



website: www.careinspectorate.com
telephone: 0345 600 9527
email: enquiries@careinspectorate.gov.scot
Twitter: @careinspect

Sent by email: [REDACTED]

Christina Ritchie
2 Oxgangs Road
Edinburgh
EH10 7AU

24 July 2023
CS2008179333
2023383288

Dear Madam

**EMERGENCY CONDITION NOTICE
SECTION 67 PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010 (“the Act”)**

This letter gives you notice that Social Care and Social Work Improvement Scotland (hereinafter referred to as “the Care Inspectorate”) has decided to impose the following emergency condition in respect of the registration of Fairmile House Nursery, 2 Oxgangs Road, Edinburgh, EH10 7AU: -

4. As of 24 July 2023, no children under the age of two years shall be cared for by the service. Condition number 1 is amended accordingly.

This is in order to comply with regulations 4(1)(a) and 15(a) of The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 (SSI 2011/210) and takes account of Standards 1,19, 3.14, 4.11, 4.14 and 4.23 of the National Health and Social Care Standards.

The reason for this decision is that it is our belief the absence of the emergency condition poses a serious risk to the health and wellbeing of children using the service. Regulation 15(a) of SSI 2011/210 states that providers must ensure that at all times suitably qualified and competent individuals are working in the care service in such numbers as are appropriate for the health, wellbeing and safety of service users. Regulation 4(1)(a) of SSI 2011/210 states that providers must make proper provision for the health, welfare and safety of service users.

Whilst these regulations do not specify the number of staff required to be working in the service at any one time, we do not consider that there are appropriate levels of

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staff with the necessary skills working in the service to care for babies in addition to the other older children using the service. At the moment, the conditions of registration enable you to provide a service to children from birth to primary school age. However, since May 2023, you have not been caring for any children under the age of two and therefore the “baby room” is not currently being used in the provision of the service. You have now indicated to us a desire to reopen the baby room and care for children under the age of two years, from September 2023.

In February 2023, we received a complaint from [REDACTED] which included allegations

[REDACTED]
[REDACTED]
[REDACTED]
These allegations were upheld by us in May 2023 after investigation, and as a result you voluntarily closed the baby room. As a result of the complaint, we made a requirement requiring you to promote children's health, wellbeing, and safety and in particular to ensure that children were appropriately supervised and cared for by an appropriate number of staff. This requirement had to be met by 11 July 2023.

On 11 July 2023 we inspected the service to ascertain if the requirement emanating from the complaint investigation, had been met. It had not been met. We found that staffing levels were critically low. We witnessed children being looked after by some staff who did not know the children well and had no knowledge of their needs. This put children at risk. For example, [REDACTED] supporting children at mealtimes. [REDACTED] The created a risk of exposure to food allergens [REDACTED] knew the children's health needs. There was also a risk that children's emotional security and wellbeing was compromised because staff who did not know them well were providing their care. Staffing arrangements were not sufficient to enable staff to have structured and planned breaks or account for planned and unplanned leave.

During the inspection we looked at the staff rota from the previous two months. We noted there were days when there was only [REDACTED] in place. When [REDACTED] is on a break, the children are being cared for by staff who do not have the knowledge or experience to manage risks to children, due to their limited understanding of childcare practice. The lack of staff means that, the service had brought together the 2-5 years age groups. There was a mix of up to 18 children at any one time aged 2-5 years in the one playroom. This arrangement was based on staffing constraints and not the needs of children. However, day care of children services must ensure skilled interactions by staff to promote children's safety and to have a positive influence on their lives as they develop and learn. Staff told us that they felt the needs of these children were not always met as they found it

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difficult to offer experiences to this wide age group. The result of this was that children were not having their current interests and curiosities met to promote a sense of wellbeing and their development.

[REDACTED]

There is a mix of staff skills and abilities in the service. [REDACTED]

[REDACTED]

[REDACTED] had received first aid training and although staff had requested that this training be delivered to all of them, you did not action this. Learning in current pedagogy and best practice was not offered to staff. Children and families benefit from staff that are well trained, competent, skilled and are supported by their provider to ensure better outcomes for the children in their care.

Gaps in staff skills and knowledge mean the quality of children's care can be variable. Staff lack basic skills and knowledge to prevent exposure of children to harm. For example, we noted a lack of cleanliness of the environment during the inspection. There was engrained dirt on floors, carpets and doors, loose flooring around the bottom of stairs, flaking paint on walls in places, the staff area and in particular their bathroom was dirty and soft furnishings were stained and dirty. Staff have had no infection prevention and control training, and this was evidenced by the uncleanliness of the environment.

The low number of staff is impacting on the outcomes for children. This could increase the risk of choking for example, if there are insufficient staff to supervise children eating and drinking. Children do not experience consistently high-quality experience or interactions throughout their day. Staff do not always receive enough breaks which increases their stress and the risk of children being exposed to poor quality interactions.

At the July 2023 inspection, you advised us you intend to reopen the baby room and begin to care for babies from birth to two years. This is despite that fact that there are insufficient qualified and competent staff to meet the needs of children currently attending the service as it is, without caring for additional, more vulnerable babies and younger children.

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The critical importance of children's early life experiences and how this will impact on their future development health and wellbeing is universally acknowledged. For example, "Realising the Ambition Being Me (National Practice for Early Years in Scotland 2020)", Education Scotland's national practice guidance for early years in Scotland, states children under two years need warmth and compassion from staff which is important for them as they grow and learn. They need staff with strong child development knowledge to support routines to meet their physical needs and help young children feel secure.

We are of the view that admitting babies and young children under the age of two, without adequate, competent staffing in place will once again expose babies to poor quality of care. Poor quality care for babies and infants is harmful because they depend on adults to meet all their needs; they require emotional and physical containment from staff for their own rapid neurological development. This stage requires consistent high-quality care, experiences, and interactions to maintain health development. Children, particular babies and infants, require constant supervision, emotionally containing relationships and are dependent on the staff to keep them safe and support their learning, development and wellbeing. If they are repeatedly exposed to poor quality practice and inadequate supervision this would adversely affect their development and wellbeing. There is no evidence that staffing arrangements will improve by September 2023. If the baby room reopened and was not safely staffed, babies would be at risk of significant harm from poor quality care.

The Care Inspectorate therefore considers it necessary to impose the above condition to ensure that you consistently provide sufficient staff to meet the wellbeing needs of the children you provide a service for and to protect any babies and younger children who may use the service in future, from the risk of harm.

In deciding to impose this condition we have also taken account of the following: -

1. Our duty under s45(2) of the Act to exercise our functions in accordance with the principle that the safety and wellbeing of all persons who use and who are eligible to use care services (which would include babies and young children using the baby room) is to be protected and enhanced, and
2. The Scottish Regulators' Strategic Code of Practice which states that where people's health and safety are at risk, regulators such as the Care Inspectorate, must protect this.

The emergency condition takes effect immediately on receipt of this notice. If you disagree with this decision, you have the right to make written representations to the Care Inspectorate, within 14 days of receipt of this notice, concerning any

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matter which you wish to dispute, by writing to Jacky Gillan, Service Manager, by emailing enforcement@careinspectorate.gov.scot.

If you make written representations, we will consider them and following such consideration either:

- a) we will propose to vary or remove the emergency condition; or
- b) we will uphold our decision to impose an emergency condition (we will notify you that we do not intend to issue a condition notice which varies or removes the emergency condition, in terms of section 67(5)(b) of the Act).

Your written representations must indicate clearly and, where possible, provide evidence to support your position in relation to any matter that you wish to dispute.

You have a right of appeal under section 69 of the Act if you do not make any written representations. You also have a right of appeal if you do make written representations, but we notify you as described in paragraph (b) above that we intend to uphold our decision to impose the emergency condition. If you wish to appeal, an appeal must be made to the Sheriff: -

- i) if you make no written representations, within 14 days of the date of receipt (or assumed receipt) of the emergency condition notice; or
- ii) if you do make written representations, within 14 days of the receipt (or assumed receipt) of the notification that we do not intend to give a condition notice in terms of section 66(b) of the Act.

If you appeal, the emergency condition will remain in place unless and until the Sheriff directs that it is to cease to have effect or that it is varied.

In light of the consequences of this notice, we suggest you consider seeking independent legal advice.

Your new Certificate of Registration, which includes the emergency condition, will be made available through the Care Inspectorate's Digital Portal at <https://portal.careinspectorate.gov.scot/account/login> using the username and password previously supplied. If you have difficulties in accessing this, please contact the helpdesk on 0345 603 0890.

The new certificate must be displayed in a prominent position while the service is in operation. Please remove from display and destroy any previous certificates of registration without delay as they are no longer valid. A copy of this notice has been sent to the local authority within whose area the service is provided.

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Yours sincerely

[REDACTED]

Louisa Walker
Service Manager

Direct: [REDACTED]

Email: louisa.walker@careinspectorate.gov.scot

cc: [REDACTED], City of Edinburgh Council

[REDACTED] [@edinburgh.gov.uk](mailto:[REDACTED]@edinburgh.gov.uk)

[REDACTED] [@edinburgh.gov.uk](mailto:[REDACTED]@edinburgh.gov.uk)

[REDACTED] [@edinburgh.gov.uk](mailto:[REDACTED]@edinburgh.gov.uk)

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