



First-tier Tribunal Care Standards

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

**2024-01147.EY
[2025] UKFTT 00280 (HESC)**

Hearing held on 10, 11 and 12 February 2025 at the Royal Courts of Justice

**Before
Ms S Brownlee (Tribunal Judge)
Mr Michael Cann (Specialist Member)
Ms Jane Everitt (Specialist Member)**

Damal After School Club Limited

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. The appeal is brought by Damal After School Club Limited (“the Appellant”) against a decision of Ofsted (“the Respondent”) dated 8 May 2024 to cancel the Appellant’s voluntary registration as a provider of childcare on non-domestic premises under Part B of the General Childcare Register, pursuant to section 68 of the Childcare Act 2006 (“the Act”) on the grounds that the Appellant has failed to comply with the regulatory requirements as set out at schedule 6 to The Childcare (General Childcare Register) Regulations 2008 (“the Regulations”).
2. On 5 June 2024, the Appellant’s legal representative filed an appeal to the First-tier Tribunal. As a result, the cancellation of voluntary registration did not take

effect. The Appellant requested that the Tribunal direct that the cancellation of voluntary registration shall not have effect as cancellation is not proportionate and not necessary.

The hearing

3. The hearing took place on 10, 11 and 12 February 2025 as a hybrid hearing at the Royal Courts of Justice in London. All participants attended in person and the hearing was held entirely in public. Any references to children/young people maintain anonymity.
4. The Tribunal worked from a hearing bundle and supplementary hearing bundle running to 486 pages. Both parties provided helpful skeleton arguments in advance of the hearing. The Tribunal also had a Scott Schedule, to which both parties had contributed.

Attendance

5. Mr Imad Farah, the current nominated individual, director and manager of the provider attended the hearing. Mr Abdishakur Mohammed, a former nominated individual of the provider and now coordinator and consultant to Mr Farah, also attended. The Appellant was represented by Miss Rosalia Myttas-Perris, counsel, instructed by Ms Chloe Parish, solicitor, of Stephenson Solicitors.
6. The Respondent was represented by Mr Tom Leary, counsel, instructed by Ms Masuma Khalique, solicitor, of Ofsted Legal Services. The Respondent called four witnesses to give oral evidence: early years regulatory inspectors, Mrs Rizwana Nagoor, Ms Catherine Greene and Mrs Siobhan O'Callaghan and early years senior officer, Ms Christine Davies.
7. On the first day of the hearing, there were two observers, who remained with the Tribunal throughout the day. They were Specialist Members Sarah Billington and George Wright, recently appointed to the Primary Health Lists Tribunal. The specialist members attended for observation purposes only and took no part in the decision-making process.

Preliminary issues

8. On 4 February 2025, the Respondent applied to the Tribunal to admit a witness statement from Ms Christine Davies as late evidence. The Appellant did not object to the application and the Tribunal noted that Ms Davies was in attendance at the hearing and ready to give oral evidence. The Tribunal had read the witness statement in advance and considered it was highly relevant evidence. Mr Daniel Lydon-Williams, an early years senior officer, had provided a witness statement at an earlier stage, but was unable to attend the hearing. In any event, Ms Davies had made the most recent decisions on the Appellant's registration and would be well-placed to deal with questions about the internal decision-making process at the Respondent. The Tribunal admitted Ms Davies' witness statement.

Background

9. Damal After School Club was first registered with the Respondent on 3 March 2017 on the voluntary part of the Childcare Register. The after-school club currently provides a space for children between the ages of 8 and 15 to attend for up to three hours (4.30 to 7.30 pm) on Mondays to Fridays to receive tutor support to facilitate completion of homework. Damal After School Club operates from a location in Brent, NW London.

10. The Appellant was inspected on the following dates:

- On 9 April 2019, the inspection resulted in an outcome of 'not met with actions'. The actions raised required the Appellant to ensure that any person in regular contact with children who works on the premises where childcare is provided is suitable to work with children, including obtaining an enhanced DBS check through Ofsted and to ensure parents are aware of the registration system for the voluntary part of the childcare register including the age of children that are permitted to attend.
- On 30 April 2021, the inspection resulted in an outcome of 'not met with actions'. The actions required the Appellant to complete an enhanced DBS check for all staff to ensure that they are suitable to work with children and to maintain accurate attendance records for children at all times.
- On 6 November 2023, the inspection resulted in an outcome of 'not met with actions'. The Appellant was required to ensure that a member of staff with a paediatric first-aid qualification is on the premises and available at all times that children are present, complete and maintain relevant training and qualifications in line with the Ofsted requirements and provide Ofsted with the relevant information within the required timeframe such as changes to the manager and to people responsible for running the childcare.
- On 11 December 2023, the inspection resulted in an outcome of 'not met with enforcement'. By this stage, a number of actions were required of the Appellant, including the requirement to provide Ofsted with relevant information within the required timeframe such as changes to the manager and to people responsible for running the childcare and a requirement to ensure all those providing childcare had an enhanced DBS check with barred lists and to ensure that children did not have unsupervised contact with anyone who did not have a DBS check.
- On 16 July 2024, the first of the two inspections which took place after the appeal had been brought to the Tribunal, the outcome was 'not met with enforcement action' which included requirements relating to having a complaints policy to be shared with parents, improvement of knowledge and understanding of the Appellant's safeguarding policy,

ensuring the nominated individual understood their responsibilities and roles, including timely notifications to Ofsted.

- On 22 January 2025, the most recent inspection, the outcome was 'not met with enforcement action'. The Appellant was required to ensure improvement of knowledge and understanding of the safeguarding policy, to ensure records are complete for all children and to ensure contact details were recorded for all staff working at the setting.

11. In addition, on 2 February 2024, the Appellant's registration was suspended due to concerns about the lack of information about any nominated individual. The suspension was lifted on 15 February 2024 following receipt of the required information. At that point, Mr Mohammed was registered as the nominated individual for the Appellant.

12. On 15 February 2024, the Respondent sent the Appellant notice of intention to cancel the Appellant's registration. On 29 February 2024, the Respondent sent the Appellant notice of decision to cancel the Appellant's registration. On 1 March 2024, the Appellant sent an objection to the cancellation, which was then revoked to allow the Respondent to consider the Appellant's representations. The Appellant sent its representations on 2 April 2024 and on 8 May 2024, the Respondent sent the Appellant notice of decision to cancel the Appellant's registration and a separate response to the representations.

13. In the meantime, Mr Farah had indicated an intention to become the nominated individual of the Appellant on or around 15 June 2024. The application was not approved by the Respondent until December 2024 due to incomplete information from the Appellant/Mr Farah.

Legal framework

14. Section 32 of the Act provides for Ofsted to be responsible for the maintenance of two childcare registers: the first register contains providers registered for early years childcare for children from birth until 31 August following their fifth birthday. Registration is compulsory. The second register has two parts: part A contains providers who provide later years childcare for children between 5 and 8 years old. Registration is compulsory. Part B contains those providers who provide later years childcare for children aged 8 years old and over. Registration is voluntary.

15. Section 68 provides for Ofsted to cancel registration on any of the two registers, where it considers the provider has failed to comply with a requirement imposed by the Regulations. Section 66 provides for Ofsted to impose conditions on registration.

16. Schedule 5 of the Regulations sets out the requirements to ensure the provider is suitable to provide childcare and there is a nominated individual, who is an officer of the company, responsible for dealing with registration and to oversee the management of childcare.

17. Schedule 6 of the Regulations sets out the regulatory requirements with which providers on the voluntary part of the Childcare Register must comply (pursuant to Regulation 12). The regulatory requirements cover eight relevant areas and the information on what is required is publicly available on the gov.uk website. The applicable areas are child welfare, safeguarding, checking suitability, qualifications and training, premises and equipment, keeping records and providing information, giving parents information and giving Ofsted information.
18. Where the chief inspector decides to cancel the registration of a provider under section 68 of the Act, the provider has a right of appeal to the First-tier Tribunal (section 74 of the Act). The First-tier Tribunal (“the Tribunal”) can direct that the cancellation should not have effect. If it so directs, it may impose conditions on registration or it can confirm the decision to cancel registration.
19. The Respondent bears the burden of persuading the Tribunal that cancellation of registration is a proportionate and necessary decision as at the time of the appeal hearing. The Respondent must establish that the disputed facts upon which it relies to support its decision are more likely than not to have occurred.
20. The Tribunal determines matters afresh and ‘stands in the shoes’ of the Respondent in reaching its decision, for which it is entitled to take into account matters which have happened since the original decision was made.

Issues

21. Given the concessions made by the Appellant, that it had failed to comply with the regulatory requirements in the past, the focus of the appeal was the assessment of the suitability of the Appellant at the date of the hearing and its ability to comply and sustain compliance with the regulatory requirements.
22. The key issue for the Tribunal is whether the Respondent is able to demonstrate, on the balance of probabilities, that the decision to cancel the Appellant’s registration on the voluntary part of the childcare register remains proportionate and necessary.

The parties’ positions

23. The Tribunal had helpful skeleton arguments from both parties, as well as a completed Scott Schedule, for consideration in advance of the hearing. The Tribunal noted that the Appellant had the benefit of legal representation from the point when the appeal was filed. In opening submissions, the Appellant invited the Tribunal to consider conditions, if it concluded that the decision to cancel registration should not take effect. The Appellant’s position was that it accepted there had been historic concerns with the setting and that on all six of the previous inspections it had not been able to comply with all of the regulatory requirements. However, the Appellant submitted that it was not proportionate or necessary to cancel registration, given the changes implemented at the setting, including the change of the nominated individual to Mr Farah. Furthermore, as part of the proportionality assessment, the Tribunal was invited to take into account the impact cancellation of registration would have on

children who use the setting in a socially and economically deprived area of London.

24. The Respondent submitted that the decision to cancel the Appellant's registration should be confirmed, as the decision remains justified, reasonable and proportionate given the Appellant's poor history of compliance with the regulatory requirements, which are not onerous. The Respondent further submits that the evidence presented of the improvements made since the most recent inspections in July 2024 and January 2025 is not sufficient to engender trust and confidence that the Appellant is able to provide sustained levels of safe and effective childcare care in a well-led and well-governed setting.

Evidence

25. We considered all the documentary evidence that was presented in the hearing and supplementary hearing bundle and during the hearing (including four photographs of improvements made to the setting's physical areas). We also carefully considered the oral evidence from the six witnesses. We have not summarised the evidence, noting that both parties were taking their own notes, and the proceedings were recorded.

The Tribunal's conclusions with reasons

Inspection methodology

26. We found the three inspectors and the senior officer from Ofsted to be credible, consistent and fair witnesses. There was no evidence of bias on the part of Mrs O'Callaghan, which was a point put to her in cross examination on behalf of the Appellant. The Tribunal took into account, not only Mrs O'Callaghan's demeanour during her oral evidence, but also the communications she had engaged in with Mr Farah and Mr Mohammed, included in the hearing bundle. She was a fair witness, who remained clear, helpful and consistent in her oral evidence. We considered that the evidence from Mrs O'Callaghan was supported by the evidence from Ms Davies, who made clear that firstly, the Respondent takes a risk-based approach to the inspection of providers on the voluntary part of the childcare register. Therefore, the scheme of assurance relies on trust between the providers and Ofsted as Ofsted inspects approximately 10% of the providers on the voluntary part of the register. Furthermore, and of significance to Mrs O'Callaghan's role, is the fact that providers on the voluntary part of the childcare register are inspected in terms of technical compliance with the regulatory requirements, which are not particularly onerous. The Respondent does not conduct a quality audit or inspection of, for example, the content of tutorial support delivered by tutors at the provider. The reason this is of relevance is that the opportunities for Mrs O'Callaghan to demonstrate a biased approach would have been very limited, given the nature of the inspection, which did not provide room for subjectivity on the part of the inspector. Mrs O'Callaghan, in the same way as Mrs Nagoor and Ms Greene, was looking for assurance that the regulatory requirements were met, such as valid enhanced DBS checks for all members of staff or the existence of a safeguarding policy or the recording of contact details for all

children attending the provider. This point, pursued by the Appellant and by Mr Mohammed in his oral evidence, was not anchored in any of the evidence before us.

27. Broadly speaking, the Appellant accepted the failures and concerns set out by the Respondent after each of the six inspections since registration in 2017. The key factual dispute was really about the extent to which the Appellant now complied with the regulatory requirements and the differing evaluations of the Appellant's ability to comply and sustain compliance in the future.
28. However, it became clear, from the lines of questioning, that the Appellant had concerns about bias from Mrs O'Callaghan and there remained a difference of view as to the arrangements for the nominated individual, from 2021 onwards.
29. The Tribunal placed weight on the oral evidence from Ms Davies. In her view, there is no leeway – you are required to meet the regulatory requirements, they are set out in information which is readily available and they are not very onerous. The Tribunal noted that the inspection methodology is binary – a provider is either complying or not.
30. As a Tribunal, we considered that the overall regulatory history of the provider was highly relevant to our decision. Out of six inspections, the provider had not been in full compliance for any of them. Not only that, but repeated issues were raised with the Appellant, the Respondent would then complete a further inspection and find a similar issue of non-compliance remained. As an example, on 9 April 2019, the provider was required to ensure any person in regular contact with children who works on the premises where childcare is provided is suitable to work with children, including by obtaining an enhanced Disclosure and Barring Service (DBS) check. At the next inspection, on 30 April 2021, the same action was raised. Then, on 11 December 2023, the same action was raised again. Despite Mr Mohammed and Mr Farah's reasoning that on 11 December 2023, the DBS failure apparently related to a staff member who no longer worked at the provider, this caused the Tribunal concern as to the attitude towards the issue. This was the third time this issue had been raised with the provider, and it was minimised on the basis that the staff member no longer worked at the provider. This ignores the seriousness of the failure in a context where it had been raised before – that for some time a staff member did not have a valid enhanced DBS check in place, in a context where this action had been brought to the provider's attention twice before.

Nominated Individual

31. A significant issue for the Tribunal, which is part of the regulatory history of the Appellant and relevant to the Tribunal's assessment of ability to comply with the regulatory requirements now and in the future concerned the nominated individual history. On this issue, the Respondent's position, supported by evidence, was clear. The Respondent had not been informed of the death of the nominated individual between the date of the death in February 2021 and the inspection on 6 November 2023. This was a serious failing on the part of the Appellant as for a period of over two years Ofsted proceeded in the

knowledge that a nominated individual was in place. It had no cause for concern on this point as the Appellant provider's staff members/directors continued to communicate with the Respondent using the email address of the now deceased nominated individual. This, in and of itself, was a serious failing from the Appellant and one which is relevant to the Tribunal's assessment of the Appellant's attitude towards compliance. It is highly relevant because the process of voluntary registration is exactly that – it is voluntary and as a result, the relationship between Ofsted and the provider is one which is based on trust and transparency, not least because of Ofsted's risk-based approach to assurance. As Ms Davies explained, in her oral evidence, Ofsted knew nothing about the proposed nominated individual, who had been operating in the role without Ofsted's knowledge, for more than two years. As a result, it was not able to assure itself that the nominated individual was suitable for approval to fulfil the role and, in a framework of voluntary registration, which relies on trust between the Appellant and the Respondent, this failure was a serious one. The Tribunal concluded it was and was not satisfied with the oral evidence from Mr Mohammed on this point. The Tribunal did not find Mr Mohammed's evidence on this point reassuring and found it difficult to follow. It in the Scott Schedule, the Appellant accepted that it had failed to inform the Respondent of the death of its nominated individual. However, in oral evidence, the Tribunal considered that Mr Mohammed attempted to minimise this failure. This was important to the Tribunal as a key factor in its determination is the confidence the Tribunal now has in the provider's ability to comply with the regulatory requirements, which includes the level of insight demonstrated about past failures. Initially, in representations made to Ofsted before the appeal was brought, legal representatives on behalf of the provider (at which stage Mr Mohammed was the purported nominated individual) accepted that the Appellant failed to inform Ofsted of the death of its nominated individual (on 8 February 2021), which was described as a genuine oversight. It was also submitted that upon the nominated individual's death, none of the remaining directors of the setting were physically or mentally ready to be heavily involved in the Appellant. As such, the deceased nominated individual's cousin, Mr Mohamoud Ibrahim, was approached to assist. This is at odds with the oral evidence given by Mr Mohammed during the hearing when he explained that all of the directors were acting as nominated individuals. This was a different account, not set out previously. Furthermore, new details came to light – Mr Ibrahim had apparently spoken to Ofsted directly about his intention to act as the new nominated individual. There was no evidence that this occurred – there were no records to substantiate the explanation. Mr Mohammed stated, in his first witness statement, that Mr Ibrahim has informed him he had sent the required documents in the post, but there was no record of this. In any event, the Tribunal was concerned to understand that throughout his involvement, including through providing financial assistance to the Appellant, Mr Ibrahim travelled internationally and was not based in the UK. The Tribunal was even more concerned that the purported nominated individual, Mr Ibrahim, did not share his contact details with Mr Mohammed, which meant that if there had been a serious issue or incident at the Appellant, one which a nominated individual would need to know about, such as a safeguarding referral to the Local Authority Designated Officer ("LADO") or a complaint made by a parent to Ofsted, there would have been no way of immediately contacting the

nominated individual. This again, was especially pertinent in the context of a relationship of trust and transparency between the provider and Ofsted.

32. The Tribunal remained concerned about the issue of the nominated individual. Mr Farah, after several months of miscommunication and misunderstanding with his application, managed to become the new nominated individual by the end of 2024. However, the Tribunal noted that at the point of the hearing, Mr Farah explained that Mr Mohammed remained in a role as a coordinator and a consultant to him in his role as the nominated individual, manager, tutor and a director of the provider. This gave the Tribunal some cause for concern, given Mr Mohammed's approach to the role and its importance, in his oral evidence.
33. Mr Farah has previous experience as a tutor, at the provider and another provider, having fulfilled the role while studying and completing a degree in computer science at Brunel University. The Tribunal did not doubt Mr Farah's commitment to the work of the provider and his dedication to tutoring children and providing a space for children to complete their homework after the school day. However, the Tribunal noted that Mr Farah had taken on a significant amount of responsibility for someone with no previous management experience. He is now a director, the nominated individual and the manager for the provider, as well as continuing in his role as a tutor. He has been acting in the roles since approximately July 2024, some seven month or so before the hearing. For the first time and in response to questioning from the Tribunal, Mr Farah share his plans for the provider. He wished to employ an administrative assistant, a risk advisor and a coordinator at the very least. After completing his oral evidence, he returned on the final day of the hearing and updated the Tribunal, through Miss Myttas-Perris, that he also had a plan to employ an ex-school principal to provide advice. He explained that he envisaged Mr Mohammed taking on one the roles, which would likely be the risk advisor role. The Tribunal considered this highly relevant to its assessment of the provider's ability to reach compliance and remain in compliance with the regulatory requirements. There appeared to have been no real thought given to the staffing structure of the provider and the fact that Mr Farah would likely find it difficult to juggle a number of different roles until the date of the hearing. It appeared to the Tribunal that the first time Mr Farah had given any real thought to plans for the future was during his oral evidence. If he had thought about it in advance of the hearing, the Tribunal would have expected the details to be set out in one of the two witness statements or, in fact, in a further witness statement. This did not engender confidence that Mr Farah will have the requisite support and capacity to operate effectively in the role of nominated individual and manager and, crucially, to ensure compliance with the regulatory requirements at the present time.
34. As to confidence, the Tribunal noted Mr Farah's oral evidence – that he now considered the provider to be fully compliant with the regulatory requirements, after the most recent inspection of 22 January 2025, after which actions were issued to bring the provider into compliance. During the course of oral evidence, Mr Leary took Mr Farah to the provider's record of contact details for the children who attend the provider. This record was exhibited to Mr Farah's second witness statement (dated 4 February 2025). The record contained an

incomplete postcode for one child and the area did not correlate with the first line of the address (for the family). Mr Farah accepted that the information appeared incomplete and explained that it was an oversight. However, this was evidence submitted to the Tribunal by the Appellant as indicative of its compliance with the regulatory requirements and in a context where the provider currently delivers the after-school club provision for 15 children (as set out in the inspection toolkit from Mrs O'Callaghan's inspection toolkit evidence of 22 January 2025). The Tribunal further noted Mr Farah's oral evidence to explain why contact details for one child were missing. He had given the child an enrolment form to complete. Mr Farah explained that the provider expected children's parents to enrol them. In the Tribunal's view, this was an appropriate response as it should not fall to a child to be responsible for enrolment. Mr Farah explained that one child's contact details were missing as he had given the enrolment form to the child. This was because the child's mother did not have "the best English". Mr Farah identified it as wrong to allow the child to remain at the provider without complete contact details recorded. The Tribunal also had concerns with Mr Farah considering it appropriate to direct a child to complete an enrolment form.

Safeguarding

35. The Tribunal considered Mr Farah's oral evidence on safeguarding. In the Tribunal's view, Mr Farah attempted to minimise the concerns raised by Mrs O'Callaghan on his responses to safeguarding scenarios at the most recent inspection. He explained that he did not feel comfortable answering the questions, based on hypothetical scenarios, within earshot of students. However, he accepted that he did not raise this with Mrs O'Callaghan at the time and indeed this point was not set out in his second witness statement. In the Tribunal's view, this response demonstrated limited insight from Mr Farah as to the true issue – the level of safeguarding knowledge was not sufficiently robust for a designated safeguarding lead, nominated individual and manager, in a context where this issue had been raised before for action.

Proportionality

36. The Tribunal considered all of the evidence carefully, keeping the statutory test in mind at all times. The Tribunal considered that Ofsted had presented sufficient evidence that there are ongoing concerns as to the Appellant's ability to comply with the regulatory requirements and to sustain compliance. The evidence on these points was credible and persuasive, in a context where the Tribunal assessed past non-compliance in a holistic way, examining not only ongoing or new failures (relating to the inspections of July 2024 and January 2025), but also the positive changes made to the setting, including real improvements to the physical space and putting in place a contactable and known nominated individual with a day to day involvement in the setting.
37. We paid careful regard to developments since the decision to cancel registration. In all the circumstances, we were not able to conclude that the Appellant was suitable and had the capability to meet all the regulatory

requirements and to sustain compliance. The Tribunal took into account the impact of cancellation to the Appellant. The Tribunal accepted that the provider is working in an area of London which has higher level of social and economic deprivation. The Tribunal did not have any independent evidence sources, such as the views of parents or children who use the provider to help it contextualise the impact cancellation would have on the community which uses the club. Notwithstanding this, the Tribunal understood that there would be a direct negative impact to the children and parents who rely on the provider. The Tribunal also took into account that a decision to cancel the provider's registration on the voluntary part of the childcare register would likely mean that more than half of the children using the provider may no longer use it due to reliance on the financial contribution from the government.

38. The Tribunal carefully considered if conditions could be a proportionate measure to meet the nature of the ongoing compliance issues and avoid the need for cancellation of registration. The Tribunal did not consider that it could formulate adequate and workable conditions to meet the nature of the concerns. In effect, the Tribunal would be imposing conditions which require the Appellant to meet the not overly onerous regulatory requirements. Proportionality also involves consideration of workability, which includes the resources of the Respondent and, crucially, what the public interest requires in the circumstances. In this case, the public interest, which includes the statutory function of the Respondent, means that the Tribunal could not conclude that conditions would be an appropriate response to ongoing compliance failures over six inspections between 2017 and 2025 and no nominated individual formally registered with the Respondent for over two years.

Order

It is ordered that:

1. The appeal is dismissed.
2. The Respondent's decision of 8 May 2024 to cancel Damal After School Club Limited's registration on Part B of the General Childcare Register is confirmed.

Judge S Brownlee
District Tribunal Judge
Care Standards & Primary Health Lists Tribunal
First-tier Tribunal (Health, Education and Social Care)

Date issued: 04 March 2025

