

First-tier Tribunal Care Standards

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

NCN: [2025] UKFTT 00409 (HESC)

2024-01150.EY

Hearing held at the Royal Courts of Justice
on 19 and 20 March 2025

BEFORE
Tribunal Judge Faridah Eden
Specialist Member M Cann
Specialist Member J Heggie

BETWEEN:

Ilays Community Limited

Appellant

-v-

Ofsted

Respondent

DECISION

The application

1. This is an appeal brought by Ilays Community Limited (“the Appellant”) under section 74 of the Childcare Act 2006 against the decision by Ofsted to cancel its registration as a provider of childcare on non-domestic premises on the voluntary part of the Childcare Register, under section 68 of the Childcare Act 2006.

Attendance

2. The Appellant was represented by Mr Lawrence Jegede of OJN Solicitors. Its witnesses were Mr Mohamed Ayeh Bogoreh, nominated individual and Mr Awil Mohamed, managing director.
3. Ofsted was represented by Ms Louise Price, barrister. Its witnesses were Ms Nelam Pooni (Early Years Regulatory Inspector), Ms Pauline Nazarkadeh (Inspector), Ms Gillian Joseph (former Early Years Senior Officer), and Ms Jo Rowley (Early Years Senior Officer).

4. On the first day of the hearing, there were four judicial observers, Judge Jane Terry, Judge Ian Comfort, Judge Eva Whittall and Primary Health Lists Professional Member Lydia Morton. These judicial office holders attended for training purposes only and took no part in the panel's decision making.
5. Ogasso Abdourahman, a Somali interpreter, attended on the second day of the hearing to assist Mr Mohamed in giving evidence.

The hearing

6. The hearing took place on 19 and 20 March 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.
7. The Tribunal worked from a hearing bundle running to 354 pages. Both parties provided skeleton arguments in advance of the hearing. The Tribunal also had a Scott Schedule, to which both parties had contributed.

Procedural issues

8. The second witness statement of Pauline Nazarkardeh, dated 19 February 2025, was admitted as late evidence at a telephone case management hearing prior to the final hearing. During the hearing, the parties agreed to admit an email exchange between Mr Borogeh, Mr Mohamed and Ms Pooni dated January 2025.
9. Mr Jegede made an application for an adjournment at the outset of the hearing on the basis that the Appellant would like Ofsted to carry out a further inspection. This has not been possible because the premises are currently closed due to work being carried out by Thames Water. We refused the application.
10. Mr Jegede was asked at the telephone case management hearing on 3 March 2025 whether he wanted to make an application to postpone the hearing and he declined. He said that his instructions had changed since then. However, he made no application to the Tribunal prior to the hearing. The panel had been convened and Ofsted had attended with four witnesses, which amounted to a good deal of public expenditure. We were satisfied that the Appellant had been given sufficient opportunity to rectify any non-compliance and that it was appropriate for us to decide the appeal on the basis of the information available to us.

Legal Framework

11. 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.

12. 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.
13. 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.
14. 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.
15. 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.
16. Ofsted 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. Ofsted must establish that the disputed facts upon which it relies to support its decision are more likely than not to have occurred.
17. 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.

Background

18. The Appellant operates the Hooyoo Care Centre, which offers childcare for children aged between 8 and 15 years old, mainly between 3 and 7 p.m. The Appellant was registered with Ofsted on the voluntary register on 7 March 2019 as operating the Hooyoo Care Centre.
19. When Mr Bogoreh was appointed as nominated individual, Ofsted decided to carry out an inspection. This inspection took place on 22 August 2022 and the finding was that the Appellant did not meet the requirements for registration on the Childcare Register. The requirements which were not met were the areas of safeguarding, qualifications and training, and providing information to Ofsted. The Appellant was notified on 24 August 2022. Ofsted set the following actions: ensuring the registered person had a first aid qualification and a level 2 childcare qualification, having knowledge of child protection and safeguarding procedures, and improving knowledge of incidents and changes that needed to

be notified to Ofsted.

20. There was a further inspection on 8 June 2023. The finding was that the requirements were not met in the areas of safeguarding, qualifications and training, complaints, keeping records and information and giving information to parents. Ofsted set the following actions: ensuring the registered person had a level 2 childcare qualification, having an effective system in place to make sure everyone providing childcare is suitable, having a written complaints policy, having proper attendance records, keeping a record of the home address and telephone number of everyone working there during childcare hours and providing copies of the written policies to parents.
21. Ofsted inspected again on 1 November 2023. The finding was that the requirements were not met in the areas of safeguarding, keeping records and information and giving information to Ofsted. Ofsted set the following actions: ensuring the safeguarding lead has secure knowledge of safeguarding children, ensuring the days and times children attend childcare are recorded, ensuring records and information relating to children are available for two years, and improving the knowledge of incidents to be notified to Ofsted.
22. On 9 January 2024, Ofsted decided to cancel the Appellant's registration and sent a notice of intention on 9 February 2024. The Appellant sent some objections which were considered by Ofsted. Ofsted sent a notice of decision to cancel on 14 May 2024. The Appellant appealed on 10 June 2024.
23. There was a further inspection carried out by a different inspector on 5 July 2024 at which the finding was that the requirements were not met in the areas of safeguarding, keeping records and information and giving information to Ofsted. Ofsted set the following actions: building on the knowledge gained from child protection training, particularly the correct reporting procedures, developing the system for recording children's attendance and improving knowledge of the changes that need to be notified to Ofsted.
24. In January and February 2025, Ofsted attempted to arrange a further inspection, but this was not possible because the Hooyoo Centre was temporarily closed whilst Thames Water carried out works.

Evidence

25. We considered all the documentary evidence referred to above. We heard oral evidence from all of the witnesses.

The Tribunal's conclusions with reasons

Position of the parties

26. The Appellant did not dispute that there had been non-compliance. The Appellant's case was that most of the areas of non-compliance had been addressed and, in those areas where there were ongoing issues, there was substantial compliance and a plan to address the issues. The Appellant argued that Ofsted's decision was not proportionate.

27. Ofsted argued that the requirements for inclusion on the Voluntary Register are not onerous. The Appellant had been given multiple opportunities to comply at announced inspections. No good explanation had been given for the non-compliance. The fact that the requirements had not been met over a sustained period of time made it unlikely they would or could be met in the future. Although some requirements were met after inspections, issues cycled and re-emerged. This pattern showed a lack of understanding and ability to meet the requirements. Even if the non-compliance were not considered holistically and over a period of time, the Appellant was still not compliant at the last inspection.

Ofsted inspection and decision making

28. We found the written and oral evidence of the Ofsted witnesses to be helpful and persuasive. Ms Pooni explained that her inspection methodology was such that she asked questions about topics such as safeguarding in a range of contexts. This meant that she tested knowledge in different ways and was not looking for a rote answer to a particular question. She also explained that an inspection would normally not be announced, but because of the limited availability of Mr Bogoreh, she had exceptionally agreed a time and date for the inspections. She said that she had not taken the decision that the safeguarding requirement was not met due to small deficiencies. She said that Mr Bogoreh was unable to explain what should happen if there was an allegation against a member of staff or volunteer. In her view was this a fundamental area, such that his failure to answer meant that the requirement was not met.

29. Ms Nazarkadeh said that as regards safeguarding, she was not just concerned about whether there was a compliant policy but about whether Mr Bogoreh could apply the knowledge. Her concern was that he could not answer basic questions and relied on a member of staff to step in. She explained that her concern about the attendance record was that, although the format had been improved since the last inspection, the completed record did not match the children who were actually present.

30. Ms Joseph said that she took the decision to cancel taking into account the entire inspection history. She also gave weight to the fact that the local authority had been involved in helping the Appellant to make improvements and had raised concerns about the Appellant's compliance in its improvement plan (page 1147 of the bundle).

31. Ms Rowley said that she decided not to revise the cancellation decision because of the repeated breaches of the requirements and because by the time of the fourth visit, the Appellant was still failing to meet basic requirements. Although there was an improvement, it was insufficient. Her evidence was that partial compliance was not enough and that the Appellant needed to meet all of the requirements in order to remain on the register.

Appellant's response

32. We found Mr Bogoreh to be a credible witness who spoke honestly about the challenges of the role. He accepted that not all of the requirements of the

Voluntary Register were met and he needed to make changes. He said that he was trying to comply, but it was difficult for him because he also had another job and he would have liked more administrative support. He felt he could meet the requirements but said that his pace in doing so was slow. He was in his own words “overwhelmed”. He said that he was very nervous when being inspected and this made it difficult for him to answer questions. He felt that the inspectors were asking for a textbook answer. He felt he was not compromising the safety of the children and that Ofsted should have provided more assistance and support. He found the support from the local authority very helpful but had to cancel some visits because it was difficult to match availability with the advisor.

33. Mr Bogoreh said in oral evidence that he would be stepping down as nominated individual. He took on the role because he was approached due to his experience of working in adult education. It is a voluntary role and he gets expenses.
34. We did not find Mr Mohamed a helpful witness. His answers appeared to be evasive. Some of this may be explained by the language barrier. However, there still remained areas in which he did not give full and persuasive answers. He said that the Appellant had done everything requested of it and met the requirements. He went on to say that he did not know what the requirements were and that it was for Mr Bogoreh to understand the requirements and ensure compliance. He did not accept that Mr Bogoreh wished to leave and said this would happen in the future. His only plan for securing a replacement for the role of nominated individual was to advertise on a community board. He could not give a persuasive answer to why the Appellant needed to be on the Voluntary Register. He said he did not know whether parents were relying on state funding to pay for their places and did not think that state funding was an issue. He said that he wanted Ofsted registration so that there was oversight of the Hooyoo centre. He would not give a direct answer to the question of whether the Appellant could continue to operate the Hooyoo centre if the Ofsted registration was cancelled.

Our decision

35. We decided to confirm the cancellation of the registration for the following reasons, taken together.
36. First, we do not consider that the requirements of Schedule 6 of the Regulations are currently being met and we do not consider that there is any prospect that they can be met in the near future.
37. The last inspection identified significant failures in relation to safeguarding and in relation to the attendance record. These are both highly important areas. We are concerned about the argument put by the Appellant in closing submissions that Ofsted was “expecting perfection”. This attitude, in our view, demonstrates an underlying inability to understand the purpose of the registration requirements and the need for basic standards to be met.
38. Safeguarding is not an examination question, but about keeping children safe.

At the fourth inspection, Ms Nazarkadeh asked a straightforward question about an allegation being made against a staff member or a concern about a child. Mr Bogoreh was not able to answer and said he would have relied on the local authority to help him. This is not an acceptable answer because he would need to be able to take action on concerns which arose out of hours if necessary. This is particularly important for an after-school provision which is likely to be operating outside working hours.

39. The last inspection was the only inspection at which the attendance record could be properly tested because it was the only inspection at which children were present. Mr Bogoreh said that the attendance list was prepopulated with children booked on to the session and that there was a cross next to children who did not attend. He said that maybe Ms Nazarkadeh did not look at the cross. He did not address her comment that there were children present who were not on the list. The Appellant's case is that there is a suitable attendance register, which is in the form at page J45 of the bundle (dated June 2024). When asked by the panel to look at the sample attendance register at J45, Mr Bogoreh could not explain why there were only 7 pre-populated names for each date, when his evidence was that there are up to 12 children who attend. He thought that maybe the names would be written on. There did not appear to be any handwritten names on the J45 attendance register, it being possible to see the edges of the entries around the redaction.
40. The last inspection also identified a failure to keep Ofsted informed about a change in the setting's telephone number. Although this requirement would not have the same immediate implications for the safety of children as safeguarding and the attendance record, it is an important part of having an open relationship with Ofsted. We are concerned that Mr Bogoreh minimised this by saying that Ofsted had his number and an email address.
41. In respect of all three requirements, we consider that the failure is likely to be ongoing. We took into account the fact that it has not been possible to conduct a further inspection. However, safeguarding has been an issue at every inspection, indicating a systemic problem with the nominated individual retaining information in a way in which he can apply it in context. Mr Bogoreh's evidence was that he did not answer questions in the way he was expected to and did not give the answers the inspector was looking for. This is indicative of an underlying attitude that safeguarding is about knowledge, not application. As regards the attendance record, Mr Bogoreh could not answer questions about the attendance record at the hearing, indicating that a robust system is not yet in place.
42. As regards notification to Ofsted, Ms Nazarkadeh expressed concern in oral evidence that the Appellant had not notified Ofsted that the setting was closing whilst Thames Water carried out work. We admitted the email exchanges referred to above in response to that oral evidence. These show that Mr Mohamed notified Ms Pooni that the centre would be closed on 24 January 2025 in response to her email of 20 January trying to arrange an inspection. Her email also said that the landline number did not connect to the right people.
43. In oral evidence, Mr Bogoreh said that Thames Water started the work on 19

January and the decision to close was taken on 24 January because of an instruction from the landlord. Even if the decision to close was taken independently of the contact from Ofsted, we would have expected the Appellant to keep Ofsted notified, particularly when the estimate for the works increased from the original two weeks. Ms Nazarkadeh's second statement also states that a no contact letter had to be sent because the landline number was a wrong number and Mr Bogoreh was not answering his mobile telephone number. This shows a continued failure to keep Ofsted notified of key information.

44. We also take into account that Mr Bogoreh is, in his own evidence, struggling to find the resources to comply with the requirements. He said that he has additional administrative support, but he was honest in oral evidence about finding the role of nominated individual to be too much. He said that he was going to resign. He also wanted to resign after the first inspection (page 130). It is clear to us that, without wishing to criticise Mr Bogoreh, he does not currently have the time or resources to devote to the role of nominated individual. In oral evidence, Mr Mohamed said that compliance was entirely for Mr Bogoreh. He did not take seriously Mr Bogoreh's wish to resign or have a coherent plan for finding a nominated individual who would be able to comply.
45. We consider that Mr Bogoreh is not able to comply with the requirements and there is no plan to put in place an alternative nominated individual. Without a capable nominated individual, the Appellant will not be able to rectify its non-compliance.
46. Secondly, we agree with Ofsted that the history of non-compliance is indicative of an inability or unwillingness to bring about sustained improvement. Safeguarding has been an issue in all of the inspections which, in our view, shows that Appellant does not understand the underlying principles and importance of safeguarding. The nominated individual was able to make some progress in some areas, but repeated inspections showed that he then demonstrated weakness in other areas.
47. There are other areas where progress has not been sustained. The Appellant was able to show the inspector a complaints policy at the first inspection but by the time of the second inspection this was no longer available. Ofsted's evidence was that the nominated individual tried to write the policy during the inspection. His evidence was that he tried to show the inspector the IT platform he was using to produce the policy. Either way, the policy was not ready and available for inspection. The issue of the attendance record has been ongoing. This was not checked at the first inspection, not provided at the second inspection, not suitable and partially locked away at the third inspection and not suitable at the fourth inspection (which was the only inspection with children present). The Appellant could not explain to the panel how the attendance register at J45, which is supposed to be compliant, would operate.
48. We also note that the London Borough of Enfield's focus improvement plan at page 147 of the bundle shows a similar pattern of the Appellant starting to engage but not sustaining any improvement. Visits were put in place and cancelled by the Appellant. Enfield was still waiting for copies of written policies.

The Appellant had not booked staff into safeguarding training as agreed. Staff did not attend Prevent training as agreed. The required child protection information was not displayed when the Enfield team visited. The plan states that there are ongoing issues about the attendance record and the retention of information about children and parents. The nominated individual is said to have poor knowledge about when to notify Ofsted of changes. Staff personnel files did not meet requirements and staff details were not being kept.

49. We took into account that the author of the improvement plan was not available to give evidence and Ms Joseph said she did not speak to the author once she had received the plan. However, the Appellant did not disagree at the hearing with any of the comments written in the improvement plan or ask that anyone from the London Borough of Enfield be available to give evidence.
50. We note that all of the inspections were announced. The Appellant had time to prepare and could have been expected to make sure all of the relevant documentation was in place. We agree with Ofsted that the requirements of the Voluntary Register are basic. There was no assessment of the quality of care offered. This was an assessment of the minimum necessary in order to run a setting.
51. We conclude that the repeated failures to meet requirements at inspections, taken with the ongoing action points in the Enfield improvement plan show that the Appellant is not able to carry out the necessary actions for a sustained improvement.
52. Finally, we go on to consider the proportionality of the decision. It was difficult to ascertain the effect of cancelling the registration. The Appellant can continue to operate the Hooyoo Centre even if the registration is cancelled. There was some discussion at the hearing about the impact on parents who use state funding for childcare. This funding is provided through tax free childcare for working parents for primary school aged children and partial reimbursement for working parents in receipt of Universal Credit. This financial assistance is only available to parents who use Ofsted approved childcare providers.
53. It is likely that at least some of the 7 families who use the Hooyoo Centre will use this funding to pay for their place. The contract at page J41 shows a monthly cost of £950 which is a significant cost for an average earner. It is also likely, given the description of the Appellant in Mr Mohamed's witness statement that the Hooyoo Centre provides an important place to go after school for young people who might otherwise not have proper supervision. Mr Bogoreh's objection to the notice of intention to cancel at page I137 states that "the parents who rely on our service are single parents on low income (care workers). There are not many affordable childcare providers in the area. By cancelling our registration means that those parents will struggle to find affordable childcare and as a result could be out of work.
54. However, the Appellant has not provided any details of the users of the Hooyoo Centre. Mr Mohamed flatly denied that any government funding was in issue, although he may have misunderstood how the system works. The Appellant is the only party in a position to provide information about the users of the Hooyoo

Centre. Without that information, it is difficult to weigh the impact on parents in assessing proportionality.

55. Even taking the possible impact on families at its highest (that all of the families receive Universal Credit and can claim back most of the cost of the care), our findings remain that the Appellant is not compliant and has no prospect of becoming compliant in the near future. The past history shows systemic difficulties which have not been addressed. We disagree with the Appellant that the breaches are minor and that the children are safe. This assertion in itself demonstrates a lack of understanding of the underlying purpose of the requirements.
56. In closing submissions, Mr Jegede indicated that the Appellant would be prepared to accept conditions. However, we could not formulate any conditions which did not simply amount to a need to comply with the requirements of the voluntary register. Mr Jegede proposed that the Appellant should be given three more months to comply or make sure there was a nominated individual with direct experience. However, the Appellant has already been given multiple opportunities to comply. Therefore, we do not consider the imposition of conditions to be a workable option.

Order

It is ordered that:

1. The appeal is dismissed.
2. The Respondent's decision of 14 May 2024 to cancel the Hooyoo Care Centre's registration on Part B of the General Childcare Register is confirmed.

Judge Faridah Eden

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

Date Issued: 08 April 2025