

# First-tier Tribunal Care Standards

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

2024-01307.EY

Neutral Citation Number: [2025] UKFTT 00980 (HESC)

Hearing held at the Royal Court of Justice  
on 1 to 4 and 28 July 2025

BEFORE  
Tribunal Judge O'Neill  
Specialist Member J Heggie  
Specialist Member J Hutchinson

BETWEEN:

Kreative Learning Childcare Limited

Appellant

-v-

Ofsted

Respondent

### DECISION

#### 1. THE APPEAL

- 1.1 This appeal is by Kreative Learning Childcare Limited (“**the Appellant**”) against a decision by Ofsted (“**the Respondent**”) dated 24 October 2024, to refuse the Appellant an additional premises to its registration as a provider of childcare on non-domestic premises.
- 1.2 On 7 November 2024, the Respondent issued the Appellant with a notice of intention to cancel its registration and has subsequently issued a notice of decision to cancel its registration. This appeal relates only to the Respondent’s decision to refuse the Appellant an additional premises. There are separate proceedings in which the Appellant has appealed the notice of decision to cancel the registration of the Appellant. Those proceedings are under appeal number 2025-01371.EY (“**the Cancellation Proceedings**”).

#### 2. ATTENDANCE

- 2.1 The hearing of the appeal was conducted as a hybrid hearing, but the parties, the witnesses and the Tribunal Panel attended each day in person.

- 2.2 The Appellant was represented by Ms Akisia Divine, who we understand to be the Appellant's company secretary. Ms Charlene Henry, the Appellant's sole director and Nominated Individual was the Appellant's only witness.
- 2.3 The Respondent was represented by Ms Rachel Birks and Ms Catriona Thomson of Ward Hadaway LLP. The Respondent's witnesses were:
- (a) Ms Pippa Clark, Early Years Regulatory Inspector.
  - (b) Ms Elizabeth Mackey, Early Years Senior Officer (now retired).
  - (c) Ms Maria Conroy, Early Years Senior Officer.

### **3. EVIDENCE**

- 3.1 We were provided with a bundle which was paginated in sections from A to K. Including index pages and cover sheets the bundle had 323 electronic pages.
- 3.2 A substantial amount of late evidence was produced by both parties during the hearing. This was largely unopposed and was admitted. The documents admitted are set out in the supplemental bundle sent to the Tribunal by the Respondent on 10 July 2025.
- 3.3 In this decision, references to documents will be to the pagination numbers unless stated otherwise using "SB" to indicate the supplemental bundle.
- 3.4 We carefully considered all the written evidence submitted to the Tribunal in advance and the oral evidence given to us at the hearing even if we do not mention it. We used the hearing to amplify and update parts of the written evidence and only record such of the oral evidence as is necessary to explain our decision.

### **4. BACKGROUND AND KEY CHRONOLOGY**

- 4.1 The Appellant has been registered as a childcare provider on non-domestic premises with the Respondent since 6 March 2023. The Appellant operates two settings; Kreative Learning Childcare and Kreative Learning Pre-School.
- 4.2 On 20 May 2024, the Appellant applied to open a third setting, Kreative Learning Babies.
- 4.3 On 5 September 2024, the Respondent undertook an approval visit to the proposed third setting, Kreative Learning Babies ("**the Approval Visit**").
- 4.4 On 18 September 2024, the Respondent completed an unannounced visit to Kreative Learning Pre-school.
- 4.5 On 24 September 2024, the Respondent served the Appellant with a notice of intention to refuse the registration of the additional premises for Kreative

Learning Babies (“**the Notice of Intention**”). This was objected to by the Appellant on 7 October 2024 and on 24 October 2024, the Respondent made its decision not to uphold the objection to the Notice of Intention and served the Appellant with its notice of decision (“**the Notice of Decision**”). The reasons set out in the Notice of Decision, were, in summary:

- (a) The Respondent was not satisfied that the Appellant had demonstrated it was able to meet and continue to meet the prescribed requirements for registration; and
  - (b) The Respondent had significant concerns about Ms Henry’s honesty and that she had failed to act with integrity in her dealings with the Respondent.
- 4.6 The Appellant issued these proceedings on 8 November 2024. The Respondent has defended the proceedings for substantially the same reasons as set out in the Notice of Decision.
- 4.7 The Appellant contends that the Respondent’s position is unfair, unreasonable and procedurally flawed; that is unsupported by evidence and based on inconsistencies.

## 5. LEGAL FRAMEWORK

### The Legislative Provisions

- 5.1 The relevant legislative provisions are as follows.
- 5.2 Section 34, Childcare Act 2006 (“**CA 2006**”) set out the general requirement for early years providers on non-domestic premises to be registered. Section 34 CA 2006 provides.

*(1) A person may not provide early years provision on non-domestic premises in England unless—*

*(a) the person is registered in the early years register as an early years provider other than a childminder (whether or not the provision is or includes early years childminding), or*

*(b) the provision is early years childminding, none of which is provided on domestic premises, and the person is registered as an early years childminder without domestic premises—*

*(i) in the early years register, or*

*(ii) with an early years childminder agency.*

- 5.3 Section 39, CA 2006, imposed an obligation on the Secretary of State to issue regulations in accordance with section 43 CA 2006 to specify welfare requirements. Section 39, CA 2006 provides:

*(1) For the purpose of promoting the well-being of young children for whom early years provision is provided by early years providers to whom section 40 applies, the Secretary of State must—*

*(a)...*

*(b) by regulations specify in accordance with section 43 such requirements as he considers appropriate governing the activities of early years providers to whom section 40 applies (“welfare requirements”).*

*(2) The learning and development requirements and the welfare requirements are together to be known as “the Early Years Foundation Stage”.*

- 5.4 Section 40, CA 2006 imposes an obligation on an early years provider to comply with the welfare requirements. Section 40, CA 2006:

*(1) This section applies to—*

*(a) early years providers providing early years provision in respect of which they are registered under this Chapter, and*

*(b) early years providers providing early years provision in respect of which, but for section 34(2) (exemption for provision for children aged [2] or over at certain schools), they would be required to be registered under this Chapter.*

*(2) An early years provider to whom this section applies—*

*(a) must secure that the early years provision meets the learning and development requirements, and*

*(b) must comply with the welfare requirements.*

- 5.5 Section 43, CA 2006 provides:

*(1) The matters that may be dealt with by welfare regulations include—*

*(a) the welfare of the children concerned;*

*(b) the arrangements for safeguarding the children concerned;*

*(c) suitability of persons to care for, or be in regular contact with, the children concerned;*

*(d) qualifications and training;*

- (e) the suitability of premises and equipment;*
- (f) the manner in which the early years provision is organised;*
- (g) procedures for dealing with complaints;*
- (h) the keeping of records;*
- (i) the provision of information.*

5.6 The Early Years Foundation Stage (Welfare Requirements) Regulations 2012, SI 2012/938 (**"the Welfare Requirements Regulations"**) are the regulations issued under section 39(1)(b) and in accordance with section 43 CA 2006. Regulation 8A provides:

*(1) This regulation applies if a registered early years provider ("P") proposes to provide early years provision ("the proposed provision") on additional premises.*

*(2) If the proposed provision is early years childminding [in respect of which the person is required to be registered by section 33(1) or 34(1)(b) of the Act] and the additional premises are non-domestic premises, P must—*

*(a) demonstrate to the relevant person that the requirements in paragraphs 7 to 9 of Schedule 1 to the 2008 Regulations will be satisfied, and are likely to continue to be satisfied, in relation to the proposed provision; and*

*(b) send to the relevant person the information in paragraphs 18 and 21 to 23 of Schedule 1 to the 2008 Regulations.*

*(3) If the proposed provision would be early years childminding, at least some or all of which is on domestic premises, but for section 96(5) of the Act, P must—*

*(a) demonstrate to the relevant person that the requirements in paragraphs 5 to 8, 13 and 14 of Schedule 2 to the 2008 Regulations will be satisfied, and are likely to continue to be satisfied, in relation to the proposed provision; and*

*(b) send to the relevant person the information in paragraphs 24 to 26 of Schedule 2 to the 2008 Regulations.*

*(4) If the proposed provision does not fall within paragraphs (2) or (3), P must—*

*(a) demonstrate to the relevant person that the requirements in paragraphs 5 to 8 and 13 of Schedule 2 to the 2008 Regulations will be satisfied, and are likely to continue to be satisfied, in relation to the proposed provision; and*

*(b) send to the relevant person the information in paragraphs 25 and 26 of Schedule 2 to the 2008 Regulations.*

*(5) In this regulation—*

*“the 2008 Regulations” means the Childcare (Early Years Register) Regulations 2008; and*

*“additional premises” means premises which the relevant person has not already approved as suitable for the purposes of paragraph 11A of Schedule 1 or paragraph 14A of Schedule 2 to the 2008 Regulations in relation to P.*

- 5.7 Paragraph 5 to 8 and 13 of Schedule 2 to Childcare (Early Years Register) Regulations 2008 (**“the Early Years Register Regulations”**) provide:

***Requirements relating to the applicant***

*(5) The applicant has carried out an assessment to identify any risks to the health or safety of children for whom early years provision is to be provided, arising from—*

*(a) the relevant premises (including the means of access to and exit from those premises),*

*(b) any equipment there, and*

*(c) the activities to be provided there.*

***Requirements relating to the manager***

*(6) The applicant has appointed an individual to manage the early years provision (“the manager”).*

*(7) The manager is suitable to care for young children.*

*(8) The applicant has, in respect of the manager (if not the applicant)—*

*(a) obtained an enhanced criminal record certificate, or*

*(b) provided an application for an enhanced criminal record certificate to the relevant person where the provision is early years provision which would be early years childminding but for section 96(5) of the Act.*

***Requirement for first aid qualification***

*(13) At least one person who is to care for children for whom the early years provision is to be provided has an appropriate first aid qualification.*

- 5.8 Sitting alongside the Welfare Regulations are the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 (**“the Common Provisions Regulations”**). By regulation 2 of the Common

Provisions Regulations, an “additional premises application” means an application under regulation 8A of the Welfare Regulations.

5.9 Paragraph 7C of the Common Provisions Regulations provides:

*(1) This regulation applies if the relevant person receives an additional premises application.*

*(2) If the relevant person considers that the additional premises, and the arrangements for the childcare proposed on the additional premises, are suitable, the relevant person must approve the additional premises application.*

*(3) If the relevant person considers that the additional premises, or the arrangements for the childcare proposed on the additional premises, are not suitable, the relevant person must refuse the additional premises application.*

5.10 Paragraph 7D, Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008:

*A determination by the Chief Inspector to refuse an additional premises application is prescribed for the purposes of section 74(2) of the Act.*

5.11 Section 74(2), CA 2006:

*An applicant for registration or (as the case may be) a registered person may also appeal to the Tribunal against any other determination made by the Chief Inspector under this Part which is of a prescribed description.*

### **The Burden and Standard of Proof**

5.12 In these proceedings the burden is on the Appellant to demonstrate suitability, rather than the Respondent being required to prove that the Appellant is unsuitable.

5.13 The standard of proof is the same as in civil proceedings, it is for the Appellant to discharge on the balance of probabilities.

5.14 The Tribunal must make its decision based on all the evidence available to it as at the date of the hearing. The Tribunal is not restricted to evidence available to the Respondent when the Notice of Decision was issued. The Tribunal is in effect looking at the decision afresh, it is not reviewing the Respondent's decision-making process.

### **The Issues**

5.15 The issues for determination by the Tribunal were those set out in the Scott Schedule at page G1.

## 6. FINDINGS OF FACT

### **Issue One: Mrs Henry's honesty and transparency regarding her arrest and involvement with the police.**

6.1 It was not in dispute that:

- (a) Mrs Henry had been arrested on 7 April 2018 and 6 January 2021; and
- (b) These two arrests were in relation to matters which form part of the criminal charges against Mrs Henry which she is due to stand trial for in March 2026.

6.2 Mrs Henry accepted that she was aware, at all material times, she had been arrested on 7 April 2018.

6.3 As regards the arrest on 6 January 2021, Mrs Henry's evidence was that she was not aware at the time of arrest that she had been arrested and she did not become aware until sometime after the unannounced visit on 18 September 2024 after the Respondent commenced enforcement action. Mrs Henry explained that she did not believe she had been arrested because she was very unwell at the time of the arrest, had not been placed in handcuffs and because she was given the option to attend the police station at another time. She accepted that she was advised at the station by a duty solicitor, has been legally represented since that date and received notification that she was being charged sometime around May or June 2023. When she received the charge sheet in the post, she believed it had been sent to her by mistake. She claimed not to have been placed in a cell whilst at the police station. She explained that she was with the nurse in the medical room most of the time.

6.4 We accept that it is possible that, at the time of the arrest on 6 January 2021, Mrs Henry did not realise she was being arrested. Mrs Henry was unwell at the time, and so quite possibly distracted and she was not placed in handcuffs. We therefore accept that she attended the police station believing she was doing so voluntarily. But we are not persuaded that this misconception pertained during Mrs Henry's time at the police station. Mrs Henry received legal advice whilst at the police station and it is inconceivable that any solicitor would not have clarified Mrs Henry's status with her before answering questions in interview. In any event, the custody sergeant would have had to have authorised Mrs Henry's detention whilst she was at the police station to ensure it was lawful and proportionate and this would have involved the officer confirming that Mrs Henry was arrested and the reason for the arrest. It is simply not probable that Mrs Henry proceeded under a misapprehension as to her detention status whilst at the police station. We therefore find that by the time Mrs Henry left the police station on 6 January 2021, she was aware that she had been arrested. Accordingly, when during the approval visit on 5 September 2024, Mrs Henry told Ms Clark that she had not been arrested she was providing information she knew not to be true.



- 6.5 During the approval visit on 5 September 2024, Ms Clark asked Mrs Henry a number of further questions, most of which were not in dispute. Ms Clark's evidence (paragraph 31 of her statement, page I36) is that she asked Mrs Henry *"if she had ever had any involvement with the police before. She said no"*.
- 6.6 In her oral evidence, Mrs Henry disputed that the question was put in this way. Mrs Henry's evidence was that Ms Clark asked her if she was involved with the police (i.e. currently involved). Mrs Henry answered no because she did not believe that she had any current involvement with the police. She stated that she had not spoken with a police officer since she left the police station on 6 January 2021 and the only person she was involved with was her solicitor.
- 6.7 In our judgement, the purported distinction advanced by Mrs Henry was nothing more than a transparent attempt to obscure the truth of the situation. Mrs Henry accepted that she had current involvement with her solicitor, and there would be no need for this if Mrs Henry did not have ongoing involvement with the police. It is therefore clear that Mrs Henry knew she had ongoing involvement with the police. She had by this point been charged and was awaiting her trial date.
- 6.8 In any event, we were not persuaded by Mrs Henry's evidence. We preferred Ms Clark's evidence over Mrs Henry's evidence, and we accepted Ms Clark's evidence. Our reasons were:
- (a) Ms Divine did not challenge Ms Clark on her evidence on this point in cross examination. We reminded Ms Divine multiple times that if any of the Respondent's witnesses' evidence is disputed, she must challenge them on the point by putting questions in cross examination.
  - (b) Ms Clark's witness statement was corroborated by her contemporaneous notes (SB page 56).
  - (c) Ms Clark's statement was corroborated by Ms Mackey's evidence.
- 6.9 We are therefore satisfied that Ms Clark did ask Mrs Henry whether she had ever had any involvement with the police before, and that Mrs Henry answered, no. Mrs Henry's answer was not truthful because she had been arrested twice before (i.e. in 2018 and 2021).
- 6.10 Ms Clark's evidence was that she explained to Mrs Henry that she had received information on her background checks regarding something dated January 2021, she asked Mrs Henry what she thought this might be and Mrs Henry said this was an allegation of theft and nothing came of it (paragraph 32 of her statement, page I36). At paragraph 34 of her statement (page I37), Ms Clark states: *"Mrs Henry stated that nothing came of it, and she has heard nothing about it since. I asked her what the outcome was. She said it was no further action"*. Mrs Henry did not accept that she said nothing came of it or that there

was no further action. For the same reasons as set out at paragraph 6.8 above, we preferred Ms Clark's evidence over Ms Henry's.

- 6.11 We are therefore satisfied that Mrs Henry told Ms Clark that nothing had come of the 2021 allegation, that she had heard nothing about it since, and that the police outcome was no further action. This information was false because by 5 September 2024 Mrs Henry had been charged and she was fully aware and understood that she had been charged.
- 6.12 We were satisfied that Mrs Henry was fully aware and understood that she had been charged because:
- (a) On Mrs Henry's own evidence, she received notification that she had been charged by post in or around May or June 2023.
  - (b) Mrs Henry's evidence, that she believed this to be a mistake, was not credible. Mrs Henry was legally represented, and it is inconceivable that she would not have clarified the position with her legal team.
  - (c) Mrs Henry had an original trial date in September 2023. At page I59 is a witness statement from DC Laura Hothersall who was the arresting officer on 6 January 2021. At page I60, DC Hothersall states that Mrs Henry's first trial was set for September 2023, this was adjourned to September 2024, and then adjourned again to March 2025. Mrs Henry was unable to confirm these dates but did confirm the trial is now set for March 2026. In the absence of any evidence to the contrary, we accepted DC Hothersall's evidence. Even if Mrs Henry had initially believed that the charges were mistake, it is not credible to suggest that this misconception could have persisted past September 2023 i.e. the original date for the trial. Mrs Henry would have been in contact with her lawyers either to prepare for her trial and/or to deal with the adjournment of it. Mrs Henry's lawyers could not have taken actions on her behalf without instructions from her. She would have to have been in contact with her lawyers to provide those instructions and by virtue of the fact that the case was going to trial would have known there was no mistake.
  - (d) Mrs Henry gave inconsistent evidence. She first stated that that she believed the charges to be a mistake. Later Mrs Henry stated that she did not believe she had been charged because her understanding was that charged meant convicted and she had not been convicted of any offence. Mrs Henry's inconsistent evidence caused us to doubt the credibility of her evidence as a whole.
- 6.13 The Respondent invites the Tribunal to conclude that Mrs Henry has not been honest and transparent during the appeal and the appeal hearing. In particular:
- (a) The Appellant's appeal form dated 28 October 2024 stated: *"I was not arrested at my home; I voluntarily attended the police station to answer questions."* Mrs Henry explained in oral evidence that she now

accepted that she had been arrested on 6 January 2021 and had known this since around the time the Respondent commenced enforcement action. Accordingly, the information set out in the appeal form was not truthful. Mrs Henry did not offer a reason to explain this. We therefore accept that Mrs Henry was not honest when she completed the appeal form.

- (b) In the Appellant's response to the Scott Schedule, it states: "*Mrs Henry fully disclosed her arrest and involvement with the police via her barrister as early as June 2024*". In oral evidence Mrs Henry accepted that this was not true. Mrs Henry did not offer a reason to explain this. We therefore accept that Mrs Henry was not honest when she completed the Scott Schedule.

**Issue Two: Mrs Henry's honesty regarding Kent Fire Service visiting the premises, including stating that they were satisfied that the premises met fire safety legislation**

- 6.14 It was not in dispute that during the approval visit on 5 September 2025, Ms Clark conducted a check of the premises to ensure the premises were safe, suitable and compliant with the relevant requirements, including health and safety, and fire safety requirements.
- 6.15 It was also not in dispute that Ms Clark asked Mrs Henry about fire safety and Mrs Henry told her that the fire service had been and visited the premises and were happy with everything, including the electric heaters, fire signage and fire exits.
- 6.16 In her oral evidence under cross examination, Mrs Henry explained that the fire service had not been out to visit the premises whilst the Appellant had been in occupation. She explained that during the lease negotiations with the landlord, the landlord had informed her that the fire service come out and checked the property and had deemed the building safe to operate as a nursery. Mrs Henry's evidence was that she had explained this to Ms Clark during the approval visit.
- 6.17 Mrs Henry was asked why she had not mentioned this in any of her written evidence. She agreed this was a flaw in her evidence but stated that she did not think she needed to explain the source of her information. She said that she had not raised this information earlier because she had not been asked before now.
- 6.18 We were not persuaded by Mrs Henry's evidence. In our judgment, her evidence on this point was a complete fabrication. Our reasons are:
  - (a) The first time that this disputed conversation with the landlord was raised was in Mrs Henry's oral evidence whilst under cross examination. The Appellant had multiple opportunities to raise the

issue prior to Mrs Henry giving oral evidence but did not. We refer to the following:

- (i) The Notice of Intention dated 24 September 2024 stated: *“In addition, during the approval visit you stated that the Kent fire service had carried out a visit on the premises and were satisfied the premises met fire legislation... You were unable to provide documents to support the visit from Kent Fire Service, therefore we cannot be assured that this visit took place”* (page I124).
- (ii) The Appellant’s response and objection to the Notice of Intention (which was prepared by Mrs Henry) is at page I127. Mrs Henry does not mention the alleged conversation with the landlord; Mrs Henry does not attempt correct Ms Clark’s version of events as set out in the Notice of Intention.
- (iii) The Notice of Decision dated 24 October 2024 stated: *“In addition, during this visit, you were asked if the premises had been checked by the fire service, you stated they had checked everything and were happy with every-thing, including the fire exits... You were also unable to provide a report from the fire service visit you said you had prior to the approval visit and said you would email the report following the visit”* (page I26).
- (iv) The Appellant’s response to the Notice of Decision is set out in the Appeal Application Form and Grounds for Appeal dated 8 November 2024 (page H5 to H11). These documents make no mention of Mrs Henry’s alleged conversation with the landlord, and they do not attempt correct the version of events as set out in the Notice of Decision.
- (v) The Scott Schedule produced by the parties is at page G1. Mrs Henry confirmed in her oral evidence that she was involved in the drafting of this document and had approved it. The Appellant’s response to issue two makes no mention of Mrs Henry’s alleged conversation with the landlord.
- (vi) Mrs Henry’s first witness statement is page J1. At page J4, Mrs Henry stated:

*“Contrary to Ofsted’s claims:*

- *I never misled Ofsted about fire safety. The fire safety assessment was carried out following Ofsted’s request—which is normal regulatory practice.*
- *Ofsted falsely claimed that Kent Fire & Rescue had no record of visiting my premises, yet I acted on all necessary recommendations made by MD Fire Safety Ltd.*

- *Ofsted used minor fire safety adjustments—which were already in progress—as a pretext for refusal, despite the EYFS allowing for corrective measures post-approval”.*

(vii) Mrs Henry’s first witness statement contains no mention of her alleged conversation with the landlord or that she relayed this alleged conversation to Ms Clark at the approval visit on 5 September 2024.

(viii) On day three (3 July 2025) of the four-day appeal hearing, the Appellant produced a second witness statement. The circumstances pertaining to the production of this witness statement are explained further below under Issue Four. Mrs Henry’s second witness statement is in the supplemental bundle at page 72, it makes no mention of her alleged conversation with the landlord or that she relayed this alleged conversation to Ms Clark at the approval visit on 5 September 2024.

(b) Had either of the conversations raised by Mrs Henry in cross examination actually happened (i.e. the alleged conversation with the landlord, and Mrs Henry’s alleged conversation with Ms Clark where she informed Ms Clark of the landlord conversation), she would have raised them earlier and in one of the above documents. To suggest otherwise is not credible. Mrs Henry’s explanation that she had not raised this information earlier because she had not been asked before is simply not true. The Respondent made clear its position in the Notice of Intention, the Notice of Decision, its Response to the Appeal, the Scott Schedule and Ms Clark and Ms Mackey’s witness statements. Accordingly, we are not persuaded that either of the conversations happened and we reject Mrs Henry’s evidence. We accept Ms Clark’s evidence.

(c) In addition to the above, we preferred Ms Clark’s evidence over Mrs Henry’s evidence because:

- (i) Ms Divine did not challenge Ms Clark on her evidence on this point in cross examination.
- (ii) Ms Clark’s witness statement was corroborated by her contemporaneous notes (SB page 56).
- (iii) Ms Clark’s statement was corroborated by Ms Mackey’s evidence.

(d) For these additional reasons, we accepted Ms Clark’s evidence.

6.19 Given the above findings, we further find that when Mrs Henry told Ms Clark that the Kent Fire Service had checked the property, she was not being truthful. Mrs Henry knew that the Kent Fire Service had not been out to inspect the property either before or after the Appellant took up occupation. The information she provided to Ms Clark was false and she knew it to be so.

6.20 The Respondent invites the Tribunal to conclude that Mrs Henry has not been honest and transparent during the appeal and the appeal hearing. In particular:

- (a) The Appellant's response to issue two in the Scott Schedule is at page G2 and it stated:

*"Mrs Henry clearly and truthfully stated that Kent Fire Service had visited and were satisfied that the premises met required fire safety legislation. She subsequently provided Ofsted with an email from the fire safety officer confirming this position".*

- (b) Mrs Henry accepted in her oral evidence that she had not provided the Respondent with an email from the Kent Fire Service and that the response to issue two in the Scott Schedule was incorrect.

- (c) The Respondent submitted that the Appellant provided incorrect information in the Scott Schedule in an attempt to mislead the Tribunal. We accept that submission.

- (d) The Appellant's response to issue four in the Scott Schedule is at page G3 and it stated:

*"As above, the Kent Fire Service attended and did not issue any notices of concern. An email from the fire officer confirms satisfaction with the premises, which Ofsted has ignored. No evidence has been produced by Ofsted to contradict the fire service's own position".*

- (e) For the reasons set out above, this was a false statement, and we accept the Respondent's position that it was made in an attempt to mislead the Tribunal.

**Issue Three: Mrs Henry's honesty in relation to previous employments when questioned, and she did not provide a complete employment history for review**

6.21 It was not in dispute that Ms Clark checked Mrs Henry's employment history and the CV that Mrs Henry provided to Ms Clark showed an incomplete employment history. Mrs Henry's evidence was that she had multiple versions of her CV, and this was an honest mistake rather than a deliberate attempt to mislead. It was accepted by the Respondent that Mrs Henry cooperated and answered Ms Clark's questions as to the gaps in her CV.

6.22 It was suggested by the Respondent that Mrs Henry had been dismissed from her post at Leytonstone Community Pre-School in or around April 2018. At paragraph 28 of Ms Clark's witness statement, she stated: *"As part of the planning for the visit, I also sampled the evidence from the inspection of EY462769 Leytonstone Community Pre-School. The evidence stated that they dismissed the manager (Mrs Henry) as she was not managing the setting effectively and there was an allegation that the setting had not been managed correctly by the manager (Mrs Henry)".*

- 6.23 This was denied by Mrs Henry. The Respondent did not produce the evidence from the inspection of EY462769 Leytonstone Community Pre-School.
- 6.24 On the evidence available to us, we were not persuaded, to make a finding of fact that Mrs Henry had been dismissed from Leytonstone Community Pre-School. There was insufficient evidence for us to do so.

**Issue Four: The premises were not fire safety compliant.**

- 6.25 The Respondent's concerns relating to the safety of the premises are set out in the Notice of Intention and confirmed in the Notice of Decision. They were, in summary:
- (a) The premises were not fire safe; and
  - (b) Mrs Henry had during the approval visit raised a concern about people parking at the front of the premises. The front of the premises is a glass front, from floor to ceiling, and on the other side of the glass front is the children's playroom. This therefore presents a high potential risk and the Respondent asked for confirmation that the glass was safety glass.
- 6.26 We explained to the Appellant at the start of the hearing on day one, that:
- (a) the Respondent was relying on the risks raised in the MD Fire Safety Limited, Risk Assessment ("**the MD Report**") (page 163) to show that the premises are not fire safe; and
  - (b) the Tribunal was considering the position as it was as at the date of the hearing, not as at the date of the Notice of Intention and confirmed in the Notice of Decision. Accordingly, if the Appellant was able to produce evidence to show that the risks raised in the MD Report had been addressed, then that would be relevant evidence and subject to hearing any objections from the Respondent would be minded to admit that as late evidence. We explained that for example, where the MD Report had highlighted missing signage, the Appellant could produce photographs showing that signage now in place. Alternatively, the Appellant could produce invoices showing that the signs had been purchased.
- 6.27 On day three of the hearing, the Appellant produced two documents exhibited to a witness statement dated 3 July 2025. These documents were:
- (a) Document A headed "Fire Safety Checklist Kreative Learning Babies" with the final page being "Amazon Fire Safety Order checklist – For Receipt Verification" (SB pages 110 to 112); and
  - (b) Document B headed "Items to Be Ordered or Acquired Updated" accompanied by what appeared on the face of it to be an email to the Respondent Early Years Regulatory Team from Kreative Learning Nursery dated 9 September 2024 (and further down the page dated 9 September 2025) (SB pages 113 to 114).

6.28 Mrs Henry's evidence was that:

- (a) Document A was a "core operational template" created by her in 2023. She stated in her witness statement that she personally completed the checklist with action items beginning on 6 September 2024.
- (b) Document B was created on 6 September 2024 by Mr Leo Henry (Mrs Henry's ex-husband) after the visit from Mr Duly of MD Fire Safety.

6.29 It was put to Mrs Henry during the hearing that the actions in Document A mirror exactly the actions listed in the MD Report. Mrs Henry was asked how this was so given she did not receive the MD Report until 8 September 2025. Mrs Henry explained that Mr Henry had experience in the building trade and was therefore already aware of all the necessary actions prior to receiving the MD Report. The MD Report did not therefore tell them anything new, they were already aware of the necessary actions.

6.30 Mrs Henry was asked, why, if Document A existed at the time, she did not send it to the Respondent. Mrs Henry referred to the e-mail dated 16 September 2024, at page I116. That e-mail was from Mrs Henry to Ms Clark and Mrs Henry stated:

*"I asked whether there would be a follow-up inspection to confirm that all the required fire safety measures were now in place. You indicated there would not be any such inspection, which left me unsure how to prove compliance. As this was one of the primary reasons for refusal, and since all issues have now been addressed, I would appreciate clarification on how I can demonstrate that the fire safety concerns have been fully rectified".*

6.31 Mrs Henry explained that she was waiting for Ms Clark to respond to this e-mail, but Ms Clark never did. She further explained that she did not think that Document A was relevant because of the way that approval visit had ended. She felt that the Respondent was targeting her and the Respondent's concerns by this point were not about fire safety but her suitability. Therefore, nothing she could have provided that would have made any difference.

6.32 It was put to Mrs Henry that neither Documents A or B were created in September 2024, but that they were created very recently. This was denied by Mrs Henry.

6.33 Mrs Henry was referred to the Response and Objection to the Notice of Intention at page I127. This document is dated 7 October 2024. At point 1. Under the heading, *"Updated Fire Safety Report and Email from Fire Safety Inspector:"* the document stated:

*"Additionally, I have included an email directly from the fire safety officer who conducted the inspection. I believe there has been a misinterpretation of his report during the inspection visit. The report clearly sets out the required*



*actions, which are being addressed, and does not indicate any immediate risk that would prevent us from meeting the Early Years Foundation Stage (EYFS) requirements in a timely manner”.*

- 6.34 Mrs Henry was asked why on 7 October she had represented that the actions identified in the MD Report were “*being addressed*”, if (as is suggested by Document A) by 9 September 2024 they had all been completed. Her answer was that this was just the way she had written the Response and Objection to the Notice of Intention.
- 6.35 Mrs Henry accepted that when she issued the appeal with the Tribunal, she had made no mention in her Ground of Appeal of the existence of Documents A or B or that the actions identified in the MD Report had been addressed.
- 6.36 Mrs Henry accepted that she had made no mention in her first witness statement (page J1) of the existence of Documents A or B or that the actions identified in the MD Report had been addressed.
- 6.37 On the final day of the hearing, the Appellant produced the invoice which is at page 121 of the supplemental bundle. We were told that this invoice was in respect of the some of the signage which had been identified as being required in the MD Report.
- 6.38 Following submissions made by the Respondent the Panel directed Mrs Henry to produce a witness statement explaining the circumstances surrounding Documents A and B. We directed that the statement be verified by a statement of truth and explained to Mrs Henry that this meant the contents of her statement had to be true and accurate to the best of her knowledge and belief. The Panel further explained that knowingly producing a document that is false or misleading in legal proceedings can be considered contempt of court.
- 6.39 At paragraph 8 of the statement, Mrs Henry states: “*I also drafted the covering letter sent to Ofsted...*” Mrs Henry explained in oral evidence that the covering letter she referred to is the document produced at page 114 of the supplemental bundle. But Mrs Henry accepted in her oral evidence that this letter was, in fact, never sent to the Respondent. She accepted that what she had stated at paragraph 8 of her statement was incorrect. This was despite the clear warning given to her by Panel on the day that she prepared the witness statement.
- 6.40 Based on the above evidence, we are not persuaded that the fire safety actions identified in the MD Report have been addressed. Our conclusion is that those actions remain outstanding. Our reasons are:
- (a) We were not persuaded by Mrs Henry’s evidence. We were not persuaded that Documents A and B were contemporaneous to September 2024. Had those documents been in existence in September 2024 then Mrs Henry would have provided them to the Respondent. As is explained further below, Mrs Henry’s reasons for

not sending them was not credible. As she did not send them to the Respondent prior to them being produced in day three of the hearing, we conclude that they did not exist at that time.

- (b) The Appellant could have raised the existence of Documents A and B at any point. She did not refer to them in the Response and Objections to the Notice of Intention, in the appeal form, in the Scott Schedule and Mrs Henry did not refer to them in her first witness statement. We accept the Respondent's submission that this is because neither Documents A or B existed at the time any of the appeal documents were produced. We find it more likely than not that Documents A and B were created only very recently.
- (c) The only mention in any of the Appellant's appeal documents to the fire safety actions is in the Appellant's Response and Objection to the Notice of Intention at page 1127. As we note above this document refers to the actions being completed. That document postdates Documents A and B. If, on 7 October 2024 (i.e. the date of the Response and Objection to the Notice of Intention), the actions had already been completed, as is suggested by Document A, then the Response and Objection to the Notice of Intention would have referred to the actions as having been completed.
- (d) We were not persuaded that Mrs Henry had decided not to send Documents A and B to the Respondent because she believed that the Respondent's mind was made up and nothing, she could have provided would have made any difference. Had she truly been of this belief then she would not have asked the question in her e-mail of 16 September 2024. She did not send the documents or even refer to them because they did not exist.
- (e) We considered the invoice at SB page 121 to have very little evidential weight. First it predated the MD Report, and no explanation was offered for that. Second, even if we were prepared to accept that signs referred to in the invoice were purchased to meet an action in the MD Report, they only address one action i.e. the lack of signage. All the other actions remain outstanding.
- (f) Mrs Henry has shown, multiple times, a propensity to mislead this Tribunal. We refer to paragraphs 6.13, 6.20 and 6.39 above. The Respondent submits that Mrs Henry has been deliberately attempting to mislead the Tribunal and we accept that submission. We therefore had no confidence that the evidence she gave in respect of Documents A and B was itself truthful.

6.41 As regards the glass in the floor to ceiling window at the front of the premises, Mrs Henry explained in her oral evidence that the only reason she believed the glass to be safety glass was because she had been told this by the landlord in the pre-contract negotiations for the lease. For the reasons set out at paragraph 6.18 above we were not satisfied that this conversation occurred.

Mrs Henry therefore failed to persuade us, on the balance of probabilities, that the glass was safety glass and therefore safe to have in such close proximity to children.

**Issue Five: The unannounced visit on 18 September 2024.**

- 6.42 The Respondent submits that the events which took place during the unannounced visit on 18 September 2024 did not form part of the decision to refuse the additional premises, but if the decision were being made as at today's date it would be an additional reason. The Respondent further submits that the events are consistent with its earlier observations that the Appellant has not been open and transparent with the Respondent during important interactions and is deliberately dishonest.
- 6.43 The Appellant does not address this specific point in its submissions but does take a point on what it describes as an "Improper Overlap" with the Cancellation Proceedings.
- 6.44 As noted above, we accept that as matter of principle, the Tribunal is considering the evidential position as it stands at the date of the hearing and so can take into account the allegations relating to the unannounced visit on 18 September 2024. But we are not persuaded it was necessary for us to do so. As is explained in greater detail below, we felt able to dispose of this appeal on issues one to four alone. It was not necessary for us to consider issues five, six and seven. In any event, those same issues are raised in the Cancellation Proceedings and will be decided in those proceedings. The Cancellation Proceedings are the more appropriate forum for these issues to be decided.
- 6.45 For the above reasons, we decline to make any findings of fact in relations to issues five, six and seven.

**Issue Six: Mrs Henry's honesty regarding the unannounced visit to Kreative Learning Pre-school on 18 September 2024, specifically in relation to why babies were being taken outside.**

- 6.46 We refer to a repeat paragraphs 6.42 to 6.45.

**Issue Seven: In relation to what was observed during the unannounced visit, Mrs Henry showed no insight into the possible safeguarding risk to children.**

- 6.47 We refer to a repeat paragraphs 6.42 to 6.45.

## **7. ANALYSIS**

### **Suitability of the Premises**

- 7.1 Under section 74(4) CA 2006, this Tribunal must either:

- (a) confirm the decision to refuse an additional premises application; or
  - (b) direct that it shall have no effect.
- 7.2 The Respondent invites the Tribunal to confirm the decision. The Respondent submits that the Appellant has failed to discharge the burden of proof and failed to demonstrate on the balance of probabilities that the additional premises are suitable.
- 7.3 The Appellant submits that decision to refuse the application for an additional premises was based *“solely on speculative suitability concerns”* and therefore *“lack statutory basis and amount to a character assassination of Mrs Henry, not a lawful regulatory determination”*.
- 7.4 We reject the Appellant’s submissions. It is clear from the reasons set out in the Notice of Decision and the discussion in this decision that the Respondent’s decision to refuse the application for an additional premises was not based solely on the allegations relating to Mrs Henry’s suitability. Part of the Respondent’s reasons for refusing the application was because it considered that the additional premises to be unsuitable (as it expressly permitted by paragraph 7C(3) of the Common Provisions Regulations).
- 7.5 We accepted the Respondent’s submissions. We agreed that the Appellant had failed to demonstrate on the balance of probabilities that the additional premises are suitable. We refer to and repeat our detailed findings of fact in relation to issue four, as set out above. In summary, we were not persuaded that:
  - (a) the actions identified in the MD Report had been addressed; or
  - (b) the floor to ceiling glass at the front of the premises was safe.
- 7.6 Ms Divine made reference in the hearing to the fact that the MD Report categorises the risks stated within it to be “tolerable”. To the extent that it is submitted that this means the identified risks are tolerable and so the premises suitable, we reject that submission. At page 70 of the supplemental bundle is a letter from Mr Duly (the author of the MD Report) dated 2 July 2025. That letter states:

*“I can confirm that subject to the actions being remedied, the premises is suitable for use as a nursery from a fire safety perspective”*.
- 7.7 As is explained in our findings of fact set out above, we were not persuaded that the actions identified in the MD Report had been remedied. It therefore follows that the premises are not suitable. Accordingly, we must confirm the decision to refuse an additional premises application.

## **Suitability of the Arrangements for Childcare**

- 7.8 Given our decision as to the suitability of the premises it is not strictly necessary for us to make any further decision. As the premises are not suitable, we must confirm the decision to refuse an additional premises application, which brings an end to this appeal.
- 7.9 We nevertheless appreciate the importance of this decision to both parties, and so we have decided to set out our decision relating to the suitability of the arrangements for childcare in the alternative.
- 7.10 The Appellant submits that the allegations relating to Mrs Henry's honesty, integrity and how these issues impact her suitability are irrelevant in the context of these proceedings. The Appellant does not make its submissions by reference to the relevant statutory provisions but does contend that the allegations relating to Mrs Henry's honesty, integrity and her associated suitability are issues for the Cancellation Proceedings and not these proceedings.
- 7.11 The Respondent accepts that Regulation 8A(4) of the Welfare Requirements Regulations requires that an applicant for an additional premises to demonstrate that the requirements in paragraphs 5 to 8 and 13 of Schedule 2 to Early Years Register Regulations will be satisfied. The Respondent did not suggest that these requirements were not satisfied. The Respondent also accepted that the requirements in these paragraphs make no mention of the suitability of the Appellant or the Nominated Individual. It is the Respondent's case that suitability of the Nominated Individual is brought into issue by Regulation 7C(3) of the Common Provisions Regulations. The Respondent submits that Regulation 7C(3) of the Common Provisions Regulations permits it to assess compliance with all of the prescribed requirements for registration when assessing an application for an additional premises.
- 7.12 The Respondent submits that regulation 7C(3) of the Common Provisions Regulations:
- (a) Does not prescribe that if an applicant satisfies the Respondent as to paragraphs 5 to 8, 13, and 25 to 26 of Schedule 2 of the Early Years Register Regulations then the Respondent must approve the application;
  - (b) Does not cross reference to paragraphs 5 to 8, 13, and 25 to 26 of Schedule 2 of the Early Years Register Regulations at all.
  - (c) Contains wording that is far broader and all-encompassing than paragraphs 5 to 8, 13, and 25 to 26 of Schedule 2 of the Early Years Register Regulations;
  - (d) Refers to consideration of the "additional premises and the arrangements for the childcare on the additional premises", in its

broadest sense, enabling consideration of the ability and willingness of the applicant to provide, and continue to provide childcare, in accordance with the requirements for registration.

7.13 The Respondent further submits that:

- (a) It cannot have been the intention of the drafters of the legislation that the Respondent in effect ignores matters which suggest that the EYFS may not be being met in relation to the provider's registration. The Respondent contends that this is Regulation 7C is worded as it is.
- (b) An assessment of the willingness and ability to comply and maintain compliance with basic requirements sent out in the EYFS, drafted with safeguarding of children at the heart, is highly relevant to the arrangements for the childcare proposed. A factor in that is openness, transparency, honesty and integrity in all dealings with Respondent.
- (c) Ignoring requirements that a provider must meet, when considering an additional premises application, would be nonsensical. The Respondent's obligation to ensure compliance with obligations does not arise at certain points during the lifetime of a provider registration. It is both continuing and continuous with no exceptions.
- (d) The Respondent is entitled to take into account where an applicant has lied during an application to register additional premises, in determining whether Regulation 7C of the Common Provisions Regulations is satisfied.

7.14 We accept the Respondent's submissions in full. The reference to the arrangements for the childcare on the additional premises in Regulation 7C(3) of the Common Provisions Regulations is broadly worded. It does not cross refer to paragraphs 5 to 8, 13, and 25 to 26 of Schedule 2 of the Early Years Register Regulations and therefore it is not limited by the requirements in those paragraphs. If the Appellants obligations were limited to paragraphs 5 to 8, 13, and 25 to 26 of Schedule 2 of the Early Years Register Regulations, then there would be no need for the Common Provisions Regulations. The Common Provisions Regulations sit alongside and add to or supplement the requirements in the Early Years Register Regulations.

7.15 We are satisfied that Regulation 7C(3) of the Common Provisions Regulations is worded such that the Respondent (and so this Tribunal on appeal) can take into account where an applicant has provided false or misleading information during an application to register additional premises. If the Respondent and this Tribunal was required to ignore such a fact, this would undermine the very purpose of the regulations, which is to safeguard some of the most vulnerable persons in our society (i.e. children).

7.16 The Respondent's Code of Conduct requires providers, such as the Appellant to be open and transparent. It provides:

*“...providers should:*

*be open and transparent during the inspection, providing evidence – or access to evidence – that will enable the inspector to report honestly, fairly and reliably about your provision”*

7.17 As is demonstrated by our findings of fact in respect of Issues One and Two (as set out above), Mrs Henry was not open and honest with the Respondent during the Approval Visit on 5 September 2024. Mrs Henry was dishonest in her communications with the Respondent and has been dishonest in her dealings with and her evidence provided to the Tribunal. Mrs Henry therefore acted in breach of the Code of Conduct.

7.18 Further, it was not disputed that the Appellant was required to comply in full with Section 3 of the EYFS. Paragraph 3.87 provides that:

*“All registered early years providers must notify Ofsted of any change:*

- Any significant event which is likely to affect the suitability of the early years provider to look after children.*
- Any significant event which is likely to affect the suitability of any person who cares for/is in regular contact with children on the premises”.*

7.19 The fact that Mrs Henry had been arrested, charged and was facing trial is quite clearly a significant event which is likely to affect the suitability of the Appellant. Mrs Henry was the Nominated Individual and was a person who cares for/is in regular contact with children on the premises. Mrs Henry should have volunteered this information to the Respondent. She did not, she deliberately sought to conceal it, which was in our judgment dishonest.

7.20 Where the person providing false, misleading or dishonest information is the Nominated Individual of the applicant, this calls into question the very suitability of the applicant itself. The Nominated Individual has ultimate responsibility for the arrangements for the childcare proposed on the additional premises. If the Respondent (and on appeal this Tribunal) cannot be persuaded that the Nominated Individual is suitable, by reason of a lack of honesty and integrity, then it follows that it cannot be persuaded as to the suitability of the arrangements for the childcare proposed on the additional premises.

7.21 The Respondent relies on applicants for additional premises to be open, transparent and honest with it. We accept that without an honest ongoing relationship the Respondent cannot be sure that it will be in a position to assess ongoing suitability of the arrangements for childcare and keep children safe from harm.

7.22 Mrs Henry, who is the nominated individual of the Appellant, has been repeatedly dishonest in her dealings with the Respondent; she has been dishonest in her dealings with the Tribunal both in the documents filed in support of the appeal and in her oral evidence. We therefore accept that the Respondent is not able to have an honest ongoing relationship the Appellant and so cannot be satisfied as to the ongoing suitability of the arrangements for childcare.

7.23 For these reasons we agree that arrangements for the childcare proposed on the additional premises, are not suitable, and the additional premises application must be refused.

## **8. DECISION**

8.1 The appeal against the Respondent's decision dated 24 October 2024, to refuse the additional premises application is refused.

8.2 The decision to refuse the application for an additional premises is confirmed.

**Judge O'Neill**  
**First-tier Tribunal (Health, Education and Social Care)**

**Date Issued: 12 August 2025**