

Be prepared

What happens if a serious allegation of wrongdoing is made against a member of a nursery's staff? *Charlotte Goddard* and *Hannah Crown* provide a legal overview and explore the thorny issues

While every parent's worst nightmare is their child coming to harm, learning that, as an early years professional, you may have failed to protect someone else's child is the ultimate failure. Clearly children's safety overrides everything else, and authorities must fully investigate any allegations that are made. But the sad fact is that many allegations are never proved one way or the other. And even when an investigation is dropped, the effect of it can still be utterly shattering.

One recent case is that of Little Angels Nursery in Wiltshire. Allegations of sexual abuse of children were made and police arrested two members of staff. Five months later, after a 'rigorous' investigation, no charges were brought and the case was dropped.

Now, none of the former staff are working in childcare, while owner Rachel Cartmell has moved her family to the other side of the country and is working for a tile manufacturer (see case study).

In 2013/14, Ofsted 'took steps' to cancel the licence of 112 nurseries, and was involved in 831 tribunal appeals. Earlier this year, two outstanding-rated settings and one 'satisfactory' setting owned by Associated Nurseries in Derbyshire and East Staffordshire had their licences suspended for around a week because Ofsted had received information 'that raised concerns about the suitability of one of the registered individuals making up the registered company'. The suspension has now been lifted.

In a statement, the inspectorate said: 'We suspended the provider's registration because we believed children may be at risk of harm... We have now lifted the suspension because appropriate action has been taken... and we are satisfied that there is now no risk of harm to children as a result of this matter.'

Associated Nurseries director San-



dra Shephard said: 'At no time has there been any suggestion of a criminal investigation.'

Solicitor Andrew Manners, director of law firm Morgan LaRoche, has dealt with numerous cases where there have been allegations or suspicions of abuse about nursery staff. He says nursery owners are often kept in the dark about the details.

He says, 'The problem for nurseries is they may well be dealing with these things blind. They may only know what the allegation is very broadly, and the police and/or Ofsted may even initially refuse to disclose which staff members are alleged to be involved.' But, he says, where

they are able to make their case, both parties benefit. 'Nurseries can try to engage with Ofsted and make a case to avoid a suspension of registration by implementing additional interim safeguarding measures.

'By keeping pressure on the police and Ofsted, nurseries can sometimes get a relatively early decision. This is where solicitors come in – we can make sure Ofsted is keeping the case under regular review, as it should be.'

THE PROCESS

If someone alleges abuse or neglect against staff at a nursery, the first thing that usually happens is an early strategy meeting between ►

In 2013/14, Ofsted 'took steps' to revoke the licence of more than 100 nurseries

ALLEGATIONS

safeguarding agencies such as Ofsted, social services, the police, health authorities and, in some cases, the nursery provider. At this meeting, the police may decide to launch a criminal investigation, and the local authority may also decide to undertake a child protection investigation under the Children Act 1989. Ofsted will make a decision as to whether the nursery's registration should be suspended in the meantime; if so, written notice will be served on the provider with immediate effect. The police are the lead agency.

If the nursery is not able to agree suitable interim safeguarding arrangements with Ofsted and its registration is suspended, it will have to close its doors. An initial suspension is six weeks, then a further period of 12 weeks with the option to extend the period further. Ofsted is obliged to keep a case under review and to withdraw the suspension if the grounds justifying it end. 'For example, if new medical evidence comes to light after a few days exonerating the nursery staff, the expectation is that the suspension will be lifted,' explains Mr Manners.

MAKING A CASE

Even when Ofsted has initially decided to suspend a nursery's registration, the nursery may be able to get this lifted by taking appropriate action. 'There may be a situation where Ofsted

intends to suspend a nursery's registration, for example following a child presenting a serious injury, but Ofsted may agree not to proceed with the suspension if the staff members who potentially came into contact with the child during the relevant period are suspended, pending further investigation,' says Mr Manners. In such complex cases, he says, 'legal advice would be essential'.

Going to a non-specialist lawyer is not a good idea. 'A Care Standards Tribunal is very different from a magistrate's court – my job is to safeguard my client's interests but to always be very mindful of my client's safeguarding duties.'

'Often, "no comment" interviews and a non-co-operation approach can be disastrous. You have to show Ofsted you are competent and you care, and police that you are fully willing to co-operate, while at the same time ensuring that your interests are being protected,' says Mr Manners.

When suspending staff, managers also need to make sure they do not additionally land themselves with an employment tribunal. 'A nursery's employment contract or policy must have a suspension clause, and the management must be clear in the suspension letter at explaining why the staff member is being suspended,' says human resources expert Jacqui Mann.

FORMAL APPEAL

Appealing is a delicate task. An appeal needs to be lodged quickly, within ten working days, but if a nursery is in the dark as to the facts behind the allegations, the decision to proceed with an appeal becomes a difficult one. Mr Manners says an appeal has the potential to cause suspicion about the provider's motives and give the impression – wrongly in most cases – that there is an unwillingness to understand the seriousness of a situation or co-operate in an investigation.

He cites an example of a nursery that faced police and Ofsted hostility when it initially appealed a suspension after being told very little about the case. When it later became clear at police station interviews what the allegation was about and whom it concerned, the provider was then able to help the investigation. Mr Manners says, 'The police's attitude changed completely once they realised that the provider wanted to co-operate.' Ofsted then withdrew the suspension.

Appeals are lodged to the Care Standards Tribunal, which will usually fix an early telephone case management hearing, during which the judge will set a time for the hearing. The hearing can also be brought forward in cases where Ofsted has suspended registration.

Nursery owners should seek specialist legal advice, and have adequate insurance



CASE STUDY: THE DEVASTATING IMPACT OF AN ALLEGATION

Last May, Rachel Cartmell's Wiltshire nursery had an Ofsted inspection. Little Angels Nursery received a 'good' with outstanding features. Five months later, it had closed following allegations of sexual abuse – Ofsted suspended the nursery's registration while the police investigated. Mrs Cartmell was advised that liquidating the nursery was the only way to repay parents and staff, and was told by police she should consider moving away from the area to protect her children from bullying.

But, in December, the police dropped the case. After conducting a 'rigorous' investigation, two members of staff who had been arrested had their bail cancelled and no charges were brought.

Mrs Cartmell says, 'Police came to my house saying an allegation had been made "of a safeguarding nature" against members of my team. Because it was a Saturday, they gave me the Ofsted letter informing me it was suspending my registration for six weeks.

'By Monday it was all over the

papers. I phoned Ofsted – then they sent someone to have a meeting. They said an allegation had been made against a member of staff and they were suspending the licence while the investigation took place. When we asked more questions, we were told they "wouldn't be shutting [us] down for nothing". It made my blood run cold.'

Contacting parents was another minefield. She says police 'categorically' told her she couldn't email, so she telephoned and left messages. 'Parents were coming back saying, "I have heard about this but not from you – why did you tell them and not me? Is it my child?" And I had no idea what to say to them because I didn't know what the allegation was. And I didn't know if what I was saying was correct legally. My mind was upside down. I was in shock.'

It wasn't until four weeks after the start of the investigation that she was told by police it was allegations of sexual abuse.

As it was, parents needed to be refunded, while she wanted

to give staff redundancy. Two weeks after the police visit, 'the accountant said we haven't got a choice, we have to put the nursery into liquidation,' Mrs Cartmell says. 'People had been paying their nursery fees over the summer, and now the nursery was closed. The parents had no option but to take their children out. And I didn't want parents to think their children would be at risk.'

The insurance company, which provided legal cover, told her that this 'did not extend to safeguarding allegations'.

Now, Mrs Cartmell, who had worked in childcare since the age of 16, works seven-day shifts in a tile shop, and has moved her family 200 miles away from their former home.

The nursery employed ten members of staff, but now, Ms Cartmell says, none of them are employed in childcare. Having been her own boss for ten years in the nursery and as a childminder, Mrs Cartmell is also without a referee.

She says, 'The police were just doing their job, and Ofsted

were doing theirs. There is no evidence that it was a malicious allegation, though I think it was, and I can't sue anybody for that anyway. But there was no reason for us ever to move.

'It is amazing it doesn't happen more. I need to be able to clear my name and to let people know what happened and that they have to be really careful.'

In terms of how she feels looking back, she says, 'Distraught is the best word for it. I can't bring myself to work with children again. On more than one occasion I have considered taking my own life.'

'I have lost the best part of everything that I have ever worked for.'

An Ofsted spokesman says, 'Young children must be safe in nurseries and other early years settings.

'When we learn of concerns, we take swift action, which can include the suspension of the setting. In this instance, it was appropriate to suspend the registration while police undertook an investigation.'

The test for the tribunal in such appeals is to decide whether or not there is a reasonable belief that continued provision by the setting may expose a child to the risk of harm. 'In such cases a judge will always consider the welfare and protection of children as the paramount concern,' says Mr Manners.

INSURANCE

Settings should check their insurance to make sure they have cover for legal representation to deal with these investigations, as well as cover for other expenses – for example, replacing a suspended staff member.

Jerry Beere, director at childcare insurance specialist Morton Michel, says: 'The legal expenses section of a nursery insurance policy should cover the costs of appealing against a decision by their regulator to suspend, alter, cancel or refuse to renew their registration. But any nursery should confirm this with their insurance provider.

'It is unlikely that there would be cover for loss of revenue caused by the suspension of the registration. Some policies will have sections which cover the cost of replacement wages in the event that a staff member is suspended following an accusation of child abuse.'

Mr Manners warns that in cases of suspension in particular, there may be loopholes. 'The cover will not be honoured if the suspension is due to any act or default by the insured, for example,' he says. 'I dealt with a situation where insurers would not pay out even though the suspension was withdrawn and there were no further charges – they eventually paid out almost two years later, but by then it would have been too late for many providers.'

COMMUNICATION

Once a nursery is under investigation, it will have many frightened parents

to deal with and will probably have to field media enquiries. 'You shouldn't do or say anything that might prejudice the investigation, but you do have to manage the concerns of very worried parents and your staff,' says Mr Manners. 'You might appoint one member of staff to handle queries, perhaps with an agreed form of words, and work with the police on what they would find an acceptable comment.'

Media handling could be covered by a nursery's insurance – for example, insurance company Pound Gates, which offers discounts to NDNA members, offers crisis communication cover.

Getting a notice of suspension does not have to be the end of the world. But nurseries need to be prepared. As Mr Manners says, 'The "it won't happen to us" attitude is a problem. All settings should think about how they would react if an allegation was made against their staff or them as owners.' ■