

## First-tier Tribunal Care Standards

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

2025-01371.EY

Neutral Citation Number: [2025] UKFTT 00981 (HESC)

Hearing held at the Royal Court of Justice  
on 21 to 25 July 2025 and on video (for deliberations only) on 1 August 2025

BEFORE  
Tribunal Judge O'Neill  
Specialist Member B Graham  
Specialist Member M Cann

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 7 January 2025 to cancel the registration of the Appellant.
- 1.2 There are separate proceedings under appeal number 2024-01307.EY, which relate to the Respondent’s decision to refuse an application for an additional premises (“**the Additional Premises Proceedings**”). For the avoidance of doubt, the Additional Premises Proceedings are separate to these 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. Mrs 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**

#### **The Bundles**

- 3.1 We were provided with a bundle which was paginated in sections from A to J. Including index pages and cover sheets the bundle had 578 electronic pages.
- 3.2 We were also provided with a supplemental bundle which was paginated in sections from A, E to J. Including index pages and cover sheets the supplemental bundle had 208 electronic pages.
- 3.3 In this decision, references to documents will be to the pagination numbers unless stated otherwise using MB to indicate the main bundle and "SB" to indicate the supplemental bundle.

#### **Late Evidence**

- 3.4 We were provided with the following documents as late evidence:
- (a) From the Appellant:
    - (i) Mrs Henry's witness statement dated 22 July 2025.
    - (ii) Email dated 9 February 2018 plus the attached letter.
    - (iii) Staff rota for the week 16 to 20 September 2024.
  - (b) From the Respondent:
    - (i) Supplemental witness statement from Ms Clark with exhibit PC12, dated 14 July 2025.
    - (ii) Redacted extract of inspection notes regarding Leytonstone Community Pre-School.
- 3.5 Only the supplemental witness statement from Ms Clark (and the exhibit) was objected to. We decided to admit the statement and the exhibit. It was directly relevant to the issues we had to decide and had been disclosed to the Appellant in sufficient time before the hearing to allow the Appellant to consider any

questions to be put to Ms Clark. Applying the overriding objective we did not consider there to be any prejudice to the Appellant by its admission.

- 3.6 Given the lack of any objection to the other documents, we admitted them all.
- 3.7 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. PROCEDURAL MATTERS**

##### **The Appellant's application to withdraw the appeal**

- 4.1 After proceedings had started on day one, Ms Divine indicated that Mrs Henry had decided not to proceed with the hearing and would like to withdraw the appeal.
- 4.2 We explained that the consequence of doing this is that the Notice of Decision would take effect. Accordingly, we invited the Appellant to take some time to consider the position before making any application. We allowed the parties a short adjournment after which Ms Divine confirmed that Mrs Henry has decided to continue with the appeal. We therefore treated the application as being withdrawn.

##### **Mrs Henry's Witness Statement**

- 4.3 At the start of the hearing, we noted that Mrs Henry had not produced a witness statement which set out her factual evidence on the issues in the Scott Schedule. Whilst it was very late in the proceedings to be considering the admission of such important evidence, we were concerned to ensure the parties were on an equal footing. We sought submissions from Ms Birks who indicated that the Respondent would not oppose a late statement from Mrs Henry provided she had time to consider it before cross examination. We therefore allowed Mrs Henry to produce a witness statement and explained that it should address the issues in the Scott Schedule.
- 4.4 Mrs Birks insisted that the statement be verified by a statement of truth and what this meant to Mrs Henry. We directed that the statement be produced by the following morning and that it be verified by a statement of truth.

##### **The Appellant's application to stay the proceedings.**

- 4.5 On day two of the hearing, the Appellant made an application to the stay the appeal. Ms Divine's submissions were, in summary, as follows:

- (a) Mrs Henry is facing a criminal trial in March 2026 in relation to the matters for which she was arrested in 2018 and 2021.
  - (b) The criminal trial has higher stakes than the present proceedings, because of the risk of a custodial sentence.
  - (c) Mrs Henry was concerned that answering questions in these proceedings may prejudice her defence in the criminal proceedings.
  - (d) Mrs Henry was also concerned that she would not be able to participate fully in these proceedings because she cannot answer questions relating to the 2018 and 2021 arrests.
  - (e) No application was made in respect of the Additional Premises Proceedings.
  - (f) The Appellant proposed that these proceedings be stayed pending the conclusion of the criminal proceedings (which was currently expected to be March 2026).
- 4.6 The Respondent opposed the application. In short, the Respondent's position was that the application had been made too late and the prejudice that would be caused to the Respondent by granting the application outweighed any potential prejudice to Mrs Henry.
- 4.7 We refused the application to stay the proceedings. We gave summary reasons during the hearing, but our full reasons were:
- (a) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly. This includes:
    - (i) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
    - (ii) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings; and
    - (iii) avoiding delay, so far as compatible with proper consideration of the issues.
  - (b) Mrs Henry had no right to silence in these proceedings, even if this meant disclosing matters relevant to the criminal proceedings. The protection which is given to one facing a criminal charge (i.e. the right to silence), "*does not extend to give the defendant as a matter of right the same protection in contemporaneous civil proceedings*"<sup>1</sup>. Because of this, it was appropriate for us to consider whether to adjourn these proceedings to allow the criminal proceedings to be heard before any decisions were made in these proceedings.

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<sup>1</sup> Jefferson Ltd v Bletcha [1979] 1 WLR 989 at 905.

- (c) Whilst we had limited knowledge as to what the criminal proceedings concerned, it was not in dispute that they related to the matters for which Mrs Henry was arrested in 2018 and 2021. We therefore accepted that if Mrs Henry was required to answer questions relating to the circumstances of the allegations leading to the arrests, then there may be a risk of prejudice to her defence in the criminal proceedings. But in our view, this risk did not arise in the present proceedings. This was so, because of the way that the Respondent put its case. The Respondent's case was not that it issued the Notice of Decision because Mrs Henry had been arrested in 2018 and 2021, nor was it the Respondent's case that it issued the Notice of Decision because Mrs Henry had been accused of a criminal offence and charged with that offence. The Respondent's case was that it issued the Notice of Decision because Mrs Henry had not been honest with the Respondent during interactions in 2023 and 2024 i.e. after she had been arrested and charged. Accordingly, there would be no need for the Respondent or the Tribunal to ask Mrs Henry any questions relating to circumstances leading up to her arrest.
- (d) Ms Birks confirmed that the Respondent did not intend to ask any questions relating the circumstances of the two arrests. Her questions would be limited to the Mrs Henry's interactions with the Respondent. Accordingly, we were satisfied that Mrs Henry would be able to participate fully in these proceedings.
- (e) In any event, even if we were to accept that there was a material risk of prejudice to Mrs Henry in these proceedings (which for the reasons set out above we do not), because no application was made in the Additional Premises Proceedings, a stay of these proceedings would achieve nothing. We explained that common issues of fact had been raised in Additional Premises Proceedings (for which a decision was imminent) and so in theory the same risk arose in those proceedings as was suggested in these proceedings. No application had been made in those proceedings and Ms Divine confirmed that she did not intend to make any application in the Additional Premises Proceedings.. We were not therefore persuaded that a stay of these proceedings on their own would mitigate the risks that were suggested to exist.
- (f) For the same reasons as set out above, the issues in these proceedings were capable of proper consideration and so a stay, which would cause a delay, would be contrary to the overriding objective.
- (g) We accepted that the proposed stay would prejudice the Respondent both in terms of the costs associated with such an order and the impact of the Respondent's witnesses. For the same reasons as set out above, we were persuaded that the potential prejudice to the Respondent which would be caused by the stay would outweigh any potential

prejudice to Mrs Henry. A stay of the proceedings would not therefore be proportionate.

- 4.8 After we issued our summary reasons for refusing the application, Ms Divine indicated that Mrs Henry would be refusing to answer any questions she felt uncomfortable with. We explained that this was Mrs Henry's choice to make, but if Mrs Henry refused to answer questions, then the Tribunal was free to draw adverse inferences.

### **Ms Divine's Conduct**

- 4.9 Ms Divine's conduct during the hearing was persistently disruptive. Ms Divine was repeatedly late which caused multiple delays; she was unnecessarily argumentative, disrespectful to the Panel and constantly interrupted despite being asked not to do so; she disrupted the hearing to accuse the Respondent's lawyers of professional misconduct without any evidence to support the accusation.
- 4.10 We accept that Ms Divine apologised multiple times during the hearing. But those apologies were hollow as her behaviour did not improve. On the final day of the hearing, we were forced to issue Ms Divine with a warning that she would be removed from the hearing room if she continued to disrupt the proceedings.
- 4.11 We accept that a hearing of this nature is stressful, and stress can affect a person's behaviour. But it is incumbent on the parties and those they instruct to represent them to behave in a way that furthers the overriding objective of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008. Ms Divine's conduct fell short of this. That being said, we did not attribute Ms Divine's conduct to Mrs Henry, and we did not let this influence our decision.

## **5. BACKGROUND AND KEY CHRONOLOGY**

- 5.1 The Appellant has been registered as a childcare provider on non-domestic premises with the Respondent since 6 March 2023. The sole director and Nominated Individual of the Appellant is Mrs Henry. Where in this decision the Appellant is referred to as "it" (or "it's"), this is to the Appellant as a body corporate. No disrespect is intended to Mrs Henry. Any reference specific to Mrs Henry is identified as such.
- 5.2 The Appellant operates two settings; Kreative Learning Childcare and Kreative Learning Pre-School.
- 5.3 On 20 May 2024, the Appellant applied to open a third setting, Kreative Learning Babies.

- 5.4 On 5 September 2024, the Respondent undertook an approval visit to the proposed third setting, Kreative Learning Babies (“**the Approval Visit**”).
- 5.5 On 18 September 2024, the Respondent completed an unannounced visit to Kreative Learning Pre-school (“**the Unannounced Visit**”).
- 5.6 On 7 December 2024, the Respondent served the Appellant with a notice of intention (“**the Notice of Intention**”) to cancel the Appellant's registration. This was followed by a notice of decision dated 7 January 2025 (“**the Notice of Decision**”).
- 5.7 The Appellant issued these proceedings on 21 January 2025.

## 6. LEGAL FRAMEWORK

### The Legislative Provisions

- 6.1 The relevant legislative provisions are as follows.
- 6.2 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*
- 6.3 The Appellant is registered in the early years register as an early years provider other than a childminder.
- 6.4 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.
- 6.5 Section 40, CA 2006 imposes an obligation on an early years provider to comply with the welfare requirements.
- 6.6 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 3 specifies the welfare requirements as being the obligatory provisions in the documents entitled Early Years Foundation Stage Statutory Framework for Group and School-based Providers (“**the EYFS**”).

6.7 Regulation 3 and Part 1 of Schedule 2 to Childcare (Early Years Register) Regulations 2008 (**“the Early Years Register Regulations”**) sets out the prescribed requirements for registration. They include (but are not limited to) the following:

- (a) Paragraph 1: *“The applicant is suitable to provide early years provision”.*
- (b) Paragraph 4: *“The applicant will comply with the EYFS welfare requirements”.*
- (c) Paragraph 9: *“Where the applicant is a partnership, body corporate or unincorporated association, the applicant has nominated an individual who is a partner in, or a director, secretary, other officer or member of the governing body of, the applicant (‘the nominated individual’) to:*
  - (a) be responsible for dealing with matters relating to the applicant’s application for registration, and subsequent registration, in the early years register, and*
  - (b) oversee (either alone or jointly with others) the management of the early years provision”.*
- (d) Paragraph 10: *“The nominated individual is suitable to be in regular contact with young children”.*

6.8 Accordingly, in order to be registered as an early years provider other than a childminder, an applicant has to be able to demonstrate that they can and will comply with all the prescribed requirements for registration, which (by paragraph 4 of Part 1 of Schedule 2 to the Early Years Register Regulations) includes Section 3 of the EYFS.

6.9 Section 68(2)(a) CA 2006, permits the Chief Inspector to cancel a provider’s the registration if it appears to him that *“the prescribed requirements for registration which apply in relation to the person’s registration under that Chapter have ceased, or will cease, to be satisfied.”*

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

6.10 In these proceeding the burden is on the Appellant to demonstrate suitability, and compliance rather than the Respondent being required to prove that the Appellant is unsuitable or non-compliance.

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

6.12 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**

- 6.13 The issues for determination by the Tribunal were those set out in the Scott Schedule which appears at MB page F1. An updated Scott Schedule is also at SB page 18, but the issues are the same.

## **7. FINDINGS OF FACT**

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

#### The Evidence

- 7.1 Ms Clark's evidence is contained at paragraphs 30 to 35 of her First Witness Statement (MB pages H6 to H8).
- 7.2 Ms Clark's oral evidence was, in summary:
- (a) Her account of the events at the Approval Visit, as set out at paragraphs 22 to 40 is accurate and true.
  - (b) It was put to Ms Clark that the Respondent came to the Approval Visit with the intention to interrogate Ms Henry. Ms Clark did not accept this. She explained that the purpose of the Approval Visit was to give the Appellant the opportunity to provide information.
  - (c) It was put to Ms Clark that her notes of the Approval Visit were written to support the Respondent's claims against Mrs Henry and were fabricated. This was why they are all written in the past tense. Ms Clark did not accept this. She explained that her notes are an accurate record of the information she collected on the day.
- 7.3 Ms Mackey's evidence is contained at paragraphs 10 to 13 of her First Witness Statement (MB pages H149 to H150).
- 7.4 Ms Mackey's oral evidence, was in summary:
- (a) The purpose of the Approval Visit was to get the background story. They were not going in with any preconceived story. Every case is different and the only way we can make a risk assessment is to speak to providers. At the Approval Visit Mrs Henry gave information that she had not been arrested that is why Ms Clark followed this up with the police.
  - (b) Ms Mackey did not accept that the Respondent were targeting Mrs Henry.

- (c) It was put to Ms Mackey that she was not truly there to quality assure the visit. The Respondent had a plan to target Mrs Henry, and this was covered up with the pretence of a quality assurance visit. Ms Mackey did not accept this was correct.
  - (d) Ms Mackey confirmed that Ms Clark had asked Mrs Henry about her involvement with the police in the way described by Ms Clark in her witness statement.
- 7.5 As regards the arrest on 6 January 2021, Mrs Henry's was referred to the grounds of appeal at MB page G7. They stated: *"The statement submitted by an Ofsted manager indicates awareness of the barrister's letter since June 2024..."* Mrs Henry confirmed that the *barrister's letter which is referred to is the same letter at MB page H161*. She accepted that this was not a barrister's letter but a letter from her solicitor, that it was dated 2 October 2024 and so no information was volunteered in June 2024.
- 7.6 Mrs Henry was referred to her witness statement dated 22 July 2025. In it she stated: *"I disclosed the full facts of my arrest to Ofsted at the earliest opportunity and cooperated fully"*. Mrs Henry was asked what she disclosed and when. Mrs Henry refused to answer what facts relating to her arrest she had disclosed to the Respondent and initially claimed to be unable to remember when she made this disclosure. When prompted by the Panel to think about the date, Mrs Henry explained that this would have been in September 2023 in a conversation with one of the inspectors. She explained that there was an allegation against her. She did not say she had been arrested because she did not believe at that time that she had been arrested.
- 7.7 Mrs Henry accepted that she had been charged in around June 2023. She explained that she was informed about the charge in the post and because she had heard nothing further from the police until receipt of this letter, she believed the charge sheet to have been sent by mistake.
- 7.8 In response to questions from the Panel, Mrs Henry explained that she clarified the charge sheet with her lawyer around October 2023 and therefore she accepted that by October 2023, she was aware that the charge against her was not a mistake.
- 7.9 At page H24 is a witness statement from DC Laura Hothersall who was the arresting officer on 6 January 2021. At page H25, DC Hothersall states that Mrs Henry's first hearing was set for 26 October 2022 at Croydon Magistrates Court and her trial was first set for September 2023, this was adjourned to September 2024, and then again adjourned again to March 2025. Mrs Henry was asked to confirm that these dates were correct, but she refused to do so. Mrs Henry refused to confirm whether she attended Croydon Magistrates Court on 26 October 2022 and whether the original trial dates were listed for September 2023 and September 2024. Her reason for refusing to answer was that she

was acting on advice. She did subsequently confirm that the trial had been listed for March 2025 but is now set for March 2026. It was put to Mrs Henry that she was refusing to answer only those questions which might harm her case; she denied this.

7.10 As regards the events of the Approval Visit on 5 September 2024, Mrs Henry's oral evidence was, in summary:

- (a) Mrs Henry accepted that Ms Clark had asked her whether she had been arrested and that she had answered, no. Mrs Henry did not make mention of her arrest in 2018 because she believed Ms Clark's question to refer only to the events in 2021. As to the arrest in 2021, at the date of the Approval Visit, Mrs Henry still did not believe that she had been arrested.
- (b) Mrs Henry did not accept that Ms Clark had asked her "*if she had ever had any involvement with the police before*". 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.
- (c) Mrs Henry did not accept that she said nothing came of the allegation, or that there was no further action.
- (d) Mrs Henry accepted that Ms Clark had asked her whether she had been charged with an offence and that she had said no. She explained that she had said no because she believed that Ms Clark was asking whether she had been charged when she left the police station in January 2021. She had not been charged in 2021 and so when she answered no, she was being truthful.
- (e) Mrs Henry did not accept that she had lied to Ms Clark. She did not accept that she had attempted to mislead the Respondent.
- (f) Mrs Henry did not accept that Ms Clark's notes of the Approval Visit were an accurate version of events. Mrs Henry's position was that both Ms Clark and Ms Mackey were lying in their evidence.

### Our Findings

7.11 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.

- 7.12 The information set out in Grounds of Appeal regarding the barrister's letter is not correct. Mrs Henry accepted that she did not volunteer any information relating to her arrest in June 2024.
- 7.13 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 it is usual for the detainee to be present when this happens. This would have involved the custody sergeant confirming that Mrs Henry was under arrest and the nature of the allegation. Accordingly, 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. It therefore follows that 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.
- 7.14 In any event, Mrs Henry accepted that she was aware, at all material times, she had been arrested on 7 April 2018 and that she did not volunteer this information to Ms Clark during the Approval Visit. Mrs Henry's reason for withholding this information was that she believed Ms Clark's questions to be limited to the events in 2021. This is not credible. If Mrs Henry had honestly held this belief, then she should have clarified the question with Ms Clark. She did not and so the information she provided was not truthful.
- 7.15 We accepted Ms Clark's evidence that during the Approval Visit she asked Mrs Henry "*if she had ever had any involvement with the police before*", and that Mrs Henry had said "*no*". In our judgement, the purported distinction advanced by Mrs Henry did not exist. Mrs Henry accepted that she had been legally represented since January 2021 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 (on this see further below).
- 7.16 In any event, we preferred Ms Clark's evidence over Mrs Henry's evidence, and we accepted Ms Clark's evidence. We were not persuaded by Mrs Henry's evidence. Our reasons were:
- (a) Ms Clark's witness statement was corroborated by her contemporaneous notes (SB page 56). We accepted that the notes

were a true and accurate record of the events that occurred during the Approval Visit. We rejected Ms Divine's contention that the notes were fabricated. There was simply no evidence to suggest any fabrication.

- (b) Ms Clark's statement was corroborated by Ms Mackey's evidence.

7.17 As at the date of the Approval Visit, 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 June 2023.
- (b) Mrs Henry's evidence, that she believed this to be a mistake, was not credible. Mrs Henry was legally represented and, she gave evidence that she clarified the position with her legal team in around October 2023. Accordingly, on her own evidence, she was aware by October 2023 at the very latest that the charge was not a mistake. Therefore, when she told Ms Clark eleven months later, in September 2024, that she had not been charged she was not being truthful.
- (c) We accepted DC Laura Hothersall's evidence as set out in her statement. Mrs Henry stated that the statement was disputed but refused to answer questions as to the dates within it. We could identify no valid reason why Mrs Henry felt unable to answer those questions. We did not accept that these questions posed any prejudice to the criminal proceedings. We accepted the Respondent's contention that Mrs Henry was refusing to answer the questions because the answers were harmful to her position in these proceedings. This was clear from the fact that Mrs Henry was willing to confirm the trial date on March 2025, but not the earlier trial dates in September 2023 and 2024. We therefore infer from Mrs Henry's refusal to answer any questions that the dates in DC Hothersall's statement are correct and Mrs Henry's criminal case was first listed for trial in September 2023. This means that any mistake as to the correctness of the charge could not have persisted past September 2023. 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 as to the fact that she had been charged.

7.18 Regarding the allegations made in 2021, Ms Clark stated at paragraph 33 of her statement: *"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 this. For the same reasons as set out at paragraph 7.16 above, we preferred Ms Clark's evidence over Mrs Henry's and so we accepted Ms Clark's evidence.

- 7.19 For the same reasons as set out above, we were satisfied that on each occasion that Mrs Henry provided Ms Clark with information that was not truthful, she did so knowingly and so acted dishonestly.

**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**

The Evidence

- 7.20 Mrs Henry's evidence is contained at section two of her Witness Statement. Mrs Henry stated: *"Upon taking on the lease I signed a 20 year lease which was a process. During the process I was told by the landlord that he has notified Kent fire safety of the change of use as he also had a flat that he renovated upstairs and it would be safe to use as a nursery. I had no reason to disbelieve the landlord who I've taken a 20 year lease from. When it was mentioned during the inspection I gave this information because I had no reason to disbelieve the information I was given by the landlord . It later transpired that landlord didn't have any confirmation for what he had told me in writing..."*
- 7.21 Mrs Henry's oral evidence was, in summary:
- (a) Mrs Henry accepted that during the Approval Visit, Ms Clark had asked her about fire safety, and she had said that the fire service had been and visited the premises and were happy with everything, including the electric heaters, fire signage and fire exits.
  - (b) Mrs Henry accepted that the fire service had not been out to visit the premises after the Appellant took up occupation. She explained that during the lease negotiations with the landlord, the landlord had informed her that the fire service had come out and done checks 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.
  - (c) Mrs Henry explained that after the Approval Visit, she tried to contact the landlord, but she was not able to get hold of him, and so she contacted the Kent Fire Service herself. They explained that she could not ask them to come out and that if she needed a fire safety report, she would have to instruct one independently.
  - (d) Mrs Henry accepted that Ms Clark had asked her about the fire extinguishers. She did not accept that she had told Ms Clark that the Fire Service needed to send her the correct ones as they did not have any to give her on the day they visited. Mrs Henry's evidence was that she had told Ms Clark that the correct ones were on order.
  - (e) Mrs Henry accepted that Ms Clark had asked if the fire service had given her a report following their visit. Mrs Henry did not accept that

she told Ms Clark that *“she would need to email the report as she did not have it with her at the time”*. Mrs Henry’s evidence was that she told Ms Clark that she would have to check in her e-mail, and if she did have a report, she would e-mail it to her.

7.22 Ms Clark’s evidence is contained at paragraphs 36 to 38 of her First Witness Statement (MB page H8).

7.23 Ms Clark’s oral evidence was, in summary:

- (a) Ms Clark explained that there was no requirement for the Appellant to have produced a fire safety risk assessment for the Approval Visit. The reason Ms Clark asked for the report was because Mrs Henry had told her that the Kent Fire Service had been and visited the premises and that they were happy with everything. Ms Clark understood this to mean that the Kent Fire Service, were happy with everything post the renovation works.
- (b) Ms Clark asked if Mrs Henry had a report from the Kent Fire Service and she said she did not have it with her, but it was on her email, and she could send it later.
- (c) Ms Clark had contacted the Kent Fire Service and they confirmed they had no record of a visit to the premises.

### Our Findings

7.24 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.

7.25 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.

7.26 We were not persuaded by Mrs Henry’s evidence. We did not believe that she had had any conversation with her landlord or that she had reported this conversation to Ms Clark. Our reasons are:

- (a) The Appellant had multiple opportunities to raise these alleged conversations prior to the final hearing of the appeal but did not. We refer to the following:
  - (i) The Notice of Intention dated 24 September 2024 stated: *“During the approval visit, you were asked if the premises had been checked by the fire service, you stated they had checked everything and were happy with everything, including the fire*

*exits. You also said that the fire service did not have any fire extinguishers and were going to send some out to you. Therefore, you had brought small, shop brought ones. These are not compliant with fire safety standards. You were also unable to provide a report from the fire service, that you told the inspector had been completed prior to the approval visit. You informed the inspector that you would email the report following the approval visit". (MB page H186).*

- (ii) The Appellant did not respond to the Notice of Intention in time.
  - (iii) The Notice of Decision dated 7 January 2025 (MB page H209) set out the same information as the Notice of Intention.
  - (iv) The Appellant's response to the Notice of Decision is set out in the Appeal Application Form and Grounds for Appeal dated 8 January 2025 (MB pages G2 to G21). 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 MB page F1. 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. The Appellant's response says: *"The email correspondence from KFRS, provided to Ofsted and submitted as evidence, confirms their visit and confirms no major safety non-compliance"*.
  - (vi) The Appellant in fact provided no e-mail to the Respondent from the Kent Fire Service and so there was no e-mail confirming their visit and that there were no major safety concerns. The information set out in the Scott Schedule by the Claimant was incorrect and not truthful.
- (b) Had either of the conversations raised by Mrs Henry 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 referred to documents. To suggest otherwise is not credible. 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) Further to the above:
- (i) Ms Clark's oral evidence was consistent with her witness statement.



(ii) Ms Clark's witness statement was corroborated by her contemporaneous notes (SB page 56) (which, for the reasons set out above we accepted were an accurate contemporaneous record): and

(iii) Ms Clark's statement was corroborated by Ms Mackey's evidence.

(d) For these additional reasons, we preferred Ms Clark's evidence over Mrs Henry's evidence, and we accepted Ms Clark's evidence.

7.27 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.

7.28 For the same reasons as set out above, we were satisfied that on each occasion that Mrs Henry provided Ms Clark with information that was not truthful, she did so knowingly and so acted dishonestly.

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

7.29 It was not in dispute that Ms Clark checked Mrs Henry's employment history and that 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.

7.30 The Respondent relied on the redacted extract of inspection notes regarding Leytonstone Community Pre-School which was admitted as late evidence. This document suggested that Mrs Henry had been dismissed from Leytonstone Community Pre-School.

7.31 Mrs Henry had stated in her witness statement that: "*I was never dismissed from Leytonstone preschool*", but she refused to answer any questions on the basis that this was part of her criminal case. But she did produce the email dated 9 February 2018 which attached a letter offering her resignation.

7.32 The Respondent invited us to infer from Mrs Henry's refusal to answer any questions that she was in fact dismissed. We accept that invitation. Mrs Henry was asked simply whether she had been dismissed. She offered no explanation as to why she felt able to make the statement in writing but not able to answer questions. We could identify no valid reason why Mrs Henry felt unable to answer those questions. We did not accept that this question posed any prejudice to the criminal proceedings.

- 7.33 On its own, the e-mail and attached letter, which was produced by Mrs Henry was of limited evidential value. All it showed was that Mrs Henry offered her resignation. It did not show that the offer was accepted or that she was not dismissed prior to the e-mail being sent. The letter was quite clearly part of a chain of correspondence because it contained an offer from Mrs Henry to return her laptop and stated: *"I have none of the other, items stated in your letter"*. Mrs Henry's letter was therefore clearly sent in response to a letter from Leytonstone Community Preschool. Mrs Henry had the opportunity to answer questions but refused to do so and we infer from this that this was because she was in fact dismissed or that she left under acrimonious circumstances. The fact that Mrs Henry omitted her employment at Leytonstone Community Pre-School from her CV suggest that she was trying to conceal this from the Respondent. Mrs Henry was required to be open and transparent, but she fell short of this. The concealment was done deliberately, and was in our judgment a dishonest act.
- 7.34 It therefore follows that the information that Mrs Henry provided to Ms Clark during the Approval Visit as to her employment history was not truthful. Mrs Henry knew the information not to be true and therefore acted dishonestly.

**Issue Four: The premises for Kreative Learning Babies were not fire safety compliant.**

- 7.35 The Respondent accepted that this was an issue for the Additional Premises Proceedings and so we declined to make any findings of fact in respect of Issue Four.

**Issue Five: The Appellant's failure to notify the Respondent of material facts following the closure of premises for Kreative Learning Childcare.**

- 7.36 The Respondent accepted that the Appellant did notify it of the closure of the premises for Kreative Learning Childcare due to a flood. The Respondent takes issue with the date of notification but that is considered further below under Issue Twelve.
- 7.37 The Respondent's case is that following the closure of the premises, the Appellant failed to notify the Respondent that:
- (a) the children were being looked after in local parks: and
  - (b) a key figure of the premises (New Life Christian Community) was a convicted paedophile.

**The Evidence**

- 7.38 Ms Clark's evidence is contained at paragraphs 47 to 50 of her First Witness Statement (MB pages H11 to H12). In summary she explained that Mrs Henry had notified the Respondent that the premises was closed due to a flood on 12

September 2012; she requested further information; Mrs Henry provided a copy of a court order which contained information that was a concern the Respondent. The court order stated that children were being looked after in local parks, and that a key figure of the premises was a convicted paedophile who might seek access to files and may have been in the premises when children were present. Ms Clark explained that the Appellant had not notified the Respondent of this.

7.39 Ms Clark's oral evidence was, in summary:

- (a) The Respondent had received information that the Temple Hill site was closed because of a flood, but Mrs Henry had not provided information as to where the children were being looked after. She was concerned about the safety of the children and so she tried to confirm with Mrs Henry where the children were being looked after, but Mrs Henry did not provide this information.
- (b) Mrs Henry did send a copy of the court order to one of Ms Clark's colleagues. But this information was not sufficient to assuage the Respondent's concerns and so the decision was taken to do an unannounced visit.

7.40 Ms Mackey's evidence is contained at paragraph 24 of her Witness Statement (MB page H153).

7.41 Mrs Henry's evidence is contained at section 14 of her Witness Statement. In summary, she explained that the premises of Kreative Learning Childcare were a church; Kreative Learning Childcare had exclusive use of the premises during its opening hours; at the weekend, the church was used as a food bank; the proprietor of the church had a brother who was a registered paedophile; it was agreed with the proprietor that the person identified as the registered paedophile would not *"be allowed within the office area even though it is locked anyway and none of them will be allowed to attend the site during operating hours"*.

7.42 Mrs Henry's oral evidence was, in summary:

- (a) It was put to Mrs Henry, that she had failed to notify the Respondent that a registered paedophile had access to the premises. Mrs Henry explained that the paedophile was not connected to the Appellant in any way and the offices at the premises were locked so there was nothing for the paedophile to access.
- (b) It was put to Mrs Henry that her concerns were sufficient to justify an application to the High Court for an injunction. Mrs Henry explained that her concern was that this person was a volunteer on a Saturday and so had access to the building on a Saturday, but she wanted to try to mitigate any reason why he could come to the premises on a weekday (i.e. when the nursery was operating).

- (c) Mrs Henry was referred to paragraph 6 of the Mrs Justice Hill DBE's reasons in the order dated 12 September 2024 ("**the Injunction Order**") (page H84).
- (d) It was suggested to Mrs Henry that the evidence she had given to this Tribunal was not consistent with the evidence presented to the High Court as part of the application for the injunction. Mrs Henry did not accept this. Her evidence was that the judge who made the injunction order had mis-recorded the information that was presented. Mrs Henry explained that the paedophile had not breached the agreement to stay away from the premises whilst the premises was operating as a nursery.

### Our Findings

- 7.43 It was not in dispute that Mrs Henry, on behalf of the Appellant, notified the Respondent that there had been a flood at the premises of Kreative Learning Childcare which had necessitated a closure of those premises.
- 7.44 It was not necessary for us to decide whether:
- (a) the children were being looked after in local parks: and
  - (b) a key figure of the premises (New Life Christian Community) was a convicted paedophile.
- 7.45 It is sufficient for the purposes of this appeal to determine as follows:
- (a) Following the flood, the Appellant made alternative arrangements for the care of the children who usually attended Kreative Learning Childcare; and
  - (b) The Appellant became aware that an individual connected to the premises at which Kreative Learning Childcare operated was a registered paedophile.
- 7.46 The above two points are not in dispute. It was also not in dispute that other than by sending to the Respondent a copy of the Injunction Order, the Appellant failed to notify the Respondent of the above two points.
- 7.47 It is however necessary for us to address the question of Mrs Henry's evidence both in respect of the evidence she presented to the Court as part of the application for the Injunction Order and her evidence in these proceedings. We refer to the following:
- (a) On 12 September 2024, the Appellant made an application to the High Court for the Injunction Order. That application was heard by Mrs Justice Hill DBE and a copy of the learned judge's order is at page H82. At page H84 are the Judge's reasons for making the order.

- (b) Paragraph six states: *“An individual related to a key figure in the Defendant is a convicted paedophile. There is a particular concern that he might seek access to the files. The Defendant had previously agreed that this person would not be on the premises when the Claimant had children there, but this agreement has not been respected”*.
  - (c) The order states that this was *“the information before the court on 12 September 2024”*.
  - (d) Mrs Henry’s evidence was that the learned Judge’s reasons were incorrectly stated, and she had not represented to the court that the paedophile had been accessing the premises in breach of the agreement that had been reached. We reject that evidence. We were not persuaded that the Mrs Justice Hill DBE incorrectly recorded the information that was before her at the hearing. The application for the injunction was made on informal short notice to the defendant. Accordingly, the Appellant had a duty to make full and frank disclosure with the court. This meant that the Appellant was required to disclose all matters that were material to the court in deciding whether to grant the order. The duty of full and frank disclosure is a continuing duty and continued until the first hearing on notice, which was listed to be on 20 September 2024. This meant that the Appellant was under a duty to correct any information that was incorrectly stated in the interim order. Mrs Henry accepted that she did not seek to correct the judge’s reasons at any point. We are satisfied that this is so because the Judge’s reasons correctly record the information that was presented to her.
- 7.48 Given the above, we find that Mrs Henry’s oral evidence given to this Tribunal is inconsistent with the information and evidence presented to Mrs Justice Hill DBE. This means that either the evidence presented to Mrs Justice Hill DBE was not truthful, or the evidence presented to this Tribunal was not truthful.

**Issue Six: Ofsted were refused entry to the Appellant’s premises when they arrived for the unannounced visit on 18 September 2024.**

- 7.49 Ms Clark’s evidence is contained at paragraphs 53 to 56 of her First Witness Statement (MB pages H13 to H14). At paragraph 53, Ms Clark stated: *“On arrival, the manager Kathleen Harwood answered the door. I showed her my identification badge. She requested we waited outside while she looked for the visitors’ book...”*
- 7.50 Ms Clark explained at paragraph 54 to 56 that when she and Ms Conroy entered the premises, the manager, Kathleen Hargood said that *“she had spoken to Mrs Henry and had been told to refuse us entry”* and that *“she [had] been asked to tell us to leave because Mrs Henry needed to make a phone call”*. Ms Clark and Ms Conroy then both left the premises.
- 7.51 Ms Clark’s oral evidence was, in summary:

- (a) When they arrived, they were first greeted by the manager and asked to wait outside. She was quite concerned by the number of children she could see. When they gained entry, they were asked to leave. The manager told them that she had been told by Mrs Henry to ask them to leave. Ms Clark handed over some papers which included code of conduct and details of the Respondent's rights of entry, and the helpline number. They withdrew and waited outside.
- 7.52 Ms Conroy's evidence is contained at paragraphs 7 to 9 of her Witness Statement (MB pages H116 to H117). Ms Conroy explained that Mrs Hargood answered the door and asked them to *"wait outside while she got the visitors record."* She explained that they entered the premises and *"Within a few seconds, the manager, KH, came out of the office... The manager told us that the owner had asked us to leave, because she did not want us on the premises"*.
- 7.53 Ms Conroy's oral evidence was, in summary:
- (a) On arrival they got as far as the playroom and observed 20 children. At that point they were asked to leave.
- 7.54 Mrs Henry's evidence is contained at section 6 of her Witness Statement. She stated: *"Inspectors arrived without prior notice, and staff initially requested clarification regarding the visit. At no point was entry refused outright. Once Ofsted clarified their purpose, access was given"*.

### Our Findings

- 7.55 We were not persuaded that the Respondent's inspectors were refused entry to the Appellant's premises when they arrived for the Unannounced Visit on 18 September 2024. It is not in dispute that the inspector's entry was initially delayed, and we consider the reasons for that delay further below under Issue Eight.

### **Issue Seven: The events which were observed during the Unannounced Visit on 18 September 2024.**

- 7.56 It was not in dispute that during the Unannounced Visit on 18 September 2024:
- (a) Four children were brought out of the back of the premises.
  - (b) Two of the children were babies and found in Mrs Henry's car with Meya Grimmond. The other two children were older and brought out by Mrs Hargood.
  - (c) Whilst she was in the car, Meya Grimmond was unsupervised. This was originally disputed by Mrs Henry in her e-mail dated 25 November 2024 (MB page H139), but it was accepted in her witness statement, albeit Mrs Henry does not accept that she was aware of the lack of supervision.

- 7.57 Mrs Henry did not accept that the children were without shoes. On this we refer to our findings of fact in respect of Issue Eight below.
- 7.58 Mrs Henry did not accept that Meya Grimmond was “unvetted”. Mrs Henry’s evidence is at section 7 of her Witness Statement. She stated: *“The young person involved was on a recognised childcare apprenticeship and had been subject to background checks”*. Mrs Henry does not explain in her statement and did not explain in her oral evidence what those alleged background checks were. In an e-mail dated 25 November 2024 (page H139), Mrs Henry accepted that Ms Grimmond was not DBS checked.
- 7.59 We were not persuaded by and did not accept Mrs Henry’s evidence. We did not believe that Mrs Henry had completed background checks on Ms Grimmond. We were provided with no information as to what these alleged background checks were other than an acceptance that a DBS had not been done. We were provided with no documents to corroborate Mrs Henry’s evidence. As explained elsewhere in this decision, Mrs Henry has shown a propensity to provide false or misleading information to this Tribunal and in the absence of any corroborating evidence, we were not prepared to accept Mrs Henry’s evidence.

**Issue Eight: 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.**

- 7.60 Ms Clark’s evidence is contained at paragraphs 57 to 62 of her First Witness Statement (MB pages H14 to H15). Ms Clark stated: *“Maria stopped Kathleen and asked where she was going. Kathleen replied she was taking the children for a walk. I noticed the children had no shoes on. Maria said to Kathleen that she needed to take the children back inside”*. Ms Clark explained that the children had no shoes on, and no belongings with them, such as bags, coats or water bottles. She noted that the weather that day was very warm and sunny.
- 7.61 Ms Clark’s oral evidence was, in summary:
- (a) Ms Divine suggested that Ms Clark was lying in her statement and the children did in fact have shoes on. Ms Clark did not accept this. She confirmed that the children who had been brought outside had no shoes on.
  - (b) When they saw Mrs Hargood coming out of the back of the premises with the two older children, Ms Conroy asked her to stop, and Mrs Hargood explained that she was taking the children for a walk.
  - (c) It was her view that Mrs Henry with the assistance of her staff was trying to conceal the four children that had been brought outside. She explained that the manager and the apprentice would have had to walk

past Mrs Henry to leave the building and so Mrs Henry knew they were being taken outside.

- (d) It was put to Ms Clark that there was CCTV of the back of the premises and the reason why the Respondent did not seek to preserve that CCTV was because it would have shown that Ms Clark was not being truthful and that the children were wearing shoes. Ms Clark did not accept this. She explained that she was not aware that there was any CCTV.

Ms Conroy's evidence is contained at paragraphs 10 to 17 and 37 to 38 of her Witness Statement (MB pages H117 to H120). In summary, Ms Conroy's evidence was that she asked Mrs Hargood where she was going, and she replied that she was taking the children for a walk; she noted that the children did not have anything with them that would suggest they were going on an outing, such as a bag; Later during this visit, Ms Conroy asked the Mrs Henry why the children were outside and Mrs Henry responded that she and the apprentice Meya were taking the children home; She explained that they would not be using buggies, they would be walking; Mrs Conroy noted that two of the babies had no shoes on them.

7.62 At paragraph 38, Ms Conroy stated: *"Mrs Henry confirmed that she had asked the member of staff Meya to wait with the children in the car".*

7.63 Ms Conroy's oral evidence was, in summary:

- (a) When she went to the back of the premises, she found the apprentice in the car with the two babies and Mrs Hargood coming out with two toddlers. Ms Conroy asked Mrs Hargood where she was going, and she said she was taking the children for a walk.

7.64 Mrs Henry's evidence is contained at sections 7 and 8 of her Witness Statement. Mrs Henry stated:

- (a) Section 7: *"At no point was I aware she was left unsupervised with babies. At the time I was not aware of the situation observed"*.
- (b) Section 8: *"I fully explained the children's movement outdoors to Ofsted on the day. The interpretation that I was evasive or misleading is incorrect and not supported by any objective factual evidence. This again was addressed in the welfare follow up meeting , explanation and documents were provided and accepted by the inspector"*.

7.65 Mrs Henry's oral evidence was, in summary:

- (a) Mrs Henry did not accept that when the inspectors arrived on 18 September 2024, she knew that there were 20 children on site, two of which were babies. Mrs Henry's evidence was that she did not become aware of these facts until after the event and after she had investigated.



- (b) Mrs Henry did not accept that the only members of staff on duty (not including her) were Mrs Hargood and the two apprentices.
- (c) Mrs Henry did not accept that the reason why the inspectors were initially denied entry to the premises was to allow time for the four children (including the two babies) to be removed from the premises.
- (d) Mrs Henry's evidence was that she was unaware that the two members of staff had exited the building with the four children.
- (e) Mrs Henry accepted that both members of staff would have had to have walked through the same room that she was in to leave the building (i.e. the office). Mrs Henry maintained that she did not see either of them. She explained that the office is a long room, and she was at the far end of it on the phone. She explained that she was so engrossed in the call this was why she did not notice the members of staff leaving with the children.
- (f) Mrs Henry accepted that the apprentice would have had to have taken Mrs Henry's car keys from the office to access her car. She did not accept that she noticed this happening.
- (g) Mrs Henry did not accept that she had told Ms Conroy, when asked, that she was taking the children home. Mrs Henry's evidence was that she had told Ms Conroy that the day continued as normal. Mrs Henry's evidence was that Ms Conroy was fabricating her evidence.
- (h) Mrs Henry did not accept that Ms Conroy asked her whether she would be using buggies to take the children home.
- (i) Mrs Henry was referred to her e-mail dated 25 November 2024, at page H139. In that e-mail, Mrs Henry stated:  
*"During the visit on 18 September 2024, there appears to be a misunderstanding regarding the circumstances surrounding the presence of children in the vehicle and the movement of children through the back door. At no point was there an intentional effort to deceive inspectors or mask unsafe conditions. The movement of children was conducted to ensure their safety and comfort during the inspection process".*
- (j) It was put to Mrs Henry that this account is a different version of events to what she said on 18 September 2024. This e-mail suggested that Mrs Henry was aware that the children were being moved into the car. Mrs Henry did not accept this.
- (k) Mrs Henry was referred to the Appellant's response to Issue Seven set out in the Scott Schedule (page F6). The Appellant's Response stated:  
*"The babies were removed briefly by a junior staff member, not unsupervised for a significant time, and not placed into any vehicle or exposed to prolonged risk".*

- (l) Mrs Henry accepted that the babies were placed in her car and so the information contained in the Scott Schedule was not correct. Mrs Henry did not accept that this was a deliberate attempt to mislead the Tribunal.
- (m) Mrs Henry was referred to the Appellant's response to Issue Six set out in the Scott Schedule (page F5). The Appellant's Response stated:  
*"Mrs Henry was not on site. She was on the phone with Ofsted HQ at the time".*
- (n) Mrs Henry accepted that she was on site and so the information contained in the Scott Schedule was not correct. Mrs Henry did not accept that this was a deliberate attempt to mislead the Tribunal.

### Our Findings

- 7.66 We were persuaded that Mrs Henry was aware that that the four children had been taken out the back of the premises by the two members of staff. Mrs Henry's evidence that she was unaware, is simply not credible. We therefore reject Mrs Henry's evidence. Our reasons were:
- (a) It was not disputed that for the four children and the two members of staff to get outside, they had to leave through the same room that Mrs Henry was in (i.e. the office). Not only that, but at least one of the members of staff had to stop, locate and take Mrs Henry's car keys.
  - (b) We did not believe that all this could happen, without Mrs Henry noticing anything at all.
  - (c) Mrs Henry had told Ms Conroy that she had asked the apprentice to wait with the children in the car. We accepted Ms Conroy's evidence on this and rejected Mrs Henry's evidence. We did not believe Mrs Henry's evidence.
  - (d) Mrs Henry has shown, during these proceedings, a propensity to provide this Tribunal with false and/or misleading information. We refer to the examples set out above in relation to the Scott Schedule. In our judgment, her oral evidence to the Tribunal on this issue was similarly false and misleading.
- 7.67 We accepted Ms Conroy and Ms Clark's evidence:
- (a) as to reason given by Mrs Hargood for being outside with the children; and
  - (b) that the children were outside without any shoes on.
- 7.68 Mrs Henry could not challenge that evidence as she was not present, and no evidence was produced from Mrs Hargood. We reject the suggestion by Ms Divine that Ms Conroy and Ms Clark's credibility was undermined because they did not secure the alleged CCTV evidence. Had any such evidence existed then it could have been produced by the Appellant at any time.

- 7.69 We accepted Ms Conroy's evidence that Mrs Henry had told her that she was taking the children home. We preferred Ms Conroy's evidence over Mrs Henry's evidence because we did not believe Mrs Henry's evidence. We refer to and repeat our comments at paragraph 7.66(d) above.
- 7.70 The account that Mrs Henry gave to Ms Conroy was different to the account set out by Mrs Henry in her e-mail dated 25 November 2024, (MB page H139). We therefore agree that Mrs Henry has given inconsistent accounts. This undermines her general credibility and is further evidence of her propensity to provide false or misleading evidence.
- 7.71 Given that Mrs Henry's account for the children being outside differed from Mrs Hargood's account and that Mrs Henry has given inconsistent accounts, we conclude that there is no one legitimate reason for the children being outside. We did not believe that the children were being taken for a walk, or that they were being walked home. The children had no shoes on and had none of their belongings with them. In these circumstances, to suggest they were walking anywhere is preposterous.
- 7.72 In our judgment, the only credible reason for the children being brought outside was because the Appellant, through Mrs Henry, was trying to conceal them from the Respondent's inspectors. We are satisfied on the balance of all the evidence that the reason why the Appellant did this was because (i) there were too many children onsite and (ii) two of the children onsite were babies and the premises was not registered to take babies. This was a deliberate act of concealment and so dishonest.

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

- 7.73 Ms Clark's evidence is contained at paragraphs 68 and 79 of her First Witness Statement (MB pages H17 and H20). Ms Clark refers to Mrs Henry's e-mail of 25 November 2024 (MB page H138). In that e-mail, Mrs Henry stated: "*The movement of children was conducted to ensure their safety and comfort during the inspection process.*" Mrs Clark explains that this email demonstrates that Mrs Henry does not understand the unsafe situation she placed children in, and in fact believes this to have been a safe situation. This does not demonstrate she has an understanding of safeguarding, the risk to children or the impact this had on children.
- 7.74 Ms Conroy's evidence is contained at paragraphs 15, 37 to 38 and 68 of her Witness Statement (MB pages H119 H123 to H124 and H130). In summary, Ms Conroy's evidence was that:
- (a) Mrs Henry's explanations for why the children were found outside on 18 September 2024 demonstrated a lack of understanding regarding

safeguarding and Mrs Henry's actions placed the children at risk. Mrs Henry failed to complete a risk assessment to ensure staff and children's safety.

- (b) Mrs Henry put children's safety at risk of harm, by:
  - (i) caring for them in an environment that was not safe or suitable for the ages or numbers of children present; and
  - (ii) allowing staff who were not fully vetted to have unsupervised access to the children.

7.75 Mrs Henry's evidence is contained at section 9 of her Witness Statement. Mrs Henry stated: *"I have completed safeguarding training and hold a Level 6 qualification. I reject the suggestion that I lack insight. All staff operate under a robust safeguarding policy that is regularly reviewed. This was also addressed as part of the welfare follow up meeting. So again I met this standard"*.

7.76 Mrs Henry's oral evidence was, in summary:

- (a) Mrs Henry accepted that Kreative Learning Preschool was not registered to take babies. Mrs Henry also accepted that on 18 February 2024 two babies were present.
- (b) Mrs Henry also accepted that 18 September 2024 was not the first time that Kreative Learning Preschool had taken babies. Mrs Henry accepted that babies were being taken at Kreative Learning Preschool every day since the date of the flood at Kreative Learning Childcare.
- (c) Mrs Henry explained that she was not aware that babies were being taken at Kreative Learning Preschool until she had completed her investigation after the Unannounced Visit on 18 September, when she had reviewed the registers. She explained that it was the manager's decision to take babies at Kreative Learning Preschool and the manager had most likely done this to try and support the families from Kreative Learning Childcare.
- (d) Mrs Henry was asked whether she ever looked at the registers during this period. Mrs Henry's evidence was that at no point did she look at the registers. She explained that she was normally quite thorough but at that period of time she was swamped and overwhelmed and there were not enough hours in the day to do everything.
- (e) Mrs Henry accepted that generally, babies go on the "Discover's Register". Mrs Henry's evidence was that sometimes older children go on the Discover's Register if they are at a younger developmental stage. It was put to Mrs Henry that given the Discover's Register was mostly for babies, she should have been able to see at glance if any babies were present. Mrs Henry did not accept this.
- (f) Mrs Henry accepted that Kreative Learning Preschool usually closed around 4pm and that the registers showed that on 16 and 17

September one of the children (who happened to be one of the babies) was not collected until 5.00pm and 5.50pm respectively. It was put to Mrs Henry that this must have been flagged to her because this was outside normal business hours and so arrangements for staffing must have been made. Mrs Henry's evidence was that she genuinely did not know, her staff were happy to work flexible hours, she only became aware that babies were present when she looked at the records as part of her investigation.

### Our Findings

- 7.77 We were persuaded that the Appellant failed to take all necessary steps to keep children safe and well and in doing so put children's safety at risk of harm. We accept that Mrs Henry has shown limited insight into the possible safeguarding risks to children. Our reasons are:
- (a) Mrs Henry was aware that the maximum number of children she could have onsite at Kreative Learning Preschool was 18. Despite this, Mrs Henry permitted 20 children to be onsite. We refer to our findings in respect of Issue Ten below. We accept that caring for children in an environment that was not suitable for the number of children put the children's safety at risk of harm.
  - (b) Mrs Henry was aware that there were babies onsite on 18 September 2024 and she was aware that this was not the first time. We did not believe Mrs Henry's evidence. On Mrs Henry's own evidence, she spoke with the manager daily and attended the premises regularly. To suggest that she was unaware that babies were onsite, for a period in excess of two weeks, is not credible. We are satisfied that Mrs Henry knowingly permitted babies to be onsite at Kreative Learning Preschool from the date of the flood at Kreative Learning Childcare to 18 September 2024. Kreative Learning Preschool was not registered to take babies, and this put children's safety at risk of harm.
  - (c) Even if we had been persuaded that Mrs Henry was truly not aware of the presence of the babies, then this in itself would have represented a serious safeguarding risk. Mrs Henry was the Nominated Individual of the Appellant. Paragraph 9 of Part 1 of Schedule 2 to the Early Years Register Regulations prescribes that the role of the Nominated Individual is to oversee (either alone or jointly with others) the management of the early years provision. It was therefore Mrs Henry's business to know that there were babies onsite. Mrs Henry's explanation that she was overwhelmed with everything else going on in her life is no explanation at all. This in itself raises a serious safeguarding concern and calls into questions Mrs Henry's leadership ability.
  - (d) Mrs Henry was aware that the children had been taken outside. We refer to our findings in respect of Issue Eight above. Mrs Henry did not

intervene; she permitted the children to be taken outside without any belongings and without shoes.

- (e) Mrs Henry permitted the two babies to be placed in a car with an unqualified apprentice who had not been DBS checked and who was unsupervised. We refer to our findings in respect of Issue Seven above. Further, whilst the four children were outside with the two members of staff, this left Brook Vincent to look after the remaining 16 children in the playroom alone. Miss Vincent was an unqualified apprentice and was not supervised. Mrs Henry could not have supervised her, as on Mrs Henry's own evidence she did not come off the phone in the office.
- (f) Mrs Henry actions showed scant regard for the safety and wellbeing of the children in her care. She was more concerned with challenging the inspectors' right to be on the premises and chose to continue with her phone call rather than end the call and see to the safety of the children.
- (g) We refer to our findings in respect of Issue Five above. It was not in dispute that:
  - (i) Following the flood at Kreative Learning Childcare, the Appellant made alternative arrangements for the care of the children who usually attended Kreative Learning Childcare; and
  - (ii) The Appellant became aware that an individual connected to the premises at which Kreative Learning Childcare operated was a registered paedophile.
- (h) But Mrs Henry did not notify the Respondent of the above information. The Respondent only found out when the Injunction Order was sent to the Respondent. By failing to proactively notify the Respondent Mrs Henry demonstrated a lack of safeguarding awareness.

**Issue Ten: Mrs Henry's honesty regarding how many children were being cared for at the time of the Unannounced Visit on 18 September 2024.**

The Evidence

- 7.78 Ms Clark's evidence is contained at paragraph 78 of her First Witness Statement (MB page H19). Ms Clark stated: *"She was also dishonest about how many children were being cared for at the time, maintaining that there were not 20 children present but 18, and that the register would prove this"*.
- 7.79 Ms Conroy's evidence is contained at paragraph 41 of her Witness Statement (MB page H19). Ms Conroy stated: *"I asked Mrs Henry to tell me about the space within the nursery and how many children she understood they could have. She responded stating that they can have 18 children aged 2-5 years"*.
- 7.80 Mrs Henry's evidence is contained at section 10 of her Witness Statement. Mrs Henry stated: *"Stated by the manager Any discrepancy noted was due to staff*

*being mid-headcount when Ofsted arrived. I have never concealed attendance numbers and all registers and deployment sheets were made available to the inspector to view and copy for her records”.*

7.81 Mrs Henry’s oral evidence was, in summary:

- (a) Mrs Henry accepted that Ms Conroy had asked her how many children were onsite and she had said 18. Mrs Henry had said 18 because this is what she had been told by the manager when she arrived onsite. Mrs Henry explained that the manager must have miscounted because she was mid-headcount.
- (b) Mrs Henry explained:
  - (i) that she only noticed there were 20 children onsite after Ms Conroy had asked to see the registers; but
  - (ii) that she did not look at the registers until she started her investigation which was within a few dates.
- (c) Mrs Henry was referred to the Amended Decision Notice dated 3 January 2025 at page H101. This Decision Notice was in respect of the Appellant’s appeal against the Respondent’s decision to suspend its registration. A hearing was held on 19 December 2024 and Mrs Henry gave oral evidence. Paragraph 15 recorded Mrs Henry’s evidence as follows:

*“She also maintained that there were not 20 children present but 18 and the register would prove this though she did not provide a copy of this”.*
- (d) Mrs Henry was asked why, if within a few days of the Unannounced Visit on 18 September 2024, she was aware that there were in fact 20 children onsite, she had represented to the Tribunal on 19 December 2024 that there were only 18. Mrs Henry did not accept that she gave this evidence. Her position was that the judge must have mis-recorded the evidence that she gave.

### Our Findings

- 7.82 It was not in dispute that on 18 September 2024, Mrs Henry told Ms Conroy that there were only 18 children onsite. But we were not persuaded that this was an honest mistake. Mrs Henry was aware that she was only permitted to have 18 children onsite. We accept Mrs Conroy’s evidence at paragraph 41 of her statement.
- 7.83 We did not believe that Mrs Henry had been told by the manager that there were only 18 children onsite. Mrs Henry’s explanation that the manger miscounted because she was mid-headcount made no sense. The manager would have known exactly how many children were onsite because a register had been taken and the register showed twenty children.

- 7.84 In our judgment, Mrs Henry knew that there were in fact 20 children onsite and so she knew the information she provided to Ms Conroy was not truthful. This is why the children were brought out of the back of the premises – we refer to our findings in respect to Issue Eight above. Mrs Henry has shown herself willing and able to lie to this Tribunal when the truth of the situation does not suit her. In our judgment, Mrs Henry provided false evidence to the Tribunal on 19 December 2024. We did not accept that the Tribunal Judge mis-recorded her evidence. If Mrs Henry was to be believed, then this would be second member of the judiciary to have mis-recorded her evidence. The position is not credible.
- 7.85 Given the above, we accept that Mrs Henry was not honest regarding how many children were being cared for at the time of the Unannounced Visit on 18 September 2024.

**Issue Eleven: Mrs Henry's honesty regarding the number of staff present during the Unannounced Visit on 18 September 2024.**

The Evidence

- 7.86 Ms Clark's evidence is contained at paragraph 63 of her First Witness Statement (MB page H15). Ms Clark stated: *"While Maria conducted the remainder of the visit, I waited for her outside as agreed. While waiting outside I observed Kathleen, Meya, and Brooke return to the premises with the group of children. I later learned that Mrs Henry had told Maria the children had gone to a local park. Mrs Henry also told Maria there were four members of staff that day. I only saw three members of staff return with the children and I only saw three members of staff in the premises while I was there. I never saw a fourth member of staff"*.
- 7.87 Ms Conroy's evidence is contained at paragraphs 48 and 49 of her Witness Statement (MB page H126). Ms Conroy stated:
- "48. We spoke about the ratios and Mrs Henry told me that Ellie, a member of staff, had been here and gone off duty on her break, just before we arrived. Mrs Henry left the office to go into the nursery room and asked the manager what time Ellie (the member of staff who we did not see) went on her break. The office is very close to the nursery room, and I heard whispering between the two of them. The manager KH then responded just before the inspectors arrived. I asked what time she came back, because neither myself nor PC saw this fourth member of staff, despite us being there for a substantial amount of time. The manager said she came back and went to the park with them. She came back to the nursery with the children and other staff, where parents were waiting to take some of the children home."*



49. *The manager told me that Ellie has a complicated pregnancy and that she is only working about 10am to 2pm at the moment*".

7.88 Ms Conroy's oral evidence was, in summary:

- (a) During the time that Mrs Conroy was at the Unannounced Visit the only members of staff that she saw were Mrs Henry, Mrs Hargood, Meya Grimmond and Brooke Clement. She did not see Elle.

7.89 Given what Mrs Henry had stated in her witness statement, we directed Ms Conroy to undertake a search of the Respondent's systems and confirm whether the Respondent was ever sent a daily staff register from Mrs Henry. Ms Conroy completed this search overnight between days two and three of the hearing and at the start of day three confirmed in the oral evidence and whilst under oath that she could find no trace of any staff attendance records.

7.90 Mrs Henry's evidence is contained at section 10 of her Witness Statement. Mrs Henry stated: *"Staffing levels on the day were appropriate. We maintain daily registers of staff and children, which confirm our compliance. These documents were made available to Ofsted"*.

7.91 Mrs Henry's oral evidence was, in summary:

- (a) She was part of the planned staff ratios on 18 September 2024. Mrs Henry was asked what her hours of work were; Mrs Henry explained that she did not have any set hours.
- (b) Mrs Henry was asked what hours she was needed to be onsite to be part of the ratio; Mrs Henry stated that she could not remember exactly, she had a meeting in the morning, and after that she would have gone straight to the premises.
- (c) Mrs Henry was asked what time she arrived at the premises; Mrs Henry explained that she could not exactly what time she got there.
- (d) Mrs Henry was asked how that worked if there were children arriving before 10am; Mrs Henry explained that this would have been covered by the manager. If the numbers were not fine with ratio, then she would have cancelled her meeting. She explained that she normally had a call with the manager early morning to discuss numbers.
- (e) Mrs Henry was asked about Ellie; Mrs Henry explained that she was working that day, she was on the rota from 10am until 2pm. Mrs Henry was not sure what time she went to doctors' appointment.
- (f) Mrs Henry explained that she did not see Ellie at all that day. Mrs Henry was asked how she knew Ellie was working if she had not seen her; Mrs Henry explained that it was on the log; Mrs Henry further explained that the setting operated a form of clocking in system through the use of thumb print on an iPad.

- (g) Mrs Henry was asked how, given the layout of the premises, it was that she did not see Ellie. If Mrs Henry was in the office, then Ellie have been in the playroom; Mrs Henry explained that she did not see Ellie and she did not see the other apprentice (Brooke) either; she explained that she was not caring for the children, she was looking through paperwork and bits and pieces.
- (h) Mrs Henry explained that the document which had been produced and admitted as late evidence was not the staff register but the staff rota.
- (i) Mrs Henry explained that Ellie and Mrs Hargood were both interviewed and produced statements as part of her investigation. But the reason she had not produced any of the material produced as part of the investigation or why they had not been asked to produced statements for these proceedings was because Mrs Henry did not want to put them through the same process that Mrs Henry has been forced to go through. Mrs Henry explained that her experience of the process has been dreadful and if they had given statements then would have had to have come and given oral evidence and she did not want to put them through this.

### Our Findings

7.92 We were not persuaded that Ellie was working and part of the staff ratios on 18 September 2024. Our reasons are:

- (a) We accepted Ms Clark and Ms Conroy's evidence that neither of them had seen Ellie during the entire time that they were at the Unannounced Visit. This evidence was not challenged. If Ellie had been in work that day then, whilst we accept that it is possible that neither Ms Clark nor Ms Conroy would have seen her at any point, it is not probable. The premises were small and consisted of only three rooms, all of which interlinked and there was a large glass window between the office and playroom. We are satisfied, on the balance of probabilities, that had Ellie been there, she would have been seen as were all the other members of staff.
- (b) On her own evidence, Mrs Henry did not see Ellie at any point.
- (c) We were not persuaded by and did not accept Mrs Henry's evidence that she had checked the log and that the log had showed Ellie to be working. As explained elsewhere in this decision, Mrs Henry has shown a propensity to provide false or misleading information to this Tribunal and in the absence of any corroborating evidence, we were not prepared to accept Mrs Henry's evidence.
  - (i) Mrs Henry did not produce the logs as evidence. Mrs Henry's explanation was that she could not access the logs as she no longer had access to her work e-mail. That may be so, but it

does not explain why Mrs Henry did not provide the logs at an earlier date before her access to her e-mails was blocked.

- (ii) We did not accept Mrs Henry's evidence that she had provided the staff registers to the Respondent. Ms Divine made emphatic submissions to the Tribunal that these same registers had been provided to the Tribunal during the suspension appeal hearing on 19 December 2024. We allowed Ms Divine overnight to locate a copy of the e-mail sending these records. Ms Divine ultimately withdrew her submissions and accepted that she had not provided the registers to the Tribunal; what she did provide to the Tribunal was the rota which we admitted as late evidence. Given the Appellant, through Ms Divine, was unable to remember what records had been provided to the Tribunal in December we had no confidence in Mrs Henry's recollection as to what was provided to the Respondent in September 2024. In any event, Ms Conroy checked the Respondent's records and was able to confirm that no registers had ever been provided. We accepted Ms Conroy's evidence on this.
- (iii) The rota that was produced by Mrs Henry was of very limited evidential value. All it showed was who was proposed to be in work, not who was actually in work.
- (iv) Mrs Henry had claimed during the hearing that there existed CCTV of the premises. If any such CCTV did exist, then it could have been produced to prove that Ellie was working. No CCTV was produced.
- (v) Mrs Henry could have produced the contemporaneous statements that she claimed to have taken from the staff working on 18 September 2025 as part of her own investigation. We did not accept Mrs Henry's reason for not producing these statements. The production of these statement would not necessarily have meant the authors of the statement would have had to have given oral evidence.
- (vi) Mrs Henry could have produced a statement from Ellie and/or Ellie could have given oral evidence in these proceedings. We did not accept Mrs Henry's reason for not doing this. No witness giving truthful evidence should have any reason to fear giving evidence.

7.93 Given the above findings, it therefore follows that Mrs Henry was not honest with the Respondent when she stated that Ellie was present and part of the staff ratio on 18 September 2024.

**Issue Twelve: Mrs Henry's honesty regarding when the water damage at Kreative Learning Childcare occurred.**

### The Evidence

- 7.94 Mrs Henry's evidence is contained at section 5 of her Witness Statement. In summary, Mrs Henry stated that: *"The flood happened August 29<sup>th</sup>, at this time we were closed for staff break as it was the summer and the bank holiday had just passed"*
- 7.95 In her oral evidence, Mrs Henry confirmed that the flood happened over the August bank holiday.
- 7.96 Ms Clark's evidence is contained at paragraph 69 of her First Witness Statement (page H19). Ms Clark explained that Mrs Henry notified the Respondent of the flood on 12 September 2024. Ms Clark referred to an e-mail from Holidays Activities and Food ("HAF") programme HAF programme coordinator at the local authority (page H111). That e-mail stated: *"The date we were asked if they could move their HAF provision because of the water damage from their site with registration 2703855 to their other Ofsted registered site was on 25th August 2024"*.

### Our Findings

- 7.97 We were not persuaded by the evidence contained in Mrs Henry's written statement, that the flood occurred on 29 August 2025. We therefore find that the flood occurred on 25 August 2025. Our reasons are:
- (a) Mrs Henry's written statement and oral evidence were inconsistent. Mrs Henry's oral evidence was that the flood occurred over the bank holiday weekend. The August bank holiday weekend in 2024 was over 24, 25 and 26 August.
  - (b) In any event, the flood could not have occurred on 29 August 2024, as by 25 August 2025, Mrs Henry had already notified the HAF programme of the flood. The Appellant did not seek to challenge the e-mail at page H111 and so we accepted the dates set out within it as being accurate.
- 7.98 Mrs Henry's evidence was not truthful. Mrs Henry knew the information not to be true and therefore acted dishonestly.

### **Issue Thirteen: The Appellant's participation in the HAF Programme.**

- 7.99 Ms Clark's evidence is contained at paragraphs 69 to 70 of her First Witness Statement (pages H17 to H18). In summary, Ms Clark explained that:
- (a) During the summer of 2024, the Appellant participated in the local authority's HAF programme. This involved the Appellant providing childcare to 38 children aged 4 years to 16 years, for a 4-week period.

- (b) The Appellant is registered on the Early Years Register only, which means that the Appellant can only provide childcare to children aged birth to five years;
- (c) By participating in the HAF programme, the Appellant provided unregistered childcare to those children aged over 5 years, which is an offence.

7.100 In oral evidence Ms Clark explained that there are certain exemptions available to those wishing to provide childcare but none of the exemptions applied to the Appellant. She further explained that exemptions from registration cannot be applied to parts of childcare provision where that childcare is already registered. Any exempt childcare must be separate to your registered childcare.

7.101 Mrs Henry's evidence is contained at section 13 of her Witness Statement. She denied that the Appellant had provided unregistered childcare.

7.102 Mrs Henry's oral evidence was, in summary:

- (a) She took guidance from the local authority who indicated that the Appellant's existing registration status with the Respondent was sufficient to participate in the HAF programme.
- (b) Mrs Henry accepted that it was the Appellant who was receiving payment for the HAF programme, that the programme took place on the premises of the Appellant and that there were no separate staff employed, but she considered the HAF programme to be completely separate from the nursery.

### Our Findings

7.103 It was not in dispute that the Appellant participated in the HAF programme and that as part of that programme the Appellant provided care to 38 children aged 4 to 16.

7.104 Any provider that provides care for children from the 1st of September after their fifth birthday up to the age of 8 for more than two hours a day must be registered on the General Childcare Register.

7.105 It was not disputed that the Appellant was providing care to 5 children who were seven years old. The Appellant offered no evidence to suggest that they were providing care for less than two hours per day or that an exemption applied. In any event, we accepted Ms Clark's evidence that no exemption did apply. We accept that the Appellant was required to be registered on the General Childcare Register and that the Appellant did provide childcare otherwise than in accordance with its regulatory obligations.

## 8. ANALYSIS

- 8.1 Section 68(2)(a) CA 2006, permits the Chief Inspector to cancel a provider's registration if it appears to him that *"the prescribed requirements for registration which apply in relation to the person's registration under that Chapter have ceased, or will cease, to be satisfied."*
- 8.2 We remind ourselves that under section 74(4) CA 2006, this Tribunal must either:
- (a) confirm the decision to cancel the Appellant's registration; or
  - (b) direct that it shall have no effect.
- 8.3 If we decided not to confirm the decision to cancel the Appellant's registration, then under section 74(5) CA 2006, the Tribunal may impose conditions on the registration of the person concerned.

### **Suitability**

- 8.4 Regulation 3 and Part 1 of Schedule 2 to the Early Years Register Regulations sets out the prescribed requirements for registration. They include (but are not limited to) the following:
- (a) Paragraph 1: *"The applicant is suitable to provide early years provision"*.
  - (b) Paragraph 10: *"The nominated individual is suitable to be in regular contact with young children"*.
- 8.5 The Respondent's case is that the Appellant is not suitable to provide early years provision, and Mrs Henry, as the Nominated Individual is not suitable to be in regular contact with young children. This is so, because Mrs Henry has demonstrated a lack of honesty and integrity.
- 8.6 The Appellant's case is that it and Mrs Henry have been honest and transparent with the Respondent at all times and so is and always has been suitable.
- 8.7 In our judgment:
- (a) The Appellant is not suitable to provide early years provision; and
  - (b) Mrs Henry is not suitable to be in regular contact with young children.
- 8.8 Mrs Henry is not suitable to be in regular contact with young children because she had demonstrated a lack of honesty and integrity. The Appellant is not suitable to provide early years provision because the sole director and Nominated Individual is Mrs Henry. We refer to and repeat our findings of fact in respect of Issues One, Two, Three, Five, Six, Eight, Ten, Eleven and Twelve.

- 8.9 Further, the Appellant is not suitable to provide early years provision because through the actions of Mrs Henry, the Appellant has shown it is unable or unwilling to comply with the EYFS welfare requirements. We refer our further analysis below.
- 8.10 Further still, the Appellant is not suitable to provide early years provision because it has demonstrated through its participation in the HAF programme that it is unable or unwilling to comply with its regulatory obligations. We refer to and repeat our findings in respect of Issue Thirteen.
- 8.11 We are therefore satisfied that the Appellant has failed to demonstrate that it has satisfied and will continue to satisfy the prescribed requirements for registrations, specifically, paragraphs 1 and 10 of Part 1 of Schedule 2 to the Early Years Register Regulations.

### **Compliance with the EYFS**

- 8.12 Paragraph 4 of Part 1 of Schedule 2 to the Early Years Register Regulations provides: *“The applicant will comply with the EYFS welfare requirements”*.
- 8.13 In our judgment, the Appellant has shown itself unable or unwilling to comply with the EYFS welfare requirements. We refer to the following:

#### Issue One

- (a) We refer to and repeat our findings in respect of Issue One.
- (b) Paragraph 3.87 of the EYFS required the Appellant to notify the Respondent of:
  - (i) *“Any significant event which is likely to affect the suitability of the early years provider to look after children”*; and
  - (ii) *“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”*.
- (c) The fact that Mrs Henry had been arrested and charged with a criminal offence is quite clearly a significant event which is likely to affect the suitability of the early years provider to look after children. Mrs Henry was a person who cares for/is in regular contact with children.
- (d) Mrs Henry did not notify the Respondent and therefore the Appellant did not comply with paragraph 3.87 of the EYFS.

#### Issue Five

- (e) We refer to and repeat our findings in respect of Issue Five.
- (f) Paragraph 3.87 of the EYFS required the Appellant to notify the Respondent of any change *“To the premises which may affect the*

*space available to children and the quality of childcare available to them”.*

- (g) Pursuant to paragraph 3.88, the Appellant was required to notify the Respondent within 14 days.
- (h) The flood at Kreative Learning Childcare occurred on 25 August 2024. Mrs Henry did not notify the Respondent until 12 September 2024. This is outside of 14 days and so the Appellant did not comply with paragraphs 3.87 and 3.88 of the EYFS.

#### Issue Seven and Nine

- (i) We refer to and repeat our findings in respect of Issues Seven and Nine.
- (j) Paragraph 3.11 of the EYFS states: *“Registered group and school-based providers, except CoDP providers, must obtain an enhanced criminal records check for every person aged 16 and over (including for unsupervised volunteers, and supervised volunteers who provide personal care<sup>15</sup>) who: Works directly with children”.*
- (k) Paragraph 3.13 of the EYFS states: *“Providers must not allow anyone whose suitability has not been checked, including through a criminal records check<sup>18</sup>, to have unsupervised contact with children being cared for”.*
- (l) The Appellant, through Mrs Henry, permitted Meya Grimmond (who was an unqualified apprentice) to be in charge of two babies in her car. Ms Grimmond was not supervised and had not been DBS checked. The Appellant therefore failed to comply with paragraphs 3.11 and 3.13 of the EYFS.

#### Issues Ten and Eleven

- (m) We refer to and repeat our findings in respect of Issues Ten and Eleven.
- (n) Paragraphs 3.66 of the EYFS sets out the indoor space requirements for the premises.
- (o) During the Unannounced Visit on 18 September 2024, there were 20 children onsite therefore too many children for the space available. The Appellant therefore failed to comply with paragraph 3.66 of the EYFS.

- 8.14 Given the above, we are therefore satisfied that the Appellant has failed to demonstrate that it has satisfied and will continue to satisfy the prescribed requirements for registration, specifically, paragraph 4 of Part 1 of Schedule 2 to the Early Years Register Regulations.

### **Conclusion**

- 8.15 As the Appellant has failed to demonstrate that it has satisfied and will continue to satisfy the prescribed requirements for registration our decision is to confirm the decision to cancel the Appellant's registration.



**9. DECISION**

- 9.1 The appeal against the Respondent's decision dated 7 January 2025, to cancel the Appellant's registration is refused.
- 9.2 The decision to cancel the Appellant's registration is confirmed.

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

**Date Issued: 12 August 2025**