in a paddling pool in a public park and the failure of the Appellant to notify the Respondent of the serious incident when a child sustained injuries in 2012.

30. The Tribunal heard oral evidence from Shannon Headd about the preparation of a statement about the incident on the 21 June 2013 and her own dismissal from the Chatterbox Preschool. She described how she had been told by the Appellant to rewrite her statement to provide more detail.

31. Ms H Stanciu gave evidence confirming the contents of a statement where she had described her visit to Chatterbox Preschool on the 28 June 2013. She described her relationship with the Appellant as a “good substantive rapport” and confirmed her view that the Appellant seemed to try to address issues in response to the advice given to her. She visited in the wake of the incident on the 21 June 2013 and looked at the “Outings Policy” and discussed the way in which the policy had been implemented. Ms Stanciu did not have any serious misgivings that the Appellant would carry out the recommendations made and confirmed that the Appellant had confirmed that she would review the policies and procedures. She confirmed her view that the Appellant would do her best to comply with Ofsted requirements.

32. Ms J Whitelaw gave evidence that her statements exhibited “toolkits” from inspections and these consist of records and notes made by her in the course of her inspections. She confirmed that she visited to monitor action and compliance with the welfare requirement notice issued in January 2014. She visited on the 14 February 2014. She found that the requirements had been met and set a further two actions in relation to food that was served that was too hot and an action in relation to learning and development.

33. Clarifying the position in relation to the staffing ratios on the date of the incident on the 21 June 2013, Ms Whitelaw confirmed that even after the member of staff had left at 3.15pm, the minimum requirements of adult: child ratios were met, but in her view, the minimum ratios imposed were not sufficient to meet the needs of the children given the number of children and the activity undertaken on the 21 June

2013. She confirmed that the importance of a risk assessment for any outing is to identify the relevant risk factors, such as the additional needs of individual children, behaviour issues and whether there are new children in the group who may be unfamiliar with the processes. She had noted that the outing to the park had involved a short walk along a busy public road, crossing a busy road, a bus journey to get to the park where there was another walk to an enclosed play area. The park was accessible to the public and a necessity to take individual children to the toilet or the possibility of an accident would reduce the number of available adults. The risk assessment should also take into consideration the experience of members of staff and whether they were new in post as all of these factors would impact on the risk assessment outcome.

34. When asked about the attendance register, the Appellant had shown a copy of the parents' signing in book. On the 21 June 2013, 13 children were shown to be in attendance on the register. Of those, three were not signed out as leaving the premises. Two other children had been signed into the staff signing in book and neither had been signed out. One child was not signed in at all. The "Lost Child Policy" stated that where a child is lost, members of staff should in the first instance search the area where the child was last seen then phone the police and then inform the parents. It was of particular concern that the Appellant had not phoned the police automatically, indicating that it wasn't an automatic reaction to a safeguarding issue. Instead the Appellant had travelled back with all of the other children to the Preschool by bus before taking any action to try to find the child.

35. From interviewing the Appellant, Ms Whitelaw formed the view that her main concern was to avoid causing distress to parents rather than securing the safety of the missing child. In Ms Whitelaw's view, had the Appellant contacted the police immediately, they would have given the case priority and could have been at the Chatterbox Preschool much more quickly than the Appellant, returning by bus with the group of children. A second concern was the delay in contacting the child's parents. It was Ms Whitelaw's view that the mother should have been notified immediately enabling her to come to the setting to comfort the child. The Appellant had not contacted the mother until 6pm some two hours after the child was found. The Appellant's actions had shown a lack of insight into the needs of the child, whilst she stated that it was her intention to avoid giving the mother a shock by the news of the child being missing. Ms Whitelaw stressed the relevance in reaching the decision to cancel the Appellant's registration of the delay in seeking help for the child for at least 35 minutes whilst the others returned from the park, her disagreement with the staff ratios in the park as being insufficient for the activity, the inaccuracy of the register of children present and none of the members of staff actually being aware of how many children were present on the day. All of these were factors in raising concerns about the Appellant.

36. On cross-examination, Ms Whitelaw denied having been aggressive towards the Appellant on her subsequent inspections of the setting, but confirmed that she had been concerned about being let into the setting without any request to confirm her identification. She denied having "barged into the setting" as alleged by the Appellant, explaining that the glass door was locked and that it was remotely opened

when she rang. She had simply opened the door and gone into the office. She considered the questions asked of members of staff to be reasonable in the circumstances.

37. On a subsequent inspection in July 2013 she confirmed that the issues with the accurate keeping of the attendance register had still not been addressed and she had taken time to explain the difficulty to the Appellant. She had recorded in her notes the Appellant's response to her comments which was "I beg to differ". Ms Whitelaw maintained that she had been very clear that the maintenance of an accurate attendance record was a requirement that she had to meet and that action would be taken in respect of the failure.

38. The recording of the meeting between Ms Sylvester and Ms Khan started with the Appellant's explanation to the parent of what should have happened when she decided to take the children to the park on the 21 June 2013. She explained that she had a habit of counting the children at the door, which was not carried out by the staff on the day of the incident. She maintained that she had checked the number of children present when they were all on the bus. She told Ms Khan that when A was found to be missing, she had asked where he was last seen and a member of staff had seen him going to the toilet. She had felt "in her heart" that A hadn't been lost and that he hadn't left the building in the first place. She went back and found that he had waited there and said that he was not crying.

39. During the course of the meeting, the Appellant confirmed to Ms Khan that the number of children present had changed after lunch and that she didn't know how many children were in attendance because she wasn't in the room all the time. The Appellant stressed to the parent that the children had not been counted before they set off and if she had been present, then the children would have been counted. She stated: "My staff have let me down." She later asked the parent to reflect on what had happened: A had been in a safe environment and that to remove him from Chatterbox would "disrupt and unsettle and emotionally" affect him. She explained her failure to contact the parent as being because she didn't think A would tell his mother what had happened before the Appellant had spoken to her, she didn't think A was distressed stating that "he was fine.." and that it would have panicked the parent unnecessarily if she had contacted her at home. At the end of the meeting, the Appellant stated that she was sorry that the incident happened.

40. Ms Carla Roberts gave evidence confirming the contents of her two statements and explaining the position of the new committee members who had joined after Ofsted had taken action in respect of the Appellant. At the time of the hearing, the new committee members had not been confirmed as appropriate to take over the registration of the setting. ~~but if their Disclosure and Barring Service checks were returned clear and they met the Respondent's registration requirements, then it may be possible for them to form a new body for registration and for Chatterbox Preschool to continue to operate. In any event, it was not necessarily the case that the setting would close if the Appellant's appeal failed the Respondent would do all that they could to process the applications of the new committee to ensure continuity of care for those children attending. If the new application was to be made (by the new~~

committee members for registration) Ofsted will try to process this as quickly as possible for the purpose of continuity of care. It is for the applicants not Ofsted to obtain the necessary checks so it would be in their hands and those of the Disclosure and Barring Service. If the cancellation was upheld, Petrona Sylvester would become a disqualified person but she could apply for a waiver of the disqualification and Ofsted would consider it.

41. The Appellant gave evidence that the current committee had sent her a warning letter and that she had two letters from the committee on her desk, which had made her very uncertain and insecure about her position. They are conducting an internal investigation into allegations of misconduct and she was awaiting a meeting with them in relation to those allegations.

42. Giving evidence about the incident on the 21 June 2013, the Appellant confirmed that the minimum staff: child ratios had not been met throughout the day and that on the return from the park, one member of staff had left early and that therefore there were insufficient adults present. The Appellant gave evidence that the policy was that members of staff were not allowed to have a mobile phone with them on trips except the Chatterbox phone. When they returned to Chatterbox, the Appellant had spoken to Fazila Patel and had decided that she would not contact the child's parents because he appeared to be stable, was not distressed in any way and was OK to go home at that time. The Appellant believed that the parent would have panicked or called the police consequently she needed to sit her down and explain to her what had happened. She had waited until the end of the day and done that by telephone. She had let the mother know that she was remorseful about the incident and had not tried to minimise the incident.

43. On the day of the incident, the child's allocated key worker was not working, and the Appellant took on the role of the child's key worker on Fridays, and was therefore the child's designated key worker on the day of the incident.

44. The Appellant explained that she and the Chatterbox staff had put in place the community petition and that the parents had been anxious to help in any way that they could, setting up their own petition. She confirmed that in response to Ms Whitelaw's criticism of the quality of the staff statements describing the incident on the 21 June, she had asked Shannon Headd to rewrite, date and sign her statement, but had not directed her to change the content other than to put in where each member of staff, including the Appellant, was at the time and to give a full account of what happened. She felt overwhelmed by the lack of support by the Chatterbox management and felt let down by the staff.

45. The Appellant gave evidence that she had not told Ms Whitelaw that she had carried out a verbal risk assessment on the 21 June 2013. She stated that there is in existence a risk assessment for a visit to the park because the children are taken there on a regular basis. She confirmed that she hadn't taken with her a copy of the register and that she had been aware when they set off that one member of staff would be leaving during the outing. When referred to the Chatterbox Preschool Local Trips/Visits tick list setting out the policy and procedures to be carried out, she stated

that members of staff should not have their personal mobiles on a trip but that she would have the Chatterbox mobile with her, despite the fact that the list included "Mobiles for staff" as the final item. She stated that the general practice was that either two members of staff have phones or she and a key worker would have a phone. On the day of the incident, no-one else had a phone. She acknowledged that she did not have enough staff members present for the activity in question and that the decision to go to the park was a last minute decision. She had told Ms Whitelaw that it wasn't necessary to cross the road and acknowledged that there was no excuse for her not being accurate with the inspector, since there was a need to cross the road on the return journey. In her view, the headcount should have been undertaken by the key worker and she should have known how many children were present on the day.

46. The Appellant denied that the Lost Child Policy required her to phone the police first. The first step is to search the area where the child was last seen. Her decision to return to the Nursery had been taken on the basis that that was where A had been last seen. She had asked the staff how many children had set off and was told that there were 15 and there were 15 children present at the park, so she didn't search the park area but returned to search the setting. The return journey had unexpectedly taken longer than anticipated and had taken almost 35 minutes.

47. The Appellant confirmed that she had panicked when she discovered a child was missing. When she found him he did not seem distressed and it she could not say whether it had occurred to her that he would need his mother in those circumstances. She realised the dangers that a child could have faced alone in the setting and because A is an intelligent child he could have tried to investigate the kitchen or try to find a way out through the window.

48. In her statement to the Tribunal, the Appellant had acknowledged that the tick list for local trips and visits had not been followed but maintained that on discovery that a child was lost, the Lost and Uncollected Children Policy had been implemented. She acknowledged that on the 16 July 2013 visit by Ms Whitelaw, there had been several hazards to children found but maintained that they had all been rectified in compliance with the notices served. She maintained that Chatterbox Preschool is a vital service to the residents of the Lewis Estate and that with further guidance from the regulator, she would be able to continue the service to the community. She had sent a letter of resignation to the current management committee confirming in writing that she will end her involvement on the last day of term in June 2014.

49. The Reverend Trevor Stephenson gave evidence that he has known the Appellant for 16 years as a member of his congregation and described the support that she has provided as part of the staff team working with young people in the community. She was one of the committee members and was instrumental in putting together child protection and health and safety policies for the Church. She became the team leader, supervising staff and a group of children on regular trips out and there were no incidents at all. He confirmed that he would have no reservations at all in involving her in the arrangement of outings for young people. In giving evidence he

also confirmed that he did not have full details of the incident leading to the appeal and was unaware of the purpose of the tribunal hearing.

50. Ms Jacqueline Reed gave evidence about her involvement with the Appellant and work done with her to ensure the sustainability and fundraising for Chatterbox Preschool. She described the Appellant as “phenomenal” and “absolutely committed to Chatterbox, describing her whole motivation as doing her best for the children.

SUBMISSIONS TO THE TRIBUNAL

51. The Respondent's submission was that the test for consideration by the Tribunal is whether the Appellant is suitable to remain registered. The burden of proof that she is not is on the Respondent and the standard of proof is the balance of probability. It was submitted that to leave a three year old alone locked in a nursery for up to an hour and a half is highly dangerous. It was the Appellant's good fortune that nothing had happened to the child. Nevertheless it would be emotionally harmful even if there were no physical injuries. In the Respondent's view the fact of the incident was sufficient of itself to demonstrate unsuitability. It was submitted however that the incident was compounded by the fact that it was not the first time such an incident had happened, but the incident in 2006 did not appear to cause the Appellant to act differently in respect of outings and she did not display a heightened awareness of obvious risks. If that incident had not caused her to act differently, then why would the more recent incident? The risks observed at the premises on the unannounced visit in July were acknowledged but there were compounding elements on the child safety front because visitors were left into the setting unchecked and required staff checks had not been carried out. It was submitted that the Appellant's failure to follow set procedures, her failure to contact the child's parent and her minimisation of the incident and her personal responsibility for it all weighed against a decision that she continued to be suitable for registration.

52. The Tribunal heard submissions on behalf of the Appellant, suggesting that had the Appellant not been a good manager, the setting would have been closed already. It was submitted that the Appellant was overwhelmed by her responsibilities and had to do everything herself. Mr Bostwick submitted at the end of the hearing that it would be appropriate for conditions to be placed on the Appellant's registration to secure future compliance with the requirements imposed or to impose a condition that she should not be in a managerial position until further training, approved by the Respondent has been undertaken.

53. The Respondent's submission was that the incident on the 21 June 2013 raised issues about the Appellant's conduct as the Nominated Person: she did not report the incident itself to Ofsted and most significantly decided to delay informing the parents of the incident until later in the evening, when the child had left the Preschool. She did not show appreciation or show insight into the effect of such an incident on the child's emotional well being and did not appear to be aware of the emotional impact on all concerned.

54. Petitions were submitted in support of the staff at their instigation, protesting against the closure of the nursery which is regarded as a valuable service within the local community.

CONCLUSIONS AND DECISION

55. The Appellant is a long-standing and experienced provider who has been involved in child care for many years. The testimonials provided by the parents who accessed her services indicate an appreciation of her service in the past.

56. On the 21 June 2013, however, there was a serious incident involving a young and vulnerable child, who was placed at a significant and substantial risk of harm because of the Appellant's actions. The dispute on facts of the incident itself are minor, in that the Appellant by her own admission left a child of three locked into the nursery for a period of over an hour and possibly as much as an hour and a half. Such an incident could have had several potentially very serious outcomes, but by good luck and chance, the child was not physically harmed, although the long term emotional outcomes are unknown.

57. The evidence leads us to the conclusion that the incident was not the result of one unlucky event, but the result of a pattern of behaviours by the management of Chatterbox Preschool which were at best sloppy and at worst a total disregard to the regulatory scheme and the expectations of an establishment offering child care facilities. The findings of the subsequent unannounced inspections identified other failures, which when identified and the subject of notices, were corrected, but which may have been in existence for a considerable time.

58. The Appellant's failure to implement the Chatterbox Preschool policies and checklists, and failure to carry out a simple risk assessment before setting off on an outing are serious failures which placed a young child at significant and real risk of harm. The Appellant acknowledged that she did not know how many children were present on the 21 June 2013, did not take the register with her on the outing and could not therefore readily identify that a child was missing. To compound the situation, the Appellant was the missing child's designated key worker on that day, but even so, it was only through the vigilance of student on work placement that the child's absence became apparent.

59. The second serious issue is the evidence about the manner in which the Appellant dealt with the incident, bringing back the entire group by bus without contacting the Police and in contravention of the Chatterbox Preschool's own Missing Child Policy. We concluded on the evidence that the Appellant showed a lack of consideration of the risks to the child, a lack of understanding of the priorities in an emergency and a lack of insight into the needs of the child and the parent in such a situation.

60. The third consideration was the evidence that the Appellant displayed neither insight nor remorse and instead appeared to be trying to displace the blame on her own staff rather than acknowledge the weaknesses in her own management. A previous incident in 2006 when another child was left unsupervised in a paddling pool

in a public park was dismissed in oral evidence by the Appellant as being the failure of another member of staff. We noted that despite that incident, there did not appear to be any change in her own approach to managing staff or outings.

61. We heard the recording of the meeting with the parent and noted that the predominant feature was the placing of blame on other members of staff for the failure to identify that a child was missing. There was neither contrition nor any concern expressed about the child during the meeting with the parent.

62. We do not consider that such conduct is the conduct of a responsible person who bears the responsibility for the welfare of young and vulnerable children.

63. The child care industry is regulated in order to ensure that there is clarity about the quality and the structure of professional care arrangements to ensure the safety and welfare of young and vulnerable children. The regulations and expectations of the regulator are designed to ensure that risks to young and vulnerable children are minimised. Risk assessments should be undertaken prior to any external activity and policies and procedures are of no value unless they are implemented. The Appellant's failures to realise the importance of knowing how many children are present on any given day and the need to undertake risk assessments prior to embarking on a trip are serious deficits in her understanding of the nature of the responsibility of a nominated individual or of a registered provider and thus leads to the conclusion that her registration should be cancelled.

64. By virtue of Section 72(5) of the Childcare Act 2006, it is possible to impose conditions upon the registration of the Appellant but we are not aware of any conditions which could assist in the present circumstances. We do not accept the submission on behalf of the Appellant that the incident was not serious and should be dealt with by way of a condition on her registration.

65. It is, primarily, the Appellant's practice of displacing blame on others, failing to acknowledge her own responsibilities and failing to appreciate that her own systems were not effective that has led to our conclusion that the appeal must fail because the Appellant is no longer suitable for registration. We conclude that the incident and the surrounding issues identified are sufficient to merit the cancellation of the Appellant's registration and the appeal should be dismissed.

DECISION

1. The appeal is dismissed.
2. There shall be a Restricted Reporting Order under Rule 14(1)(b) 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.

Judge Meleri Tudur
Ms Bridget Graham (Specialist member)
Ms Wendy Stafford (Specialist member)

14 April 2014

Reissued as amended in red to correct clerical errors as identified in red under my hand pursuant to Rule 44 of the Tribunal Procedure Rules 2008.

Judge Meleri Tudur
12 May 2014