

# Early Years Strategic Review

on behalf of:

Worcestershire Safeguarding Children Board

Warwickshire Safeguarding Children Board

Coventry Safeguarding Children Board

Birmingham Safeguarding Children Board

Report Author

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# 1 INTRODUCTION

- 1.1. In May 2013 West Mercia Police completed a criminal investigation into allegations of sexual abuse at Bright Eyes Nursery in Worcestershire. Three linked day nurseries had been closed following disclosure by a three year old child and this caused significant media interest and concerns by parents and the local community. Amidst this, the independent chair of Worcestershire Safeguarding Children Board publically undertook that the Board would enquire into why this had happened and so assure the public that early years provision in Worcestershire was generally safe. Although West Mercia Police believed that sexual assaults had taken place, due to the challenges of obtaining evidence where the prime witnesses were small children, the decision of the Crown Prosecution Service was that there was insufficient evidence to bring criminal charges in this case because of the age of the children. There was strong concern about this decision from the Safeguarding Children Board and the parents.
- 1.2. During the course of the investigation West Mercia Police uncovered a number of serious concerns about practice within the nursery particularly about the way that data was controlled, managed and stored; a clear lack of control within the nursery setting of unauthorised people having access to the child care environment and cannabis being found on site. These concerns were brought to the attention of the Safeguarding Children Board which confirmed the need for an inquiry.
- 1.3. In deciding what form this inquiry would take the independent chair took into account evidence from the police which did not indicate concerns around any individual agencies. The main concern of the Board was that approximately 66 complaints had been made to Ofsted over a two year period, many of these raising the issues identified by the police but these had not been pieced together to raise a safeguarding alert of sustained risk. A key question for the Safeguarding Children Board was therefore whether the whole system including the inspection process is effective in safeguarding children, and this was identified as a system issue, rather than about the specific incident of abuse at the Bright Eyes chain of nurseries.
- 1.4. The Safeguarding Children Board decided that the case did not reach the threshold for a serious case review as there was no reason to believe that there was learning for local agencies in Worcestershire about their own practice. However, the Safeguarding Children Board did want to better understand the robustness of the safeguarding system, quality and practice in early years settings and a decision was therefore made to commission a strategic inquiry.
- 1.5. The independent chair of Worcestershire Safeguarding Children Board discussed these issues with other independent chairs in the West Midlands, some of whom had similar concerns relating to the regulation of safeguarding practice in early years settings. Specifically, a previous serious case review into Little Stars nursery in Birmingham had highlighted a number of concerns about the safeguarding practice in a number of organisations including the regulation and inspection of nurseries.<sup>1</sup> As a result of these discussions and the high level of interest in this issue, three other Safeguarding Children Boards agreed to directly contribute to the strategic review.
- 1.6. It was agreed by the four Independent chairs that a reference group would be set up led by Worcestershire Safeguarding Children Board and that a strategic inquiry would focus on the effectiveness of regulation and inspection arrangements work and make local and national recommendations. The four Local Safeguarding Children Boards in the West

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<sup>1</sup> Birmingham Safeguarding Children Board (2013) Serious Case Review Case Number 2010-11/3

Midlands area contributed to the review process:

- Worcestershire LSCB
- Warwickshire LSCB
- Coventry LSCB
- Birmingham LSCB.

1.7. The reference group leading the review consisted of:

- Worcestershire Safeguarding Children Board Independent Chair
- Service Manager Safeguarding & QA Chair – Worcestershire Safeguarding Children Board SCR Sub Group
- Head of Children's Social Care Worcestershire County Council
- Group Manager, Children's Services, Worcestershire County Council
- DCI Warwickshire & West Mercia Police
- Senior Advisor for Safeguarding Children in Education, Children Services, Worcestershire County Council
- Early Years and Childcare Manager, Children's Services, Worcestershire County Council
- Designated Nurse for Safeguarding Redditch & Bromsgrove, Wyre Forest & South Worcestershire Clinical Commissioning Group
- Service Manager, Children's Centre, People Directorate, Coventry City Council
- Senior Officer, Early Years, Quality, Workforce Development, Safeguarding & Nursery Schools, Warwickshire County Council
- Childcare Quality and Sufficiency Manager Early Years, Childcare and Children Centres Service Birmingham
- Integrated Safeguarding Team Manager Worcestershire Health & Care NHS Trust
- Worcestershire Safeguarding Children Board Administrator

1.8. In developing the terms of reference for the review, the group took account of a wide range of concerns that had been expressed by the West Midlands group of independent chairs. Concerns included:

- the ability of LSCBs to obtain assurance about private providers
- the ability of the inspection process to identify specific risks associated with practices within the nursery
- practice issues such as safe storage of records and the role of non-staff family members and their access to children.

1.9. The full terms of reference for the review were agreed by the reference group and are attached at appendix one. In essence these address:

- The role of LSCBs in relation to early years providers
- The effectiveness of the registration and inspection system in respect of nursery providers and who regulates the regulator?
- Management of complaints and concerns.

1.10. An independent reviewer was appointed but due to some delays in gathering the initial information and the unexpected demands of a serious case review elsewhere this reviewer withdrew from the contract. This review has therefore been completed by Jane Wonnacott, Director of In-Trac Training & Consultancy. Jane is a qualified and experienced social worker and has worked independently for over 20 years. She has developed safeguarding

training programmes for early years providers and is the author of numerous serious case reviews including Little Teds nursery in Plymouth and Little Stars nursery in Birmingham. She has written a paper comparing the two settings<sup>2</sup>.

## **2. REVIEW PROCESS**

- 2.1. This section sets out the activity that has been undertaken in order to inform this final review report.
- 2.2. There have been four meetings of the reference group who have contributed their expertise to the discussions and supported the process. The report author attended three of these meetings.
- 2.3. Relevant background information was reviewed. This included:
  1. Background information in relation to events in Bright Eyes Nursery
  2. Information regarding LADO involvement in allegations against staff in nursery settings across the four LSCBs participating in this review.
  3. Serious case reviews carried out into abuse in nurseries (Plymouth and Birmingham)
  4. The Early Years Foundation Stage framework document
  5. Current Ofsted documentation relating to the regulation, inspection and compliance in nursery settings.
- 2.4. Two focus groups were held with 30 managers/ owners from nurseries across the four LSCB areas, all of whom had inspections in the last year. The participants represented the full range of grades given by Ofsted after the inspection process.
- 2.5. A meeting was held with two senior staff members from Ofsted; the safeguarding lead and the officer responsible for policy guidance and training in relation to early years and childcare settings.
- 2.6. A meeting was held with officials from the Department for Education with responsibility for the development of the Early Years Foundation Stage and liaison with Local Safeguarding Children Boards.
- 2.7. A final draft report was shared with all those who had contributed to the review in order to check for accuracy before being approved by the reference group and shared with the West Midlands independent chairs group.

## **3. SAFEGUARDING CHILDREN IN NURSERIES: WHAT DO WE KNOW?**

- 3.1. There is no research evidence into the extent of abuse within nursery settings in England although a study of sexual abuse within day care settings in the United States<sup>3</sup> estimated a national rate of 1300 children being sexually abused in 267 day centres. Information in England primarily comes from published serious case reviews; the two most recent having

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<sup>2</sup> Wonnacott, J (2013) 'Keeping Children Safe in Nurseries: A focus on culture and context. *Journal of Sexual Aggression*. **19** 32-45.

<sup>3</sup> Finkelhor et al (1988) *Nursery Crimes, Sexual abuse in day care*. Thousand Oaks CA: Sage

taken place when an offender has been convicted. There is anecdotal evidence that there have been other situations in England where a conviction has not been obtained and where Safeguarding Children Boards have not considered that the threshold for a serious case review has been reached. This strategic review was prompted by one such case.

- 3.2. Other serious case reviews which have focused on the abuse of children within their families have, in some instances, highlighted issues relating to practice within nurseries. These have primarily focused on whether nursery staff acted appropriately in recognising and referring potential abuse.<sup>4</sup>
- 3.3. A comparison study of the two published serious case reviews into sexual abuse in nurseries found that although the profile of the offenders was very different (one an experienced female and the other a young inexperienced male) there were a number of similarities primarily relating to organisational systems and culture. This is in line with the literature into abuse prevention across a range of organisations.<sup>5</sup>
- 3.4. The comparison of the two serious case reviews<sup>6</sup> reveals a number of features in common with the Bright Eyes nursery group and the table in appendix two has been extended to show where known similarities exist. Family links between staff, lax recruitment procedures, lack of effective child protection training, and a history of complaints were present in all three situations.
- 3.5. In order to establish the extent of allegations against staff in nurseries in the local area, the (then) Local Authority Designated Officers (LADOs) were asked to provide information to the inquiry in respect of the number of inquiries they received relating to nursery settings and of these the number which proceeded to a formal meeting<sup>7</sup>. It should be stressed that the role of the designated officer in the local authority is management and oversight of investigations rather than to carry out the investigation themselves.
- 3.6. A quality comprehensive analysis was not possible as each local authority area collates different information as part of their dataset.

The following information was obtained:

	<b>Total LADO interventions</b>	<b>LADO Meetings</b>
Worcestershire	61 since 1.2.14	21 since 1.11.14
Warwickshire	31 since January 2010	25 since January 2010
Coventry	26 since December 2013	14 since December 2013
Birmingham	153 since Jan 2014	30 since January 2013

Although statistical comparison is problematic and the allegations would relate to a wide range of behaviours, the figures do show that the volume allegations relating to nurseries are not insignificant. Those with responsibility for investigating allegations need to be

<sup>4</sup> For example Birmingham Safeguarding Children Board (2013) *Serious Case Review in respect of Keanu Williams*.

<sup>5</sup> Erooga, M (2012) *Creating Safer Organisations* Chichester: Wiley – Blackwell.

<sup>6</sup> Wonnacott, J (2013) Keeping Children Safe in Nurseries: A focus on culture and context. *Journal of Sexual Aggression*. **19 32-45**.

<sup>7</sup> The revised *Working Together to Safeguard Children* (2015) no longer refers to LADOs but does require local authorities to have “designated a particular officer or team of officers (either as part of multiagency arrangements or otherwise) to be involved in the management and oversight of allegations against people that work with children.

supported by sound knowledge and frameworks which will assist them in responding effectively to such issues within nursery settings.

#### **4. THE CURRENT FRAMEWORK FOR SAFEGUARDING CHILDREN IN EARLY YEARS SETTINGS**

4.1. Safeguarding children in early years settings is underpinned by a combination of:

- the statutory framework as set out in the Early Years Foundation Stage and its underpinning regulations<sup>8</sup>
- regulation and inspection by Ofsted
- guidance and procedures published by Local Safeguarding Children Boards
- national child protection guidance as set out in *Working Together to Safeguard Children* (2015).

4.2. This section sets out the role of each in order to understand the inter relationship between them, and underpins a later analysis highlighting any gaps that may compromise safeguarding in early years.

##### **The Early Years Foundation Stage (EYFS)**

4.3. The latest version of this framework was published in 2014 and it sets standards that all early years providers must meet in relation to learning and development and safeguarding children and promoting their welfare. Compliance with the EYFS is mandatory for all early years providers apart from those which seek exemption from the learning and development requirements from the Secretary of State. Ofsted regulates settings against these requirements and makes a judgement as to the quality of provision and compliance with the regulations.

4.4. The safeguarding and welfare requirements are general rather than specific and do not exist in isolation and include the statement that:

*Providers must have and implement a policy and procedures, to safeguard children. These should be in line with the guidance and procedures of the relevant LSCB.(para 3.4)*

4.5. Staff should be trained to understand the procedures and this training should:

*Enable staff to identify signs and indicators of abuse and neglect at the earliest opportunity, and to respond in a timely and appropriate way.(para 3.6)*

4.6. The framework also sets out the requirement that providers must have regard to the Government's statutory guidance 'Working Together to Safeguard Children'.

4.7. There is also a requirement that providers must put in place appropriate arrangements for the supervision of staff who have contact with children and families and this should provide support, coaching and training and:

*Foster a culture of mutual support, team work and continuous improvement, which encourages the confidential discussion of sensitive issues.*

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<sup>8</sup> Department for Education (2014) *Statutory Framework for the Early Years Foundation Stage*. [www.gov.uk/government/publications](http://www.gov.uk/government/publications). Reference DFE-003337-2014

- 4.8. The EYFS therefore sets out what each setting should have in place in order to safeguard children. It does not (and was not intended to) identify the detail of *how* settings should discharge their safeguarding responsibilities and relies on national and local procedures to provide the specific guidance which will help settings be clear about what good safeguarding practice looks like.

### **Regulation and Inspection by Ofsted**

- 4.9. The most recent statutory guidance for local authorities<sup>9</sup> requires them to secure sufficient early years places to meet the criteria set out in the guidance and ensure that funded early education is provided by settings that have been rated “good” or outstanding” by Ofsted and for two to four year olds by providers rated “requires improvement” or better. It is significant that this guidance also removed their role in assessing or improving quality in early years settings and makes it clear that Ofsted is the “sole arbiter of quality” although local authorities do contribute to improving quality through the requirement to provide information, training support and guidance to providers who receive an inspection judgement that is less than good. Support or developmental activity will almost inevitably be focused on these settings and the Ofsted judgement therefore plays a crucial role in identifying the quality of a setting and in driving the work of the local authority Local authorities are also required
- 4.10. There are four aspects of Ofsted’s regulation of early years providers set out in their framework for inspection<sup>10</sup>
- registration of applicants
  - inspection of registered providers
  - checking on those who are not registered but may need to be, meet legal requirements for registration
  - taking enforcement action where the requirements of registration are not met.

#### *Registration*

- 4.11. The registered person is legally responsible for the standards of practice in the setting although they may not be involved in day to day delivery of the service. The process of registration involves detailed checks, interviews and visits to the premises and is therefore an important opportunity to identify any concerns relating to the individuals understanding of effective safeguarding.

#### *Inspection*

- 4.12. Once registered, a setting will be inspected within 30 months of their registration and thereafter at least once in every inspection cycle.<sup>11</sup> Inspections are either carried out by an inspector directly employed by Ofsted or by one of two companies who are commissioned by Ofsted to carry out this work. Settings will be inspected more frequently where:
- Ofsted have received a concern about a setting and a risk assessment concludes that the inspection should be prioritised,
  - the provider had been judged inadequate or required improvement at their last inspection.
- 4.13. It is important to note that Ofsted inspectors have a very limited time within which to carry

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<sup>9</sup> Department for Education (2014) *Early Education and Child care: statutory guidance for local authorities*.

<sup>10</sup> Ofsted (2014) *The framework for the regulation and inspection of provision on the early years register* Page 5

<sup>11</sup> The inspection cycle is defined by the Secretary of State as the by the end of the year in which it was three years since the last inspection, with the year ending 31<sup>st</sup> August.

out the onsite aspect of their inspections. The inspection time allocated to pre school settings is normally half a day and nurseries one day. For larger establishments there is the possibility of extending the inspection to two days. The time restriction means that although inspectors will make every effort to speak to parents there may be little opportunity to talk to them and gain their views unless they happen to be available at the premises during the course of the inspection.

- 4.14. Ofsted sets out guidance for those conducting early years inspections which reiterates the need to assess against the requirements of the EYFS<sup>12</sup> and the early years evaluation schedule<sup>13</sup> which sets out descriptors against which inspectors can assess the evidence gathered during an inspection. These descriptors are general statements rather than containing specific details about safeguarding processes. For example, an outstanding setting will display care practices where:

*Children's safety and safeguarding is central to everything practitioners do. They effectively support children's growing understanding of how to keep themselves safe and healthy.*

And leadership and management where:

*The provider has an excellent understanding of their responsibility to ensure that the provision meets the safeguarding and welfare and learning and development requirements of the Early years Foundation Stage and has effective systems to monitor their implementation. The provider makes the most of learning relating to safeguarding and child protection to improve practice.*

- 4.15. How such descriptors are interpreted depends upon the professional judgement of the individual inspector and Ofsted has in place a training programme for inspectors to assist them in this task. This includes training on inspecting safeguarding and welfare plus discrete training in safeguarding which looks at wider safeguarding issues than those covered in EYFS or in the inspection materials.

#### *Enforcement*

- 4.16. As well as the standard inspection cycle, Ofsted will contribute to evaluation of effective safeguarding through responding to complaints. This is a sensitive area with the need to balance an approach which is just and fair to providers but at the same time is robust enough to ensure the safety of the children in the setting. Concerns about Ofsted's response to complaints were highlighted by the serious case review into events at Little Stars in Birmingham and new guidance was issued in 2013. One important change is that all inspectors, including those not directly employed by Ofsted now have access to full details of all previous complaints and action taken.
- 4.17. The guidance sets out the detail of the investigation process but in summary, current practice described by Ofsted is that each complaint will be risk assessed and the speed and type of response based upon this assessment. There are two types of visits, investigation visits and full inspections and not all complaints will result in an immediate visit and full inspection. However, where the risk assessment process reveals that there is potential risk to a child, there is a history of related concerns, or a number of concerns have been received within a short space of time there will be a priority inspection within seven working days. It is important to note that Ofsted are not investigating to prove or disprove allegations but to:

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<sup>12</sup> Ofsted (2014) *Conducting Early Years Inspections*

<sup>13</sup> Ofsted (2014) *Evaluation schedule for inspections of registered early years provision*



*decide whether a registered person is complying with statutory requirements set out in legislation and the Statutory Framework for the Early Years Foundation Stage,<sup>14</sup> any conditions of registration, or whether the person has committed an offence under the Childcare Act 2006 or the regulations.<sup>15</sup>*

- 4.18. Ofsted's role in relation to the registered person and not a staff member who may have had a complaint made against them. The investigation of any specific concerns about a member of staff will fall within the remit of the local authority and, if appropriate the police. This is why the Ofsted guidance stated that Ofsted will always attend strategy meetings in relation to the registered person but

*We do not normally attend strategy discussions where the concern relates to a member of staff (including the manager for early years settings), unless there is evidence of non-compliance by the registered person. For example, if a serious allegation relates to a member of staff we may wish to attend the strategy discussion in order to assess whether the registered person is taking appropriate action in response to the concern. Where we attend a strategy discussion in these circumstances, we make it clear that our regulatory role is only in relation to the registered person and/or the registered manager for social care settings, and that we have no regulatory relationship with other staff members. (chapter 2.2)*

- 4.19. Where an incident is confirmed as having occurred, the Ofsted inspector must consider:
- the provider's attitude to the incident
  - the provider's compliance with requirements such as notifying the incident to Ofsted
  - whether this was a one-off incident or whether there are other examples of incidents or non-compliance recently associated with the setting
  - the provider's willingness to learn lessons from any incident and any improvements they have made between the time of the incident and the inspection
  - compliance during the inspection and the quality of risk assessments, staff induction and professional development.
- 4.20. Where a provider owns more than one establishment Ofsted will need to decide whether a complaint should trigger an inspection of these other establishments. This review has been informed that this will form part of the risk assessment and depend on what the concern is and in particular whether it is related to the suitability of the provider overall or whether it was particular to a specific setting; for example a premises issue.
- 4.21. Ofsted do not routinely notify the local authority of complaints unless they reach the threshold for child protection/safeguarding either in respect of an individual child (when a referral will be made to the "front door" team) or in respect of a staff member (when the relevant designated officer in the local authority will be notified). This does leave a potential gap where a complaint may highlight some concerns about the culture and practice within the nursery but this does not obviously fall into either of the categories above or trigger a

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<sup>14</sup> *Statutory Framework for the Early Years Foundation Stage*, Department for Education, 2012; [www.education.gov.uk/g00213120/eyfs-statutory-framework](http://www.education.gov.uk/g00213120/eyfs-statutory-framework).

<sup>15</sup> The prescribed requirements of registration are set out in the schedules made under the Childcare (Early Years Register) Regulations 2008 ([www.legislation.gov.uk/ukxi/2008/974/contents/made](http://www.legislation.gov.uk/ukxi/2008/974/contents/made)); the Childcare (Early Years Register) (Amendment) Regulations 2012 ([www.legislation.gov.uk/ukxi/2012/939/contents/made](http://www.legislation.gov.uk/ukxi/2012/939/contents/made)); the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 ([www.legislation.gov.uk/ukxi/2012/938/made](http://www.legislation.gov.uk/ukxi/2012/938/made)); the Childcare (General Childcare Register) Regulations 2008 and amendment regulations 2009 and 2012 ([www.legislation.gov.uk/ukxi/2008/975/contents/made](http://www.legislation.gov.uk/ukxi/2008/975/contents/made)).

full inspection which results in the setting requiring improvement<sup>16</sup>. In the case of Bright Eyes for example the local authority was not aware of a number of the complaints that had been made.

### **Guidance and procedures published by the Local Safeguarding Children Board**

- 4.22. In order to meet the requirements of the EYFS providers need to implement a policy and procedure in line with the requirements of the Local Safeguarding Children Board. Local Safeguarding Children Board procedures may be general and not specific to early years providers, although there are some examples of LSCBs setting out their local expectations. For example, Richmond LSCB has a sample policy for use by settings, linked to the EYFS and specifying certain activities such as the frequency of training. Other LSCBs are less specific in their expectations or do not have any detailed guidance for early years. It was beyond the scope of this review to undertake a detailed national comparison and this is an area that organisations with a national remit such as the Association of Independent LSCB Chairs may wish to pursue further
- 4.23. The variation in approach is exemplified by the LSCB areas participating in this review.
- Worcestershire has detailed safeguarding guidance for early years providers and are in the process of seeking formal adoption by the LSCB.
  - Coventry early years team provide guidance to providers via a DVD. This DVD is guidance only and has not been formally adopted by the LSCB although it does contain links to relevant LSCB procedures.
  - Warwickshire has developed a range of documents relevant to safeguarding, some ratified by the Local Safeguarding Children Board and others developed by Children's Services to support schools.
  - Since the serious case review into Little Stars Birmingham have developed a comprehensive set of guidance for early years professionals working for Birmingham. There is no guidance specifically for early years providers that has been adopted by the Safeguarding Children Board.
- 4.24. Where local expectations relevant to early years settings are not identified by the Local Safeguarding Children Board, there will be no local quality benchmarks for settings to work to and Ofsted inspectors will be unable to *require* settings to use specific procedures in place or demonstrate that staff have received training at a certain level or regularity.

### **National statutory guidance : Working Together to Safeguard Children**

- 4.25. Working Together to Safeguard Children sets out the guidance that should be followed by all organisations working with children where there are concerns about the safety of a child and includes key roles and responsibilities including that of the designated person referred to in paragraph 3.5 above. The purpose of the guidance is to cover the legislative requirements and expectations on individual services to safeguard and promote the welfare of children, and set out a clear framework for LSCBs to monitor the effectiveness of local services. Its purpose is not to include detailed guidance on different settings. The guidance does set out the role of the Local Authority Designated Officer (LADO) referred to in para

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<sup>16</sup> Ofsted do provide local authorities with detailed information on a daily basis about any enforcement action they are taking.

3.5 above but there is no specific guidance within this document specifying any practice that is specific to early years settings other than re iterating the duty of providers to comply with the Early Years Foundation Stage.

- 4.26. Working Together to Safeguard Children is supplemented by detailed safeguarding guidance for schools<sup>17</sup>, in contrast to the situation within early years where the sector is dependent upon the Early Years Foundation Stage. It is the view of this review that this does not provide the specific detailed guidance that early years settings need.

## **5. THE EXPERIENCE OF NURSERIES**

- 5.1. Two focus groups were held with representatives from nurseries in the four participating Safeguarding Children Board areas. These were attended by people who were mainly managers or owners. All had been inspected within the last year and represented the full range of inspection judgements. It should be stressed that this section of the report represents the views of this group and the comments have been considered alongside those from other contributors including Ofsted to inform the final analysis.
- 5.2. The overwhelming message from the focus groups was that there is a wide variation on the way in which inspections are carried out and the amount of time an individual inspector gives to safeguarding. There were descriptions of some inspectors asking detailed questions of the registered person, managers and staff whereas others only checked that procedures were in place. The skill of inspectors in putting settings at their ease and facilitating open and honest discussion was highlighted as crucial but too variable. Good inspectors were described as those who treated the setting with respect, explained the plan for the day, spent time with staff, got involved with the children and did not spend all their time in the office.
- 5.3. It was the view of these groups that the time given to inspections was generally too short and did not allow for a detailed look at safeguarding practice or explore some of the “softer” evidence relating to organisational culture. For example, the majority of inspections described by the focus groups did not explore the way that concerns in relation to individual children are recorded and reviewed nor ask about any referrals that had been made to children’s social care. This is an important area as some settings described feeling uncomfortable in making referrals due to possible repercussions from the family/community. The risks associated with settings embedded within their local community and understanding of any risks resulting from family relationships between staff is not usually discussed. There was however one incidence of an inspector asking whether staff were friends with parents on social networks.
- 5.4. There was a unanimous view that there is no clear understanding of what good supervision looks like and that this confusion applies to the understanding of inspectors as well. Although this is a requirement of the EYFS inspectors were described as asking minimal questions about the way in which supervision is delivered or its impact on staff within the setting.
- 5.5. Safeguarding training is another area where settings feel there is not enough clear guidance and there is too much variation in what inspectors deem to be good enough.
- 5.6. The effectiveness of the DBS system in supporting the inspection process was also questioned as Ofsted are able to check there is a number against each member of staff

but having no way of knowing whether these are correct. Another concern is the implementation of the DBS system in small family run settings where, for example, mothers and daughters have been told to verify each other's DBS application.

- 5.7. Both focus groups spoke extensively about their experience of the way in which Ofsted responds to complaints and many felt that they had been unfairly treated. The discussions highlighted the fine line that Ofsted inspectors need to negotiate between thorough investigations and managing a situation where the complaint may well be unfounded or malicious. The interpersonal skills and knowledge of the inspector as well as a clear appeals process were all described as important.

## **6. ANALYSIS**

- 6.1. Early years providers are not a homogenous group and acknowledgement of this fact must be the starting point for any analysis of the effectiveness of the safeguarding system. They range from individual childminders, small preschool settings in a village or community hall through to large groups or chains. Management and governance arrangements therefore vary from local committees or boards of trustees through to structures reminiscent of large corporations. The challenges associated with ensuring a safe environment will therefore differ from setting to setting.
- 6.2. However, although there may be variations between settings some of the fundamental aspects of a safe organisation will be constant even if the way implementing them will vary. All parents placing their children in nurseries have the right to feel confident that the regulatory frameworks that are in place will identify settings that are not delivering the highest standards of safeguarding practice.

### **Regulation: is the EYFS fit for purpose?**

- 6.3. The degree to which the Early Years Foundation Stage provides an adequate framework for safeguarding children in nurseries is crucial as it sets out standards which are mandatory for all early years providers. It is against this framework that Ofsted inspects settings and reports on the quality of the standards of provision. It is the view of this review that although the EYFS safeguarding and welfare requirements set broad standards compatible with good safeguarding practice there is little guidance as to the detail of *how* settings should operate. Although paragraphs 3.68 to 3.71 of the EYFS refer to the need to maintain and retain records in relation to individual children there are no specific requirements about recording safeguarding concerns and the need for a system of review which enables patterns to be analysed. This review believes that this is a fundamental gap and it is significant that in the case of Little Stars over a period of time there had been no systematic review of concerns in relation to the abused child and in the case of Bright Eyes the police were concerned about the way that children's records were stored.
- 6.4. This review also is concerned that the EYFS provides no specific requirements and framework against which Ofsted can inspect the quality of management and leadership and the effectiveness of the governance arrangements within a nursery such as governing bodies or quality assurance mechanisms. This is a significant omission, particularly in the light of the problems found in both Little Teds and Little Stars nurseries in respect of management and governance arrangements.

- 6.5. In respect of training requirements the EYFS does not specify the level of safeguarding training that is required and how often this should be updated although it does give guidance on the content. This is in stark contrast to the situation in health organisations where the intercollegiate document sets out clearly the safeguarding training that should be undertaken by all health professionals.<sup>18</sup> This review believes that this is an important gap particularly as registered persons may not be an early years professional and not all staff will have an early years qualification. Even though managers and 50% of staff are required to have a qualification and in practice 87% of staff in full day care are qualified to at least level 3 and 93% are qualified to at least level 2, there is still a need to ensure that basic safeguarding knowledge is built upon and regularly updated.
- 6.6. The supervision requirements within the EYFS are designed to promote a culture within nurseries where staff are able to discuss concerns about individual children and develop their own safeguarding practice. It also describes an approach to supervision which would provide an opportunity for staff to discuss any anxieties they may have about the practice of colleagues. However, although this type of supervision is well embedded within other professionals who work with children it is relatively new within an early years environment. Although the EYFS provides a good basis for introducing a model of staff supervision there is insufficient detailed guidance as to exactly what good supervision looks like and how this can be implemented in nurseries. Some settings described to this review being approached by HR companies who offer to give them supervision tools but these do not focus on the aspects of reflective supervision practice which underpin effective safeguarding. The Ofsted “getting to good” training pack also shows how far there is to go with this aspect of practice as it has minimal input on supervision and this appears to focus on supervision as performance management rather than taking a more rounded approach.
- 6.7. Early years professionals are unlikely to be safeguarding experts and there is a need for clarity about what is expected of them. This review concludes that this is not provided within the EYFS and it can only be fit for purpose if there are other mechanisms for clarifying the specific requirements of safe practice.

### **The role of Local Safeguarding Children Boards**

- 6.8. The EYFS is clear that settings should comply with *Working Together to Safeguard Children* as well as Local Safeguarding Children Board procedures. However, *Working Together* is general child protection guidance applicable to any professional and not all Safeguarding Children Board procedures will contain specific guidance for nurseries or other early years settings. There may be guidance documents developed by early years advisors in the local authority<sup>19</sup> but unless these become procedures adopted by the Local Safeguarding Children Board Ofsted cannot require settings to comply with them.
- 6.9. There is therefore a very important role for Local Safeguarding Children Boards in setting out within their procedures the specific guidance necessary for nursery settings. Examples of expectations that the review believes would assist settings in developing their practice and Ofsted inspectors in judging whether settings are complying with local requirements are:

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<sup>18</sup> Safeguarding Children and Young People: roles and competencies for health care staff. 2014  
[https://www.rcoa.ac.uk/system/files/PUB-SAFEGUARDING-2014\\_0.pdf](https://www.rcoa.ac.uk/system/files/PUB-SAFEGUARDING-2014_0.pdf)

<sup>19</sup> For example the comprehensive set of documents in the Worcestershire “yellow folder” and other documents described in paragraph 4.23.

- how concerns about a child are recorded
- safe storage of records
- systems that should be in place for reviewing concerns in order to identify potentially vulnerable children
- the level of safeguarding training that should be provided by the setting and how often this should be refreshed
- expectations regarding participation in training delivered by the Safeguarding Children Board
- risk assessments that should be in place for example, where there are family relationships between staff members
- minimum standards for staff supervision as a basis for safeguarding children
- the elements of safer recruitment

6.10. Local Safeguarding Children Boards have a wide ranging remit and there is a danger that specific issues relating to early years providers may not be high on the agenda. However the review has concluded that there is an urgent need to recognise the particular risks within this sector relating to:

- the vulnerability of the children due to their young age
- the isolation of many of the settings, for example small facilities embedded within the local community and with minimal safeguarding experience in the management committee
- lack of adequate national guidance in relation to specific expectations of the safeguarding practice and training within settings
- the limitations of the Ofsted inspection process outlined below.

### **Inspection and complaints: the role of Ofsted**

6.11. The limitations of Ofsted inspections need to be recognised as these should not be relied upon as the *sole* mechanism for ensuring the children in early years settings are safe but rather one piece of the jigsaw.

6.12. A setting will only have a full inspection on a 47 month cycle and the review team were told that there are settings in Worcestershire that have not had an inspection for five years. This is concerning due to the high staff turnover in many nurseries. Inspectors have very little time to explore all aspects of practice in depth and can only *require* settings to comply with what is described within the EYFS. Although this sets out in broad terms expectations in relation to safeguarding, if there is no additional specific local guidance, inspectors rely heavily on their own professional judgement to interpret the information in front of them. Although Ofsted have a mandatory safeguarding training programme in place for all inspectors (including those not directly employed by Ofsted) the evidence submitted to this review from nurseries suggests that there is a wide variation in the degree to which inspection allows exploration of the less tangible aspects of safeguarding practice. This may have been due to the fact that not all inspectors had completed the training at the time of the inspections being described by the group.

6.13. It is also important to reiterate the point made in section four, that Ofsted's "regulatory role is only in relation to the registered person and have no regulatory relationship with other staff members"<sup>20</sup>. In the case of Little Stars nursery the serious case review was critical of the fact that the Ofsted inspector did not speak to the perpetrator when they visited the

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<sup>20</sup> Ofsted (2012) *Compliance, investigation and enforcement handbook*

nursery after a complaint was made against him. However in strict terms, this would not have been the Ofsted inspectors remit as their role is to ensure that the *registered person* is adequately fulfilling their safeguarding responsibilities. Inspectors can observe a member of staff's practice or speak to them about their understanding of safeguarding policies and how they put them into practice but the direct investigation of concerns regarding the alleged perpetrator would be the remit of the local authority and possibly the police. Although this distinction may seem artificial and common sense might expect an Ofsted inspector would explore the situation directly with the alleged perpetrator, this example clearly highlights that general "folk" beliefs may over estimate Ofsted's current role and function.

- 6.14. Serious case reviews into abuse within nurseries have highlighted the significance of organisational culture and a table comparing the situation in Little Teds and Little Stars is set out in appendix two. The review into Little Teds nursery in Plymouth described a safer settings as those which
- Operate safer recruitment procedures, including value based interviewing
  - Have effective policies and procedures in place which are communicated to staff, including child protection and intimate care
  - Encourage open discussions amongst the staff group about good and poor practice and facilitate constructive challenge of each other
  - Ensure that safeguarding is openly discussed and staff are aware of the possibility that abuse might happen within their workplace
  - Have effective whistle blowing procedures
  - Have safeguards in place where boundaries may be blurred through friendship networks amongst staff and parents
  - Encourage communication and contact with parents and ensure they are kept well informed about their child's day to day experiences
- 6.15. Some of these factors are easier to regulate and inspect than others. For example, policies and procedures are relatively easy to inspect but the impact of blurred boundaries or problematic staff cultures where there are unhealthy relationships and lack of challenge may be harder to identify. This is a challenge for the regulatory system.
- 6.16. Ofsted does have in place a comprehensive QA system which includes reviews of evidence bases, written reports and decisions. Where inspections take place by organisations commissioned by Ofsted they are required to have their own QA arrangements and then Ofsted further QA a sample of these within the region. All settings are asked to complete an evaluation following an inspection and in 2013-14 96% of settings were satisfied with the conduct of the inspection.
- 6.17. There remained concerns within the reference group about the degree to which Ofsted are open to hearing concerns about inspections, for example where there is a view that there have been inconsistencies in the way that providers have been treated. Ofsted responded to this concern as follows:

*All inspectors work to the same Ofsted guidance and procedures on inspection and undergo the same training. There are also quality assurance arrangements in place to monitor inspections for robustness and consistency. Any local authority that has concerns about an inspection should raise these with the appropriate person in their region. Under Ofsted's regional structure each local authority Director of Children's Services is already directly engaged with senior managers in their Ofsted region through regular dialogue and therefore each local authority will already have a contact in Ofsted through which to raise*

*concerns. Providers can also raise concerns about their inspection, and should do so immediately with the inspector at the time. Where a provider remains unhappy they have recourse to Ofsted's published complaints process.*

- 6.18. Although there is a system in place designed to enable a dialogue with Ofsted, the fact that a number of senior staff on the reference group did not feel that this is operating effectively would indicate that either the system needs amending or there needs to be further work to ensure that early years professionals and other local authority staff are aware of the role they can play in raising concerns about inspections. From the perspective of Ofsted, they have had positive feedback about the recent regionalisation of early years work and it is hoped that this will continue to improve relationships.

### **Governance, external scrutiny and challenge**

- 6.19. Since Ofsted inspections happen infrequently, especially in the case of “good” or “outstanding” settings it is important that day to day governance arrangements include an appropriate level of scrutiny and challenge. Again the EYFS is not specific about what is required although it is a fundamental aspect of a safe organisation.
- 6.20. It is here that the wide variation in the types of settings in the sector is particularly relevant. Whilst chains of nurseries will have quality assurance systems in place, the small family owned nursery may have no “critical friend” who can challenge their practice and/or provide an opportunity for reflection. Committees and boards of trustees may fulfil this function in some settings but the quality of challenge is likely to vary depending upon the knowledge and experience of those involved.
- 6.21. This is a role that was, to a large extent, previously carried out by local authority early years advisors but this is no longer the case unless a setting is inadequate or requiring improvement, although local authorities may (resources permitting) provide support to a wider range of settings.. This is a significant gap that needs to be addressed and therefore, as a minimum, there is a need for the EYFS to be specific about requirements for external scrutiny over and above that provided via the inspection process.

## **7. CONCLUSIONS**

- 7.1. Safeguarding young children when they are being cared for out of their home environment is a crucial aspect of work within early years settings and this review has focused on one aspect of the early years environment (day nurseries) as a result of recent evidence of abuse in more than one nursery. That young children may be abused by those in a position of trust is horrific and preventing a reoccurrence must be a priority for all involved. However, it should also be emphasised that nurseries play an important role in recognising and responding to situations where children may be being abused outside the setting and safeguarding practice needs to focus on this aspect of their role as well.
- 7.2. A positive aspect of the early years environment is that many settings are embedded within their local communities. However this also presents challenges for a staff group who may be friends as well as colleagues and where it may be hard to contemplate that families well known to them could harm their children. There are significant responsibilities placed upon nursery staff who may lack experience in this area of their work and they need high quality training, guidance supervision and support. However, safeguarding is not an area of expertise for many of the people with overall responsibility for practice in nurseries and



therefore expectations of them and criteria for inspection need to be clear. This review has found that the system for supporting the safeguarding task is not robust enough and does not provide the clarity needed to enable all early years providers to develop and maintain high standards of safeguarding.

- 7.3. It is the view of the Department for Education that the Early Years Foundation Stage is fit for purpose and Ofsted have not asked for specific changes to the safeguarding requirements. However, although technically the Early Years Foundation Stage does set out the broad parameters of good safeguarding practice it relies on robust local procedures provided by Local Safeguarding Children Boards and these may not provide the level of detail specific to nurseries that is required. Indeed not all Safeguarding Children Boards may be aware of their crucial role and this is an area for further discussion at a regional and national level.
- 7.4. This review has concluded that the current regulatory system for safeguarding children in nurseries therefore has a number of flaws which are not the fault of any one organisation, but a result of gaps in the system. The review believes that these gaps are a result of:
- Ofsted's role as the "sole arbiter of quality" inspecting against a framework (the EYFS) that does not provide sufficient detailed guidance to nurseries or inspectors about what constitutes effective safeguarding practice including effective governance arrangements,
  - an over reliance on inspections that may only take place every 47 months and in some instances last less than a day,
  - lack of capacity with the local authority to support nursery settings unless they are requiring improvement or inadequate,
  - lack of national safeguarding guidance similar to that provided for schools or health professionals,
  - the EYFS relying on local safeguarding procedures to underpin practice within early years settings when these procedures may not contain specific guidance for early years providers who have limited safeguarding experience,
  - LSCBs being unaware of the crucial role they play in providing a framework to underpin Ofsted inspections in their local area.

## 8. RECOMMENDATIONS

*It was not possible to compare or collate information regarding LADO notifications in early years settings across the participating authorities due to different information gathering systems.*

- 8.1. Local Safeguarding Children Boards participating in the review should develop a coordinated approach to the collation of information relating to LADO notifications in order to enable cross border comparison and collation of regional information and consider encouraging this across the wider West Midlands/West Mercia areas.

*The EYFS requires early years settings to have procedures in line with the requirements of the Local Safeguarding Children Board. Local Safeguarding Children Board procedures may not provide specific enough guidance to support safe practice or the Ofsted inspection process.*

- 8.2. Local Safeguarding Children Boards participating in the review should set out specific expectations regarding child protection practice in early years settings and the core elements of an effective safeguarding policy including:
- record keeping and storage of children's files

- process for review of records of concern relating to individual children
  - training requirements in respect of safeguarding children
  - risk assessment process where more than one family member works within the setting
  - components of effective supervision including recording processes
  - expectations regarding safer recruitment
  - guidance on the management of allegations.
- 8.3. Local Safeguarding Children Boards should review their membership and ensure that it includes someone with early years expertise.
- 8.4. The Department for Education should be asked to make it clear within statutory child protection guidance (as set out in *Working Together to Safeguard Children*) the important role that Safeguarding Children Boards should play in setting out expectations for early years providers within their local procedures.
- 8.5. Ofsted should require inspectors to routinely ask Local Safeguarding Children Boards at the time of the inspection for any local guidance setting out expectations relating to safeguarding practice in early years settings.

*The Early Years Foundation Stage does not set out specific requirements in relation to governance, management and leadership and as a result external challenge and quality assurance processes in respect of safeguarding are not consistent.*

- 8.6. The Department for Education should be asked to revise the Early Years Foundation Stage and set out the core requirements of governance arrangements which ensure sufficient challenge and support to settings in respect of their safeguarding practice.

*Members of the reference group with extensive experience of the early years context were not sufficiently confident in the effectiveness of the system for challenge Ofsted when there is a concern about the inspection process in particular settings or groups of nurseries.*

- 8.7. Ofsted should work with children's services departments to evaluate the effectiveness of the regional liaison arrangements in ensuring that early years professionals are able to raise concerns about the effectiveness of inspections in relation to keeping children safe in specific nurseries.

## **Appendix One**

### **Terms of Reference**

#### **West Midlands Local Safeguarding Children Boards**

# **Strategic Inquiry: Oversight of Independent Early Years Settings**

## **Terms of Reference**

### **1. Introduction**

1.1 The purpose of the independent Strategic Inquiry is to establish the degree to which LSCBs can be assured that the regulation and inspection arrangements for private day nursery providers - particularly in relation to safeguarding - are both sufficient, and if sufficient, appropriately implemented. The Strategic Inquiry will use recent LSCB concerns about such nurseries in the West Midlands as the starting point for examining current national arrangements. The Strategic Inquiry should make recommendations for any improvement necessary.

#### **1.2 *Participating LSCBs:***

- Birmingham (Receiving information)
- Coventry (Represented on Reference Group)
- Warwickshire (Represented on Reference Group)
- Worcestershire (Represented on Reference Group )

1.3 There will be a small Strategic Reference Group to oversee the inquiry and support/facilitate the work of the Independent Reviewer.

#### **1.4. *Role of the Reference Group:***

- To act as a steering group, providing direction for the Lead Reviewer
- To facilitate contacts, 'open doors', for the Lead Reviewer
- To provide feedback and challenge on the Overview Report

### **2. Key Issues to be addressed**

#### **2.1 *General:***

- Clarify the role of LSCBs in relation to private early years providers
- Clarify the role of Ofsted in relation to the registration and inspection of private early years providers to include the extent of scrutiny of governance arrangements within such settings
- Clarify how Ofsted's processes are regulated/quality assured
- Clarify how parents can obtain information on the quality of nurseries
- Clarify the interface between LADO /Position of Trust procedures and the scope of the regulatory framework.

#### **2.2 *Registration and Inspection:***

- What assurance does the registration process provide on safeguarding?
- What assurance does the inspection process provide on safeguarding?

- The professional skills of Ofsted staff on safeguarding, in identifying appropriate intervention, and in understanding what local agency involvement should be.

### **2.3 Complaints/Concerns:**

- How are complaints and concerns managed by Ofsted
- How are local agencies and the LSCB informed of/consulted on such complaints/concerns so that they can fulfil their own roles properly

## **3. Expectations**

3.1 Boards have raised queries about a number of issues (see below for examples) but to make this Strategic Inquiry more manageable, the independent reviewer will focus on identifying how regulation and inspection arrangements should work, what has happened in reality in the participating West Midlands Board areas, and produce some local and national recommendations.

3.2 The agreed approach will be for each of the participating Boards to:

- Send any SCRs, documentation and/or outline of particular issues or concerns that have arisen in their area regarding the regulation and inspection arrangements for private day nursery providers, particularly in relation to safeguarding, to the independent reviewer
- Provide a named contact point to the independent reviewer
- Be prepared to attend any meetings or provide further information to the independent reviewer as and when requested

3.3 It is anticipated that the Strategic Inquiry will take approximately 10 days to complete, but this will be kept under review and extended as necessary according to any issues that may arise.

## **4. Report:**

The report will include the following:

- A summary of concerns from the commissioning LSCBs
- A summary of any local learning to date
- An analysis of the points in 'Key Issues' above
- A conclusion of the overall adequacy of current arrangements, and any local implementation issues
- Recommendations for improvement

### ***For note***

Examples of the queries raised by Boards are:

- Vetting and Barring arrangement for non-employees who have access to nurseries
- Engagement of early years providers in S47 inquiries
- The ability of LSCBs to obtain assurance about private providers
- The ability of employed staff to voice concerns without fear of employment threats
- How the LA is informed of complaint outcomes
- How well nurseries record parental details
- Storage arrangements for confidential papers ( eg in owners' homes)
- The ability of private nurseries to close after a poor inspection and reopen, rebadged, but essentially with the same leadership/ownership
- Does an inspection cover access to non-nursery staff through the layout/geography of the setting
- Would an inspection include the degree to which areas of the nursery are essentially invisible to others, thus providing risk of undetected abuse
- Is an inspection able to assess the quality of supervision, and say the use of family members/untrained staff to cover for trained staff and hide trained/untrained ratios

## Appendix Two

### Comparison of Little Teds, Little Stars Nursery & Bright Eyes Nurseries

	<b>Plymouth (female offender)</b>	<b>Birmingham (male offender)</b>	<b>Bright Eyes</b>
	Wonnacott, J (2013) 'Keeping Children Safe in Nurseries: a focus on culture and context. <i>Journal of Sexual Aggression</i> . <b>19</b> 32-45.		Information from West Mercia Police (as there has been no SCR the information has not been collated in a similar format to the other nurseries)
<b>Nature of the setting</b>	Developed as a community facility.	Community facility as part of a re-generation project.	Family owned and run business comprising three nurseries.
<b>Nursery culture and relationships</b>	Offender had informal links with nursery manager - friendship/babysitting.	Offender had informal links with nursery manager - his mother was previous manager of the nursery.	Family members employed in various roles within the nurseries, leading to a network of informal relationships across the staff group.
	Offender described as in powerful position within staff group. Seen as experienced.	Offender described as in powerful position within staff group. Seen as knowledgeable.	
	Cliques in staff group.	Cliques in staff group.	
	Permeable boundaries between staff and parents – many staff drawn from local community.	Permeable boundaries between staff and parents – staff friends with parents on Facebook.	
<b>Identification of concerns</b>	Concerns within the nursery about offender's behaviour not challenged by other staff.	Concerns about offender's behaviour in respect of abused child apparent to staff – anonymous contact with Ofsted who investigated.	A range of complaints made to Ofsted over a number of years. Some of these complaints related to behaviour identified as a concern by West Mercia Police during the police investigation into allegations of sexual abuse. For example staffing ratios and illegal drugs on the premises

	Students expressed concern to college about general practice within the nursery.	Informal discussion and concern amongst the student population about the behaviour of the offender.	
<b>Staff knowledge and training</b>	Lack of thorough child protection training.	Child protection training not seen by staff as tailored to early years settings.  Issues about robustness of offender's route to qualification; particularly practice assessment within the nursery.	
<b>Governance and Management</b>	Ineffectual governance arrangements – board of trustees not functioning.	Ineffectual governance – manager seen as the expert and practices (particularly recruitment procedures) not scrutinised.	
	Lax recruitment processes in respect of offender.	Lax recruitment processes in respect of offender.	
	No staff supervision.	No staff supervision.	
<b>External regulation</b>	Ofsted ratings satisfactory x2.	Ofsted ratings “good” and “satisfactory”.	Ofsted rating in 2009 “good”
<b>Relationship with LA</b>	LA concern about standards within nursery. Nursery seen as slow to respond to advice.	Extra support offered by LA. Nursery viewed as responding to advice.	
<b>Nature of offending</b>	Several victims.	One victim in nursery – many online.	
	Sharing images of nursery abuse online.	Online offending (not linked to nursery).	

