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27 January 2015

Dr Fiona Wilcox  
HM Senior Coroner  
Westminster's Coroner's Court  
Horseferry Road  
London  
SW1P 2ED

[REDACTED]  
Chief Operating Officer

Dear Dr Wilcox,

### **FINAL OFSTED RESPONSE TO CORONER'S REGULATION 28 REPORT**

I refer to your Regulation 28 Report, dated 28 September 2014 and addressed to, amongst others, the Chair of Ofsted which you made following the conclusion of the Inquest into the tragic death of Tiya Chauhan on 24 August 2012 after an incident at Dicky Birds Nursery, Wimbledon. The Chair has asked me, as Chief Operating Officer, to respond on his behalf.

The report required Ofsted, as a named recipient of the Report, to respond by 14 November 2014. You kindly agreed to an extension of this date of 27 January 2015 since Ofsted did not receive the Report and we only became aware of it on 2 December 2014 through the Department for Education.

Ofsted takes very seriously its obligations in relation to the regulation and inspection of the providers of childcare, including nurseries, under the Childcare Act 2006. These obligations are to be undertaken with particular regard to its general statutory duty to have regard to the need to safeguard children<sup>1</sup>.

In light of the outcomes of the Inquest and its statutory responsibilities, Ofsted has given careful consideration to the four matters of concern set out in your report and the action which Ofsted is able to take in relation to these concerns to prevent future deaths of a similar nature. These are detailed below.

As part of this consideration, Ofsted has met with relevant Food Standards Agency officials to discuss the incident and the matters of concern to ensure that our response is appropriate and coordinated with other agencies and bodies. We have contacted the Local Government Association by email and are currently liaising with them in order to discuss your Report with them to ensure that all your concerns are appropriately addressed.

<sup>1</sup> See sections 119(3) and 117(2)(a) of the Education and Inspections Act 2006

**That nurseries, other childcare and school settings and even parents may be using raw jelly during play without appreciating the especial risks of choking that a cube of jelly presents.**

Ofsted will be including details of the inquest, including its findings of the risks associated with the use of raw jelly during play by children, in its next regular newsletter to all Directors of Children's Services (DCSs) in local authorities in England. As we explained in our evidence, local authorities, not Ofsted, have the statutory duty to provide information, advice and guidance to childcare providers. It is therefore for local authorities to advise individual providers of the risks posed by raw jelly, but Ofsted can support this by bringing to their attention the matters highlighted in the inquest. The aim of this will be to highlight the risks of raw jelly play by children in childcare and school settings. It will be for the DCS's to decide how best to disseminate this information further to these settings.

Ofsted has given careful consideration to whether it should write out to all registered childcare providers but has concluded that this would be outside Ofsted's statutory remit. As mentioned above, Ofsted cannot advise settings on how to deliver the requirements of the Early Years Foundation Stage (EYFS) since legislative provisions clearly place the obligation for advice and training of childcare settings on Local Authorities.

The newsletter will highlight to DCS's that the relevant concerns are relevant not only for nurseries but also for childminders and other providers of early years childcare including schools. In relation to schools, we will also provide a copy of the newsletter to the Department for Education (DfE) given they have policy responsibility for schools and also are the registration authority for independent schools including academies and free schools. You will also wish to note that we have kept DfE informed about the inquest and ensured that they have been kept aware of the evidence given by Ofsted and the inquest outcomes.

**That packets of raw jelly do not contain a warning that cubes of jelly present a choking risk to children.**

The inclusion of warnings on the packaging of food items and products is not a matter for Ofsted. We have discussed this concern with the FSA and have agreed that they will respond to you on the possibility for further action.

**That raw jelly cubes may be used in play with young children without sufficient supervision.**

The Ofsted Newsletter referred to in relation to the first concern will alert DCSs to the findings of the Inquest that there are risks associated with the use of raw jelly cubes in play with young children without adequate supervision.

In inspecting registered early years providers, Ofsted inspects compliance with the EYFS requirements including those relating to the risk assessment of activities and supervision. Any breach of EYFS requirements arising from unsafe practices would result in appropriate regulatory action by Ofsted. We will ensure that the findings of the inquest are disseminated to Ofsted and contracted inspectors of EY provisions so that they are aware of the risks of the use of raw jelly in activities in their inspection of EYFS compliance. As was made clear at the inquest, the use of raw jelly in activities in play is not specifically precluded by the EYFS. This means that inspection outcomes and regulatory action would be determined by whether EYFS requirements relating to supervision and risk assessments were breached by a provider due to unsafe practices involving raw jelly in play activities rather than the use of raw jelly of itself. Inspectors could not advise or require providers to cease the use of raw jelly if they became aware that it was being used in play activities.

**That LAs and Ofsted learn lessons from this tragic death and ensure appropriate warnings are communicated to the settings overseen by them and training and inspection is organised and implemented as required to mitigate the risk from raw jelly play.**

We have highlighted above the action that Ofsted has concluded is within its statutory in terms of ensuring that the findings of the inquest are communicated to local authorities that have statutory responsibility for the provision of advice and training of childcare settings as well as to Ofsted and contracted inspectors. As set out above, Ofsted's statutory role is to regulate and inspect registered settings and Ofsted does not have statutory responsibility for the provision of advice and training of providers which falls to local authorities.

I hope that the measures outlined above combined with action to be taken by the FSA assist in your alleviating your concerns about the risk of further death from the use of raw jelly cubes in play by children.

Yours sincerely

A large black rectangular redaction box covering the signature of the Chief Operating Officer.A smaller black rectangular redaction box covering the name of the Chief Operating Officer.

Chief Operating Officer