



[REDACTED]  
Minister for Early Education  
Sanctuary Buildings 20 Great Smith Street Westminster London  
SW1P 3BT  
[REDACTED]

Katrina Hepburn  
Area Coroner, Central and South East Kent  
Central and South East Kent Coroners' Service  
Oakwood House  
Oakwood Park  
Maidstone  
Kent  
ME16 8AE

**22 July 2024**

Dear Ms Hepburn,

## **RESPONSE TO REGULATION 28 REPORT TO PREVENT FUTURE DEATHS**

1. This is the Department for Education's (DfE) response to the Regulation 28 Report to Prevent Future Deaths dated 29 May 2024. The report was issued following the inquest into the death of Oliver Keith Steeper, who choked on food whilst being fed at nursery in 2021.
2. We want to begin by expressing our deepest condolences to Oliver's family and acknowledge the tragic nature of this incident.
3. In that light, we would also like to thank you for your report. The information provided by the report is vital in the Department's ongoing work to ensure the safety of all children whilst in early years settings.

## **Matters of Concern**

4. The **MATTERS OF CONCERN**, as you outline them, are as follows:
  - a. **Paediatric First Aid (PFA) requirements** – the requirement in the Early Years Foundation Stage (EYFS) statutory framework to have ‘*at least one*’ member with a valid PFA certificate is not sufficient.
  - b. **Paediatric First Aid Training Validity Period** – the current requirement in the EYFS is for PFA training to be renewed every 3 years. Staff may not be able to recall the detail of their training due to the passage of time.
  - c. **Staff Education Regarding Weaning Stages** – limited evidence of knowledge or training of staff members regarding the stages of introduction to solid food, importance of information sharing with parents, and choking risks.

## **Scope of Departmental Response, Definitions and Divisions of Responsibility**

5. This response sets out the Department’s current position and further steps that may be taken by Government to strengthen the safeguarding requirements within the [Early Years Foundation Stage \(EYFS\) statutory framework for group and school-based providers](#).
6. The EYFS framework for group and school-based providers is mandatory for all registered group and school-based early years providers in England. Early years provision is defined in section 96(2) of the Childcare Act 2006 (the ‘2006 Act’) to mean the provision of childcare for a young child. Section 39 of the 2006 Act requires the Secretary of State to specify in regulations ‘learning and development requirements’ and ‘welfare requirements’ for the purpose of promoting the well-being of young children. Together these requirements are known as the ‘Early Years Foundation Stage’ or EYFS. Before making welfare regulations, the Secretary of State is required by section 43 of the 2006 Act to consult the Chief Inspector (Ofsted) and any other persons she considers appropriate. Section 40 of the 2006 Act requires early years providers registered under Part 3 of the 2006 Act, and certain schools who are not required to register, to ensure that the early years provision meets the learning and development requirements and complies with welfare requirements set out in the EYFS. This response refers to early years providers required to comply with the EYFS as “relevant early years providers”.
7. It is also helpful, for the purpose of this response, to clarify that the EYFS framework uses the word “must” where the requirement is mandatory. Some of the items in the framework provide information that providers “should” take into account when delivering the requirements and should not depart from them without good reason.

8. It is the role of Ofsted<sup>1</sup> to assess how group and school-based relevant early years providers meet and deliver the EYFS framework through inspections. Ofsted may issue actions if a relevant early years provider fails to meet a requirement set out in the EYFS, and/or may issue a welfare requirements notice if the failure relates to a requirement set out in Section 3 of the EYFS. It is an offence for a relevant early years provider not to comply with a welfare requirements notice.

### **Department for Education Response**

9. The Government takes the safeguarding of all children very seriously. The Department is committed to protecting children from harm across all early years settings. There are legal requirements within the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 and Section 3 of the EYFS to protect children in early years settings. We have set out the most relevant requirements below and have explored options to go further which directly address the Coroner's matters of concern.

#### **Matter of concern: Paediatric First Aid (PFA) Requirements**

10. The issue you highlighted regarding this concern around PFA requirements is the risk of there potentially only being one member of PFA-qualified staff on site and that one staff member being indisposed or unavailable when an emergency situation arises. You cite the following requirement in the EYFS for school and group-based providers:

**'3.29** At least one person who has a current paediatric first aid (PFA) certificate must be on the premises and available at all times when children are present and must accompany children on outings.'

11. However, there are further requirements regarding staff deployment and PFA which must also be considered by early years settings:

**'3.30.** Providers should take into account the number of children, staff, and layout of premises to ensure that a paediatric first aider is able to respond to emergencies quickly.'

**'3.31** All staff who obtained a level 2 and/or level 3 qualification since 30 June 2016 must obtain a PFA qualification within three months of starting work in order to be included in the required staff:child ratios at level 2 or level 3 in an early years setting. To continue to be included in the ratio requirement the certificate must be renewed every 3 years.'

**'3.35.** Staffing arrangements must meet the needs of all children and ensure their safety. Providers must ensure that children are adequately supervised,

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<sup>1</sup> Where the early years provision is provided by independent schools to children over the age of 2 who are registered pupils, this function is performed by the inspectorate of independent schools.

including whilst eating, and decide how to use staff to ensure children's needs are met. Providers must inform parents and/or carers about how staff are organised, and, when relevant and practical, aim to involve them in these decisions.'

**'3.36.** Children must usually be within sight and hearing of staff and always within sight or hearing. Whilst eating, children must be within sight and hearing of a member of staff.'

12. The requirements outlined above when implemented together should ensure that there is a PFA member of staff available and ready to respond to incidents quickly. However, the Department recognises the importance of staff members being PFA trained, especially whilst children are eating, which is why in the recent EYFS safeguarding consultation which closed on 17 June 2024, we have put forward the following proposals:

- a. The group and school-based based provider EYFS currently states that 'Suitable students on long term placements and volunteers (aged 17 or over) and staff working as apprentices in early education (aged 16 or over) may be included in the ratios at the level below their level of study, and the provider is satisfied that they are competent and responsible' (3.49). We propose making it explicit that in order for students on long term placements and volunteers (aged 17 or over) and staff working as apprentices in early education (aged 16 or over) to be included in the ratios, they will also need a valid PFA certificate. Therefore, the proposed new wording will read: 'Suitable students on long term placements and volunteers (aged 17 or over) and staff working as apprentices in early education (aged 16 or over) may be included in the ratios at the level below their level of study if the provider is satisfied that they are competent and responsible and if they hold a valid and current PFA qualification.'
- b. To add a new requirement that states: 'Whilst children are eating there should always be a member of staff in the room with a valid paediatric first aid certificate.'

**Matter of concern: Paediatric First Aid Training Validity Period**

13. The concern you outlined here is that of the current requirement in the EYFS for PFA training to be renewed every 3 years and that staff may not be able to recall the detail of their training due to the passage of time.
14. Paragraph 3.29 of the EYFS states that 'PFA training must be renewed every three years and be relevant for people caring for young children and babies'.
15. Within the EYFS, Annex A: Criteria for effective Paediatric First Aid (PFA) training it states that 'Providers should consider whether paediatric first aiders need to undertake annual refresher training, during any three-year certification period to help maintain basic skills and keep up to date with any changes to PFA procedures.'

### **Matter of concern: Staff Education Regarding Weaning Stages**

16. The concerns you highlighted here were around the limited evidence of knowledge or training of staff members regarding the stages of introduction to solid food, importance of information sharing with parents, and choking risks. You specifically mentioned the “Diplomas in Childcare and Education”.
17. The Department sets the standards (the early years qualifications criteria) which underpin early years qualifications. The qualifications criteria we hold are the Level 2 Early Years Practitioner criteria, and the Level 3 Early Years Educator criteria, and can be found in the [Early Years Qualifications and Standards document](#).
18. Awarding organisations and training providers are responsible for developing and delivering the content of their qualifications and courses to meet our early years qualifications criteria, and sending these to the Department for assessment, approval and addition to the [Early Years Qualifications List \(EYQL\)](#). Holders of these qualifications can then work as qualified members of staff within the staff:child ratios in EY settings.
19. The Level 3 Early Years Educator (EYE) qualifications criteria were recently reviewed in order to improve the quality of the criteria and by extension the quality of early years qualifications at Level 3 and above, and ensure better-quality care for children as a result. Following the review and subsequent public consultation, the Department published the new Level 3 EYE qualifications criteria in April 2023. The new criteria can be found at Annex E of the [Early years qualification requirements and standards document](#) and will come into effect from 1 September 2024.
20. Following the publication of the new EYE criteria, the Department asked awarding organisations and training providers to update their qualifications at Levels 3, 4, 5, 7 and 8\*<sup>2</sup> to meet the new criteria and submit them to DfE for assessment and approval **by September 2024**, in order to remain on the EYQL after September 2024. These qualifications must then be delivered for “first teach” for new learners by **September 2025 at the latest**, so that new learners starting on a qualification from September 2025 take on an approved qualification. As part of its business-as-usual activity, the Department is currently in the process of approving qualifications against the new criteria and will be adding approved qualifications to the [EYQL](#) by September 2024.
21. The new criteria includes revised detail on weaning/ preventing choking. Annex E of the [Early Years Qualification Requirements and Standards document](#) sets out the criteria, including that educators will learn that:

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<sup>2</sup> \*To note: The EYE Review does not affect qualifications at Levels 2 and 6. Approved L2 and L6 qualifications will remain on the EYQL and remain full and relevant beyond September 2024.

**4.4.** There are different stages of weaning and it is important to keep knowledge up-to-date, including knowledge of food allergies and anaphylaxis.

**4.5.** Mealtimes can be a high-risk environment for babies and young children in regard to choking, the signs of choking, that choking can be completely silent, therefore children should be supervised closely when eating.

Educators will learn how to:

- find and apply the most up-to-date advice on weaning provided by the NHS.
- prepare food that is suitable for the age and development of babies and children, referring to the most up-to-date guidance
- supervise children effectively when eating

22. The new criteria signposts to the following guidance which contains information on how to prepare food safely for children to prevent choking, and weaning:

- [Example menus for early years settings in England](#)
- [Food safety: help for early years providers](#)
- [Food safety advice on choking in settings: foundation years](#)
- [NHS Start for Life: weaning](#)

23. The Level 2 Early Years Practitioner (EYP) criteria were last updated in 2019 and include key subsections on Safeguarding (Section 2), Health and Safety (Section 3) and Wellbeing (section 4). While the criteria do not contain explicit reference to preventing choking as such, there *is* reference to carrying out routines including for eating (including weaning) (see para 4.5 of the criteria at Annex C of the [Early Years qualification requirements and standards document](#)), and to assessing risks and acting accordingly including in the event of children requiring urgent medical attention (see para 3.3 of the criteria at Annex C). The Department does not currently have plans to revise the Level 2 EYP criteria in the near future, but we will consider the findings of this report in any future revisions as part of our regulatory role.

24. The Department does not have a criteria at Level 1, as the EYFS does not include staff:child ratios at Level 1 and therefore there is no requirement for someone to hold a Level 1 qualification in order to count in those ratios. The lowest level of ratio is Level 2, and the corresponding qualifications criteria is at Level 2 (Early Years Practitioner).

25. Regarding your concerns around information sharing with parents, the EYFS currently states:

**3.34.** Each child must be assigned a key person. Their role is to help ensure that every child's care is tailored to meet their individual needs, to help the child become familiar with the setting, offer a settled relationship for the child and build a relationship with their parents and/or carers.

**3.82.** Providers must share the following information with parents and/or carers: Food and drinks provided for children.

26. In addition to the EYFS statutory requirements, we have also produced information for the sector regarding food safety and choking prevention which was published in July 2021, and introducing babies to solid food which was published in March 2024. This can be found on the DfE owned 'Help for early years provider's platform:

- [Food safety](#)
- [Introducing solid foods](#)

27. We recognise the importance of staff understanding the different weaning stages, information sharing with parents and how to prevent choking. This is why in the aforementioned EYFS safeguarding consultation, the addition of a safer eating section was proposed which includes the following new requirements:

- a. Before a child is admitted to the setting the [provider/childminder] must obtain information about any special dietary requirements, preferences, food allergies and intolerances that the child has, and any special health requirements. This information must be shared by the [provider/childminder] with all staff involved in the preparing and handling of food. At each mealtime and snack time [providers/childminders] must be clear about who is responsible for checking that the food being provided meets all the requirements for each child.
- b. [Providers / Childminders] must have ongoing discussions with parents and/or carers about the stage their child is at in regard to introducing solid foods, including to understand the textures the child is familiar with. Assumptions must not be made based on age. [Providers / Childminders] must prepare food in a suitable way for each child's individual developmental needs, working with parents and/or carers to help children move on to the next stage at a pace right for the child. The NHS has some advice [providers / childminders] may find useful to refer to: [Weaning – Start for Life – NHS – \(www.nhs.uk\)](https://www.nhs.uk).
- c. [Providers / Childminders] must prepare food in a way to prevent choking. This guidance on food safety for young children [Food safety - Help for early years providers - GOV.UK \(education.gov.uk\)](https://www.gov.uk/guidance/food-safety-for-young-children) includes advice on food and

drink to avoid, how to reduce the risk of choking and links to other useful resources for early years settings.

- d. Babies and young children should be seated safely in a highchair or appropriately sized low chair while eating. Where possible there should be a designated eating space where distractions are minimised.
- e. Children must always be within sight and hearing of a member of staff whilst eating. Choking can be completely silent therefore it is important for [providers / childminders] to be alert to when a child may be starting to choke. Where possible, [providers / childminders] should sit facing children whilst they eat so they can make sure children are eating in a way to prevent choking and so they can prevent food sharing and be aware of any unexpected allergic reactions.
- f. When a child experiences a choking incident that requires intervention, providers should record details of where and how the child choked and parents and/or carers made aware. The records should be reviewed periodically to identify if there are trends or common features of incidents that could be addressed to reduce the risk of choking. Appropriate action should be taken to address any identified concerns.

### **EYFS Safeguarding Consultation**

28. The EYFS safeguarding consultation concluded on 17 June 2024. The consultation proposes changes to the safeguarding section in both the childminder and group/school-based provider versions of the EYFS, to make it easier for practitioners to understand the requirements and how to fulfil them. As already outlined, there is a proposal for a new safer eating section which has been informed by extensive engagement with providers, health professionals, sector stakeholders and safeguarding experts and using lessons learned from previous incidents. We expect to publish the response to the consultation in autumn this year.
29. The safety of our youngest children is our utmost priority and the Department continually monitors and reviews safeguarding requirements for early years settings to make sure children are kept as safe as possible.
30. Finally, we would again like to thank you for giving us the opportunity to respond and express our deepest condolences to the family and friends of Oliver Steeper.

Yours sincerely,



Minister for Early Education