

**First-tier Tribunal Care Standards**  
**The Tribunal Procedure (First-tier Tribunal) (Health, Education and  
Social Care) Rules 2008**

2024-01316.EY-SUS  
[2025] UKFTT 00002 (HESC)

Hearing held via CVP on 19 December 2024

**BEFORE**  
**Tribunal Judge Ian Robertson**  
**Specialist Member Michael Cann**

**BETWEEN:**

**KREATIVE LEARNING CHILDCARE LIMITED**

**Appellant**

-v-

**OFSTED**

**Respondent**

**DECISION**

**AMENDED DECISION**

**REPRESENTATION**

The Appellant represented herself assisted by Akisa Divine  
M Smart (solicitor) represented the Respondent his witnesses were Pippa  
Clark, Maria Conroy and Elisabeth Mackey

1. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was remote via Video. A face to face hearing was not held as it was not practical and nobody requested it. All issues could be determined in a remote hearing. Due to the nature of the hearing (see below) we considered that this was fair and reasonable in the circumstances. There were no disconnections through the hearing.

**THE HEARING.**

2. This is an Appeal brought by Ms Henry on behalf of Kreative Learning Childcare Limited against a decision dated 15 November 2024 made by Ofsted against the decision to suspend its registration for a further period of 6 weeks from 15 November 2024 to 26

December 2024 as a childcare provider on the Early Years Register.

3. This is the third period of suspension following an original Notice served on 18 September. This is the first appeal. In preparation for this appeal we were provided with a bundle running to 270 pages. Today additionally we have heard oral evidence from Pippa Clark, Maria Conroy, Elizabeth MacKey and Charlene Henry herself. Throughout the proceedings Ms Henry was assisted by Ms Akisia Devine who is the Company Secretary and describes herself as a paralegal.

## **BACKGROUND**

4. The following is the way in which Ofsted put their case:

The Respondent maintains that the continued provision of childcare by the Appellant may expose children to risk of harm. The following factors are significant for the Tribunal to take into account when considering the issue of risk:

- a. failed to implement effective risk assessments to ensure the safety and wellbeing of staff and children.
- b. the Respondents inspectors were refused entry to the premises on 18 September 2024 by the Appellant and her staff.
- c. members of staff/apprentices had been left unsupervised both inside and outside of the premises with very young children. The Appellant should have ensured that members of staff/apprentices have the appropriate experience to work with children under two years of age. A 17-year-old unqualified apprentice was allowed to oversee the care of two children aged one-year-old.
- d. young children had been removed from the premises through the back door/fire exit which was a possible attempt to conceal the children from the Respondent.
- e. failed to ensure that the movement of children from the premises during the inspection visit was conducted in such a way the children were safe.
- f. insufficient staff members were present for the number of children in the premises. The appellant should have ensured that there was at least one member of staff present for every three children aged under the age of two.
- g. concerns relating to a police investigation into allegations of theft and fraud in 2021/2022, involving the Appellant.

- h. On 7 October 2024 the registration of Kreative Learning Pre School was further suspended and on the 5 November 2024 the LADO provided an outcome to the LADO referral whereby the LADO substantiated the concern under the 4th LADO harm threshold of suitability and have referred to the DBS.
  - i. concerns around the Appellant's overall suitability and integrity as the Appellant has been dishonest with the Respondent on numerous occasions and has withheld information.
  - j. the Appellant has shown no remorse or reflection following the visit on 18 September 2024 which demonstrates a lack of understanding of safeguarding and risk which is very concerning given her senior role in the organisation.
5. The Appellant argues that the inspection visit was motivated by malice on the part of Ms Clark the lead inspector and that following a meeting to discuss a Welfare Requirements Notice issued subsequent to the visit on 18 September the organisation satisfied all Ofsted's requirements and that therefore the continuation of the suspension was unnecessary and disproportionate.

## THE LAW

6. Section 69(1) of the Childcare Act 2006 provides for regulations to be made dealing with the suspension of the registered provider's registration. The section also provides that the regulations must include a right of appeal to the Tribunal.
7. Under the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 when deciding whether to suspend a provider the test set out in regulation 9 is:
- “That the Chief Inspector reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm”.*
- “Harm” is defined in regulation 13 as having the same definition as in section 31(9) of the Children Act 1989:*
- “ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill treatment of another”.*
8. **Ofsted v GM and WM [2009] UKUT 89** established that on an Appeal under Regulation 12 *“The First-tier Tribunal stands in the shoes of the Chief Inspector and so, in relation to Regulation 9, the question for the First- tier Tribunal is whether, at the date of its decision, it reasonably believes that the continued provision of childcare by the Registered Person to any child may expose such a child to a risk of harm”.*

## THE HEARING

9. We heard evidence from Ms Clark who attended the property on 18 September 2024 along with Ms Conroy. They are both Early Year Inspectors employed by OFSTED. They had attended the property as a result of information received that following the closure of another property run by the company due to a flood more children may be being cared for than was appropriate.
10. Ms Clark's evidence was that when the inspectors attended the property they were asked to wait by the manager whilst she obtained the visitors book. They waited in a lobby but could not see into the main nursery room which they entered, where they counted 20 children, a number later confirmed by the manager and not challenged by Ms Henry in any subsequent written documentation. The manager then told them that she had been directed to ask them to leave. They left the property by the front door and went around the back where they saw two babies under 1 in a car with a very young staff member who they described as looking terrified. Ms Clark then saw the manager coming out of the back door with 2 two year olds. When challenged she said she was taking them for a walk but they did not have shoes on and had no belongings with them.
11. Ms Clark established that there were 4 staff members on site. The young person in the car, the manager and another apprentice. Ms Henry was also on site but remained in the office on the phone. Effectively therefore at the point of seeing the manager leaving with the 2 two year olds there was just one member of staff looking after 16 children. It transpired that the staff member in the car was a 17 year old apprentice with no qualifications and no DBS check. The other staff member was also a 17 year old apprentice.
12. Ms Clark was cross examined by Ms Devine and it was suggested that the visit was made out of malice because a complaint had been made against her by Ms Henry, Ms Clark denied knowing a complaint had been made although she was aware that an E mail had been sent. It was put to her that she was not denied access but that if she was it was not at the instigation of Ms Henry. She was adamant that she was denied access but accepted she did not know directly that this was on the orders of Ms Henry although she was present in the office throughout apparently on the phone to Ofsted.
13. Ms Conroy corroborated Ms Clark's evidence. She remained at the premises after Ms Clark left. It was put to her that there was a further staff member present. She did not see this person and her presence was never brought to her attention.
14. Ms MacKey is the decision maker. Ofsted had issued a Welfare Requirements Notice after the visit and a meeting took place to discuss this. It was accepted by Ms MacKey that Ms Henry had complied with all aspects of that Notice. She was cross examined

therefore on why, given this, the suspension had continued. Her rationale was that Ofsted were very concerned but what they saw as the deception perpetrated on 18 September, what they saw as an attempt to “hide” the babies the establishment was not registered for and the lack of openness and honesty around this and refusal to accept any responsibility by Ms Henry. Also the situation had been investigated by the LADO who had upheld safeguarding concerns.

15. Ms Henry gave evidence. She denied refusing the inspectors access and said that if this had happened it was due to the manager. She denied knowing about the children being taken out of the backdoor and said that it was the responsibility of the manager. She accepted that it had happened but thought it must have been as part of the normal routines that she had instructed the manager to follow during the inspectors visit. She agreed that babies were present that the premises were not registered for but stated that this was the managers decision not hers. She maintained she remained in the office throughout the visit and could not be held responsible for anything that happened. She maintained that there was another member of staff on duty but that she must have been on a break to attend the doctors when the inspectors visited. She also maintained that there were not 20 children present but 18 and the register would prove this though she did not provide a copy of this.

16. It was put to Ms Henry in cross examination that much of her evidence was being heard for the first time and that in the various statements and documents filed to date the evidence she gave had not been articulated. She was not really able to answer this.

## **OUR CONCLUSIONS**

17. We have considered this matter afresh as we are bound to. We have read the evidence produced in the bundle and have considered the oral evidence and submissions made by both parties.

18. Our decision is based therefore on the situation as it stands today. We are aware that the test for suspension is that “That the Chief Inspector [ the Tribunal ] reasonably believes that the continued provision of childcare by the registered person to any child may expose such a child to a risk of harm”. This is in reality a low test as the emphasis is upon the safeguarding of children who may be cared for by the Appellant.

19. We are also very alive to the fact that at this stage in the process we should not be making findings of fact. However some facts are not in dispute; the fact there were babies on site, the fact that two babies were left in a car in the care of a 17 year old unqualified unchecked apprentice and that when the manager took the two 2 year olds out there was only one active staff member looking after 16 children under 3.

20. Sadly we have come to the conclusion that far from reflecting upon the situation and accepting the distress and potential harm caused to the children on 18 September, Ms Henry has attempted to deflect and blame others. She has sadly missed the point. She has not taken responsibility for the situation and her attempt, through Ms Divine, to accuse Ofsted of malicious intent is particularly egregious considering the accepted factual situation.

21. The Appellants lack of insight into the concerns of Ofsted and LADO does not give us confidence that she will act in a child centred fashion to prevent harm in the future if a crisis occurs.

## **DECISION**

To dismiss the appeal

**Judge Ian Robertson**

**First-tier Tribunal (Health, Education and Social Care)**

**Date Decision Made: 23 December 2024**

**Date Decision Issued: 30 December 2024**

**Amended Date Decision Issued: 03 January 2025**

