

First-tier Tribunal Care Standards

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

[2022] 4504.EY
NCN: [2022] UKFTT 308 (HESC)

Heard on 4 -7th July 2022 at the Royal Courts of Justice, London

BEFORE
Tribunal Judge – Ms S Iman
Specialist Member - Ms L Bromley
Specialist Member – Ms H Reid

BETWEEN:-

Canvey Kids Limited

Appellant

-v-

Ofsted

Respondent

DECISION

The Appeal

1. This is an appeal of Canvey Kids Limited (“the Appellant”) against Ofsted’s (“the Respondent”) decision on 23 December 2021 to cancel the company’s registration as a provider of childcare on non-domestic premises on both the compulsory part (Part A) and the voluntary part (Part B) of the General Childcare Register, under Section 68 of the Childcare Act 2006.

Hearing

2. The hearing took place on 04-07 July 2022. The parties and their witnesses attended in person at the Royal Courts of Justice. The Tribunal met remotely for deliberations on 19th July following receipt of written submissions from both parties.
3. The Tribunal were alert to the fact that Rabbi Goldman was not represented and therefore reasonable adjustments were made. The Tribunal assisted Rabbi Goldman in clarifying his questions to the witnesses throughout proceedings. Throughout the hearing the Tribunal ensured that adequate breaks were given throughout the day. The Tribunal also requested written submissions from the

parties due to Rabbi Goldman giving evidence prior to the close of proceedings and the lateness of the hour. The Tribunal wanted to ensure that Rabbi Goldman was given adequate time to prepare his written submissions and Rabbi Goldman also expressed a view to the Tribunal that he would prefer submissions to be in writing.

Attendance

4. Rabbi Goldman attended in his capacity as Nominated Individual for Canvey Kids Ltd and represented himself. Mr Fieldhouse a Safety Specialist who had visited the premises of Canvey Kids Ltd in his capacity as a Fire Safety Expert also attended as a witness.
5. Mr White represented the Respondent. Ms Lynn Hughes (Early Years Regulatory Inspector) and Ms Sarah Stephens (Early Years Senior Officer) attended as witnesses for the Respondent in these proceedings.
6. The witness statements of Ms Ann Cozzi (Early Years Regulatory Inspector), Ms Daniella Adams (Early Years Regulatory Inspector), Ms Tina Mason (Early Years Regulatory Inspector) and James Evans (Investigator) were all agreed and admitted as read into the record.

Late Evidence

7. The Tribunal received the Scott schedule in advance of the hearing. We also received the Appellant's Skeleton Argument and the Respondent's Skeleton Argument.
8. The Tribunal also requested and received the following late evidence in order to have sight of the relevant documents that were submitted by Rabbi Goldman to Ofsted. These documents were as follows;
 - a) Factual Accuracy Check for the Draft Inspection Report;
 - b) Invitation to interview dated the 10 June 2022;
 - c) Draft report cover letter dated 12 November 2021;
 - d) Inspection Outcome letter dated 12 November 2021;
 - e) Email dated 15th November 2021 from Jacob to the Respondent copied to Rabbi Goldman;
 - f) Emails from Rabbi Goldman to Ofsted dated the 28 June 2022, 23 June 2022, 23 June 2022 and 20 June 2022.
9. There was no objection from either party regarding the admission of the late evidence and it appearing to the Tribunal to be necessary to the proper determination of the appeal to admit it. The Tribunal admitted the above evidence pursuant to Rule 2 and Rule 15 of the First Tier Tribunal (Health, Education and Social Care Chamber 2008) Rules as the evidence was relevant to the issues for determination and it was in the interests of justice to do so.
10. Following the hearing, the Tribunal received final written submissions from both the Appellant and the Respondent. The Appellant also submitted observations

on the Respondent's written submissions.

Background

11. The Appellant is a private limited company (registered at 31 Willow Close, Canvey Island, SS8 9HQ) with three directors:
 - a. Joel Braver director since 24 December 2018.
 - b. Michael Schwartz– director since 24 December 2018.
 - c. Rabbi Avrohom Goldman– director since 9 November 2021.
12. Rabbi Goldman became a director of the company on 9 November 2021 and is also the Nominated Individual of the Appellant company. He had taken over from the previous Nominated Individual Jacob Gross who resigned his position in August 2021.
13. The Appellant has been registered with the Respondent since 8 April 2019 to provide childcare on non-domestic premises at the Former Castle View School, Meppel Avenue, Canvey Island, Essex, SS8 9RZ. The setting is registered on the Voluntary and Compulsory parts of the General Childcare Register.
14. The Jewish Congregation of Canvey Island (JCOCI) Educational Foundation Ltd is responsible for the facilities management of the buildings and the general upkeep of the premises in which the child-minding provision is based but also sublets accommodation to other providers to run clubs.

Legal framework

15. Section 68 of the Childcare Act 2006 provides for the cancellation of a person's registration in certain circumstances. Section 68(2) states that Respondent may cancel registration of a person registered on the Early Years Register, or on either part of the General Childcare Register, if it appears:
 - (a) 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,
 - (b) that he has failed to comply with a requirement imposed on him by regulations under that Chapter.
16. The Childcare (General Childcare Register) Regulations 2008 also set out the prescribed requirements for the compulsory and voluntary part of the childcare register. Schedule 3 and Schedule 6 sets out the requirements governing activities in relation to both parts of the General Childcare Register for the purposes of section 59 of the Childcare Act 2006, and therefore those registered on the compulsory and voluntary part of the childcare register, must also meet these requirements.

17. These Regulations stipulate that an applicant for registration on the General Childcare Register is an individual who is 'suitable' to provide later years childminding. Schedule 3, paragraph 8(1)(a) of the Regulations also states that the later years provider and any person caring for the children must be 'suitable' to work with children.
18. The legal burden of proof is borne by the Respondent, who must establish the facts upon which it relies to support cancellation. The standard of proof to be applied is the "balance of probabilities". It must also demonstrate that the decision to cancel the Appellant's registration is proportionate and necessary. The Tribunal makes its decision based on all the evidence available to it at the date of the hearing and is not restricted to the matters available to the Respondent when the cancellation decision was taken.
19. The powers of the Tribunal can be found in section 74(4) of the 2006 Act. Essentially the Tribunal may either confirm the Respondent's decision to cancel or direct that it shall not have effect. If the Tribunal decides that cancellation should not have effect, it may consider imposing conditions on the Appellant's registration

Issues

20. The key question for the Tribunal is whether the Respondent is able to demonstrate, on the balance of probabilities, that the decision to cancel the registration of the Appellant remains a proportionate and reasonable one.

The Appellant's position

21. The appeal that is brought can be summarised on the following grounds, namely that the decision of the Respondent to cancel registration is wrong. The Respondent has acted partially in that it gave insufficient weight to the information provided by the Appellant in respect of the subsequent improvements made.
22. The Appellant's case is that it does not challenge any of the shortcomings found by the Respondent prior to Rabbi Goldman taking over as the Nominated Individual.
23. The Appellant however does state that the failures of the previous management team are continually being brought up. The Appellant states that that it is important to understand that Rabbi Goldman had no control over matters prior to him becoming a Nominated Individual. Rabbi Goldman states that it is important that he is judged on the present situation, not from a period before he assumed his management role.
24. The Appellant also submits that the Inspectors and the Respondent are targeting the provision and are motivated by discrimination due to the fact that it is a provision serving the Jewish Community. Moreover, that the decision to cancel registration is linked to the prejudice they retain against the Jewish community.

25. The Appellant states that it had improved and rectified the majority of the Respondent's requirements from the previous inspections. Whilst it is acknowledged that they have not fulfilled all the requirements, Rabbi Goldman states that they are working towards this goal and remains confident that they will get there. Rabbi Goldman states that it is unacceptable to expect all requirements to be met in such a short period of time.
26. The Appellant also states that the Tribunal should consider that cancelling the only registered childcare provider designed around the needs and lifestyle of the Orthodox Jewish community in Canvey Island would be devastating to all its users and families, parents and children alike, as they don't have any other option available for them.

Respondent's position

27. The Respondent does not believe that the Appellant is suitable to remain registered. This is due to its repeated failures to meet the statutory requirements for registration and due to concerns that the Appellant has failed to be open and honest and/or work co-operatively with the Respondent in respect of the arrangements for childcare at the setting.
28. The Appellant has been inspected a total of five times since registration. On each inspection, the Appellant has been found not to be meeting statutory requirements.
29. At the time that the Respondent issued the Notice of Decision to cancel registration on 23 December 2021, the Respondent had inspected the Appellant as follows:
- a. 21 January 2020 – judgement of “not met” (not meeting statutory requirements).
 - b. 14 July 2021 – judgement of “not met”.
 - c. 8 November 2021 – judgement of “not met”
30. There were subsequent inspections on the 01 March 2022 and 13 June 2022 which also resulted in the judgement of “not met”.
31. At each inspection, the Respondent informed the Appellant of the actions they must complete to meet the mandatory requirements. The Appellant has not in the Respondent's view been able to bring about the necessary improvements and further breaches were identified. The Respondent submits that repeated breaches were found at the various inspections which demonstrates the Appellant's limited capacity to make and sustain compliance with the regulations.
32. The Respondent also submits that the Appellant company is the registered provider and therefore the *full* inspection history of the Appellant must be relevant to the decision to cancel. It cannot be reasonable or sensible for a provider with a poor compliance history to be able to shed its poor history by

appointing a new Nominated Individual.

33. The main areas relate to breaches relating to welfare and safeguarding, record keeping including records of attendance provision of information to the Respondent, and breaches relating to staff skills, qualifications, training and experience.
34. The Respondent also has concerns about leadership and management at the setting. When the Appellant was initially registered, their Nominated Individual was Jacob Gross. In August 2021, the Respondent was informed that Jacob Gross had resigned as a director and was no longer the Nominated Individual.
35. Whilst the Appellant informed the Respondent that the new Nominated Individual was going to be Rabbi Goldman, the appropriate forms were not submitted and therefore suitability checks were not completed until December 2021. The Respondent was informed that Rabbi Goldman became director on 9 November 2021 and applied to the Respondent to be the Nominated Individual on 11 November 2021. Between August and November 2021, the setting was operating without any Nominated Individual. It is not clear who, if anyone, was in charge during this period as the Appellant's case is that the other two directors play no role in the setting.
36. Rabbi Goldman has repeatedly expressed his confidence to the Respondent that the Appellant is meeting or will shortly meet requirements but this is not supported by the Respondent's inspection evidence. The Respondent therefore submits that the appeal should be dismissed and that cancellation should take effect.

Evidence

37. The Tribunal read the bundle in advance which included, for each witness called, their witness statements and the Tribunal agreed this should stand as their Evidence-in-Chief.
38. At all times the Tribunal recognised that the Appellant was presenting his own case. Rabbi Goldman occasionally had difficulties in formulating questions. In those instances, the Tribunal established the points that he wished to put and asked each witness some open questions. The Tribunal also asked additional questions about matters that it considered were relevant, to make sure that it understood all the evidence.
39. The Tribunal heard evidence from Ms Hughes who has been employed by the Respondent as an Early Years Regulatory Inspector since 1 January 2019.
40. She explained that Canvey Kids Ltd registered with the Respondent on 8 April 2019 to provide childcare on non-domestic premises at the Former Castle View School. Her understanding is that the setting is a club for children of the Orthodox Jewish community on Canvey Island. The club provides homework support for children of this community who are electively home educated. The setting is open all year from 1-4pm Monday to Thursday and is registered on

the Voluntary and Compulsory parts of the General Childcare Register.

41. She explained that she has been involved with the Jewish Congregation of Canvey Island (JCOCI) site ~~in~~ since March 2019 when she visited the site with an EYRI colleague.
42. Miss Hughes took the time to explain to the Tribunal how settings with registered childcare provision usually operate in her experience. She explained that on the occasions she has inspected and visited other settings, she would see a range of activities with children having fun and enjoying themselves but at Canvey Kids Ltd it was different. The children were in specific age groups facing the front very much like a classroom. She understood that the support provided to them related to home schooling and supported learning in subjects like Maths and English.
43. In her evidence she explained that she had never seen a time when children were playing. She understands that children spend the whole day on site. Religious clubs would be attended in the morning and Canvey Kids Ltd and Young Stars clubs attended in the afternoon. Children can be onsite from 9 am and some may not leave until 6pm although others may leave earlier. The Tribunal were also told that Young Stars was a provision for 3-5 year olds.
44. In her evidence it was explained that the organisation registered with the Respondent is required to appoint a Nominated Individual who is responsible for ensuring that the provision meets the requirements of the Childcare (General Childcare Register) Regulations 2008 and will liaise with the Respondent.
45. Jacob Gross resigned as a director of the company on 8 July 2021. The Respondent was informed that Jacob Gross was no longer a director and would no longer be the Nominated Individual for the Respondent in August 2021 and Ofsted was notified in October 2021 that Rabbi Goldman was to be the new Nominated Individual. Rabbi Goldman became the new Nominated Individual on 17 November 2021: the suitability checks for him to be the Nominated Individual were cleared on 27 January 2022.
46. Ms Hughes explained that the first inspection in January 2020 had come about due to the Respondent being informed, (not by the setting), about a fire at the premises. She met with Jacob Gross, the previous Nominated Individual. Mr Gross informed the inspectors that the fire had broken out in a section of the building that was not connected to Canvey Kids Ltd, therefore, he believed he was correct in not being required to inform the Respondent of this significant event.
47. The area of the building that was affected by the fire was partitioned off. The Respondent was satisfied with the explanation given. However, an inspection was carried out and was given a "not met" rating due to examples such as Mr Gross being unable to provide proof that appropriate insurance was in place or a record of the name, address and telephone number of every person living or working on the premises where childcare is provided

48. On the 14 July 2021 EYRI colleagues, Tina Mason and Ann Cozzi carried out a further inspection of Canvey Kids Ltd. The outcome of this inspection was also not met. Ms Hughes explained that this was the only inspection that she did not attend .
49. She was asked to accompany Tina Mason to carry out another Compulsory and Voluntary Childcare register inspection, partly to monitor whether the previous actions had been addressed. On 08 November 2021, they were greeted by the security guard at the main gate, she requested if they could speak to someone from Canvey Kids Ltd. The security guard made some telephone calls and told them that someone would come down to meet them. They parked the car in the car park and approached the security guard again. He made some more calls, then asked if they could put any questions in writing. They explained that they were there to carry out an inspection and would need to see inside the building.
50. They waited for approximately ten minutes and asked the security guard again if anyone was coming to meet them. He said that Rabbi Goldman is in charge of the site, but he was not there.
51. Once admitted to the site, they were shown daily registers for the girls. Their attendance was recorded, however, there were no times of arrival or departure recorded and this was a breach of the general childcare requirements. This requirement has been breached on previous inspections. Ms Hughes explained that they observed the children in the various classrooms and saw them to be generally happy and engaged.
52. When asked for proof of the staff/volunteers suitability, they were advised that this information was held by the administrator – Rabbi Goldman. Therefore, they were not able to establish whether all adults working with or having contact with the children were suitable.
53. Ms Sarah Grunfeld, who they were advised was responsible for safeguarding, was not able to produce her safeguarding training certificate and could not show the inspector a copy of the safeguarding procedures.
54. They observed wall displays, which had been completed by the children. They were told that it was a project about war and that some of the displays were about the Jewish and British cultures. They were concerned by the displays as no one seemed able to provide a translation of the descriptions which were in Yiddish.
55. They were shown a very basic, attendance list, however, the attendance was not recorded for that day. This resulted in a discussion about how would they know who was present in the event of an emergency that day. They were advised that the attendance is recorded in the office, therefore, the supervisors would know who was present. However, they were not provided with this evidence.

56. The outcome of this inspection was also not met. Actions were raised, some of which were repeated from the previous two inspections.
57. On the 12 November 2021 a case review was held, it was considered that the provider has failed to meet the requirements of the Childcare Register on three consecutive inspections and had failed to ensure the safety and well-being of children who attended these clubs.
58. Ms Hughes' recommendation to her senior officer – Ms Stephens - was that as the provider has shown limited capacity to improve and sustain safe and suitable provision for children, they should begin the process of cancelling the provider's registration on the Childcare register. A decision that was agreed by all parties in attendance.
59. During the visit, they had observed a large number of pre-school children leaving the site at 1pm. They were concerned because no early years provision was registered at the site. Rabbi Goldman was asked about these children and which club they had been attending. He told the inspectors that he had no knowledge of this club as it was not connected to Canvey Kids Ltd. He said that it operates at one end of the girl's side of the building. He was asked to provide information about who runs this club. Subsequently, as part of their written objections, Rabbi Goldman provided information that Sheindy Roter runs this club and supplied a contact email address for her.
60. On 22 November 2021 a Notice of Intention (NOI) to Cancel the Appellant's registration of Canvey Kids Ltd was sent to Rabbi Goldman as the Nominated Individual for Canvey Kids Ltd. No response was received from the Appellant to object to this decision, therefore, on 7 December 2021 the initial Notice of Decision to cancel the Appellant's registration was sent. Rabbi Goldman spoke with Ms Stephens and stated that he had in fact objected to this decision on 2 December 2021. Ms Stephens asked him to re-send the objections, which he did and she considered his objections.
61. On 23 December 2021 Ms Stephens wrote to Rabbi Goldman confirming that she was not upholding his objection and the cancellation process was to continue. On 23 December 2021 the Notice of Decision was sent to Canvey Kids Ltd.
62. On 11 January 2022, Ms Hughes and a colleague EYRI, Daniella Adams carried out an unannounced visit to the site to ascertain information around a suspected unregistered provision – Young Stars.
63. During this visit, Sheindy Roter told the inspectors that Rabbi Goldman was her direct line manager and that he carried out all of the DBS checks and other suitability checks for the volunteers who work within the Young Stars club. Rabbi Goldman has denied any involvement with the Young Stars club which the Respondent now considers poses a question over his integrity.
64. On 1 March 2022, Ms Hughes and Ms Ann Cozzi carried out an unannounced inspection to the site. Rabbi Goldman had stated in his appeal that they had

made the necessary changes and that the setting was now meeting the requirements of the Childcare register. Out of fairness to the Appellant, it was considered that they should carry out a further inspection to give the Appellant the opportunity to demonstrate the improvements made.

65. They arrived and introduced themselves to the security guard at the main gate. Ms Hughes asked him if they could speak to someone from Canvey Kids Ltd. He made a telephone call and asked them to wait inside the complex. A short time later a Mr Shreiber met with them and said that he would show them into a conference room, where they waited for almost 40 minutes.
66. Ms Grunfeld then came to the room and said that she would show them around the girl's section of the club. Ms Hughes explained to Mr Shreiber that they would need to see the boy's section too, even though they had been told that there were no boys in attendance that day.
67. Ms Hughes explained that the premises throughout the building were in a state of disrepair and were generally strewn with rubbish which does not meet the requirements of the Childcare Register in relation to regulations for suitability of premises and equipment.
68. They also found during this inspection that the records now being kept for the girls as a daily attendance register do not contain the actual times that children are present, therefore still did not meet the requirement regarding keeping records.
69. A safeguarding discussion was held with the designated safeguarding lead – Miriam Spitzer. She described her role as being the person other volunteers would come to if they had a safeguarding concern. She was able to tell Ms Hughes about some of the types of abuse that would concern her and who she would refer these concerns to Essex County Council, including the Local Authority Designated Officer (LADO). However, Ms Spritzer demonstrated weak knowledge of wider safeguarding issues, such as female genital mutilation or the Prevent duty. Ms Hughes considered that this did not meet the requirement of the Childcare Register.
70. They also held a discussion with Miss Grunfeld. Ms Hughes was told that the club is really for the children of Orthodox Jewish families. If someone outside of this community wanted to attend, she would have to seek approval from the elders. She also said that those children would have to follow the Orthodox Jewish faith, such as praying at specific times during the day. In Ms Hughes view this did not provide an inclusive provision or meet the requirements.
71. It was also noted that Ms Grunfeld was unable to show that any of the staff held relevant qualifications. This did not meet the requirement 'qualifications and training'.
72. During the inspection in March 2022, Mr Shreiber showed them around the boys' section of the building. They gained entry to this area via a main staircase but had to go through two sets of doors before they reached the final rooms off

of the main corridor. The area at the end of the corridor was completely blocked by a wooden partition wall. The only means of escape from this end of the section of the building was one staircase. This meant that if a fire were to break out in one of the rooms or the section of corridor between the staircase and the two farthest rooms, there would be no means of escape for the children or adults in those two rooms. Mr Shreiber acknowledged this, however he confirmed that this had not been considered when the wall was installed. This demonstrated to Ms Hughes a serious lack of understanding about risks.

73. Ms Hughes explained that any decision around cancellation is a joint decision based on sound evidence. She explained that in this instance there were children potentially in an unsafe environment.
74. Ms Hughes was informed by Ms Grunfeld during the inspection that they would have to speak to the elders if a non- Jewish child wanted to attend the setting and the question would have to be put in writing. After further questioning it was stated that anybody could come to this club and no one would be prevented from attending. The inspectors asked what if the child was Muslim. They would be advised to email that question over to the elders. Ms Hughes maintained that this was a breach of the requirements.
75. Ms Hughes believed that inclusivity should be in the capacity of the manager to comment on. She should have been able to answer that question instead of stating that it would need to put in writing and sent to the elders.
76. Ms Hughes discussed at length the issue that arose during the 13 June 2022 in respect of the benches that were standing upright against a wall. She was asked by Mr Schechter "what should I do with them" and in answer to a suggestion from Rabbi Goldman that this response was sarcastic, she said that she believed it to be a genuine question that caused her some concern. She said if she had been told that the benches would be placed on the floor before children arrived she would not have had any further concerns.
77. Ms Hughes also noted during the inspection that the fire exit was now unblocked and a window without restrictors was open all the way. It led to the roof and there was nothing around the perimeter of the roof.
78. Ms Hughes explained that there was a consistent pattern that the people they speak to during the inspections have a limited understanding of the requirements and responsibilities involved in providing services such as Canvey Kids Ltd. She explained that their concern is that information is not being cascaded down so that they do not understand what they need to do in order to meet requirements.
79. She explained that it was apparent that Mr Schechter had not undertaken the appropriate training. He was not able to demonstrate the relevant knowledge or to provide evidence of suitable training around safeguarding.
80. Ms Hughes explained that a prevent duty training certificate and lesser safeguarding certificate level were produced which were inadequate. He was

not able to show the inspectors the Safeguarding Policy.

81. He was the point of contact for other people to come to, in order to discuss any safeguarding matters as designated safeguarding lead. As a designated safeguarding lead it is expected that he would attend a more robust course so he can handle those concerns from staff. The designated safeguarding lead should be made aware of various types of abuse so that they can identify them. The bench-mark is that the person would be able to identify types of abuse that can be found in any society or any walks of life.
82. Ms Hughes explained that she was concerned that there was no ability to meet the requirements. She explained that she had never come across premises in such poor state and the setting was not providing the best for young children. She explained that her concerns also extended to the way information such as the times of opening and closing or change in management was shared with the Respondent.
83. In cross examination she accepted that the provision was different from most provisions that they see but that there are requirements which must be met and they are not onerous. She was concerned that information about the requirements is not cascaded to the staff.
84. She also explained that the children were very well behaved and polite – that it was a controlled environment and had an appearance of a school set up.
85. Ms Hughes also clarified that the Respondent is an independent regulator and does not have a role to support providers.
86. Ms Hughes confirmed that she still believed that the decision to cancel the Appellant's registration remains the most appropriate course of action because the Appellant has been unable to demonstrate that they meet the Childcare Register requirements on successive occasions. The Appellant has been given numerous opportunities to address the many actions raised by the Respondent and while some progress has been made to meet some of the requirements, this has not been sufficient.
87. The Tribunal also heard from Ms Stephens who was employed by the Respondent as an Early Years Senior Officer. She had been in post since September 2021 but has been employed by the Respondent since 1 April 2017 as an Early Years Inspector and has been involved with Canvey Kids Ltd, since August 2021.
88. On 12 November 2021, Ms Stephens was part of the case review meeting in relation to the repeated failure to comply with statutory requirements and repeated actions being raised. Her evidence explained that a case review considers all available evidence and information about non-compliance, as well as the enforcement options available, before the decision maker reaches a decision that is proportionate and appropriate. The purpose of a case review is to ensure that children are safeguarded, to review the consistency in approach, explore whether they have considered all other options and ruled them out,

tested that the sufficiency of evidence supports the proposed action and decided whether we need to obtain further evidence.

89. Ms Stephens explained that at the time of the case review meeting Canvey Kids Limited had made very little improvement since the previous inspections in July 2021 and January 2020. There had been now three not met judgements. During the most recent inspection, there were no records of children's names and hours of attendance, no evidence of DBS checks and qualified staff working with children, no safeguarding policy/procedures and staff lacked a deeper understanding of safeguarding.
90. There was no certificate of registration on display. There were no accident records or records for each child on the premises. The premises remained a concern. The Respondent had not been supplied with all the necessary information relating to the new Nominated Individual so they could complete the checks.
91. These were all actions raised at the previous inspection in July 2021. Furthermore, actions were raised in January 2020 relating to records of children's hours of attendance and documenting children's details. The provider had continually breached statutory requirements, therefore, did not understand the issue or demonstrate a willingness to work with the Respondent to address the concerns.
92. Ms Stephens explained that she was very concerned about the impact of these breaches upon the welfare of children and furthermore, compliance action raised at previous inspections had failed to achieve the necessary outcome. On 29 November 2021, she explained that the areas of focus for the visit placed emphasis on the actions set at the previous inspection and assessing whether these had been met. These included the safety on the premises, safeguarding children, facilities, organisation of childcare, complaints, keeping records and keeping Respondent informed. The deadline for these actions to be met was the 26 November 2021.
93. When on site on 29 November 2021, she called Rabbi Goldman. Rabbi Goldman informed her that the actions were due on the 26 November 2021 and that they were working on them, so he had shut the site. The Appellant had not notified the Respondent of the change of hours, as required. Her evidence stated that Rabbi Goldman did not understand why she needed to visit the site if there were no children there. However, during the discussion he confirmed that children were attending Canvey Kodesh. This club offers religious studies for children from three years and over. Rabbi Goldman subsequently attended the site and met with the Inspectors.
94. On entering the building there was an area at the bottom of the corridor that Rabbi Goldman was reluctant to allow access to. He stated that he did not know if children were in the room because it was not part of Canvey Kids Ltd. Ms Stephens asked if Rabbi Goldman could tell her who ran the club or what hours they operate as it may require registration, he stated that he would find out. He referred to this provision as Young Stars. He confirmed at that time Canvey

Kids Ltd operated from 1pm to 4pm.

95. Ms Stephens had concerns about Rabbi Goldman's working cooperatively and openly with the Respondent's assertion that they had closed the setting for the Hannukah Festival as he had clearly said during the visit on 29 November 2021 that he had closed the setting to work on the compliance actions. She took this into account on the day of the visit when considering suspension of the setting as it appeared at that time that he was working effectively with the Respondent to minimise any risk to children's safety. This raised concerns about the Nominated Individual working openly and honestly with the Respondent, and the suitability of those responsible for Canvey Kids Ltd.
96. The Respondent was also informed that it was Rabbi Goldman, who had responsibility for Young Stars and this raised concerns relating to Rabbi Goldman's honesty and integrity as he told inspectors that he was not aware who was responsible for Young Stars. On 22 March 2022, Rabbi Goldman was sent a letter asking him to attend an interview under caution so the Respondent could question him in relation to the criminal offence of operating unregistered early years care as there were concerns relating to an unregistered school and creche on the site. He declined the request. Ms Sheindy Roter and JCOCI Educational Foundation Limited were also invited to interview but they also declined to attend.
97. Ms Stephens explained to the Tribunal that five inspections in 30 months was unusual. However, they were justified in inspecting because of the level of concerns in non-compliance and regulation. She also echoed Ms Hughes' evidence that they felt it fair and proportionate to re-inspect and to give the provider that opportunity to demonstrate that they were complying hence the subsequent inspection in March 2022.
98. Over a period of time the setting failed to demonstrate that they could meet those requirements. Ms Stephens explained that this was a long period in a child's life to be receiving poor quality of care and therefore it was felt it was the right decision to cancel the registration.
99. In respect of the inspection on the 29 November 2021, Ms Stephens explained that the actions from the previous inspection were due on 26 November 2021. Rabbi Goldman told her they operated 1pm-4pm. He talked about children being in other clubs and she considered that there were blurred lines of when children would attend. No additional action was taken at the time of this inspection even though the actions had not been met.
100. Ms Stephens also took the Tribunal to the letter sent out 12th November with the draft report and the e-mail response by Jacob Gross dated the 15 November 2021 which outlined that actions were in place and/or they would be by the prescribed date and that Rabbi Goldman was copied into the response
101. In respect of the maintenance of records. Ms Stephens explained that the provider needs to be maintaining records, if an allegation was made against

a member of staff they would then know who was on site that day.

102. Ms Stephens also explained the concerns about the pictures of helicopters and war scenes Mrs Hughes raised concerns about the visual images and walls. Rabbi Goldman subsequently explained what it meant at that time and they were satisfied with the explanation given.
103. Ms Stephens also explained that it is the Nominated Individual's responsibility to notify the Respondent if there is a change of address and Ofsted does not check the records in Companies House to see if an address might have changed.
104. Ms Stephens also in her evidence explained that after any inspection, the inspectors would sit down with management and discuss the actions required to ensure compliance.
105. Ms Stephens went on to explain that there is a factual accuracy check with any report. This gave the Appellant an opportunity to respond within 5 days if they considered anything was inaccurate. Ms Stephens in her evidence explained that those actions were discussed on the 29 November. The Appellant was working towards putting those actions in place. That was the whole purpose of their attendance on the 29th November. Rabbi Goldman was working on the compliance actions and that he had said that he closed the site to work on the actions. Ms Stephens said that she did stress that the actions were due for completion. She also stated that the final report was usually served 30 days after the draft report.
106. In respect of the invitation to interview the Respondent, she explained that they wanted to talk to Rabbi Goldman about his involvement with Young Stars because his information appeared to contradict the information given by Sheindy Roter. Ms Stephens explained that they have to work with individuals openly and honestly. She explained that Rabbi Goldman had provided many different and inconsistent accounts and this did raise concerns.
107. The Tribunal also heard from Mr Fieldhouse. in his capacity as Fire Safety Expert. He explained that he had visited the premises at Meppel Avenue many times since Rabbi Goldman was appointed as director of Canvey Kids. He discussed fire safety issues with the team and is working in cooperation with the Essex Fire and Rescue service to do everything necessary to meet all the requirements and ensure that they keep up their standards. In his written evidence he stated that *I have full confidence to say that Canvey Kids have the ability to fire safety requirements, and that the Director, Rabbi Goldman, can provide the necessary support to ensure the smooth running of the setting.*
108. Mr Fieldhouse explained that he had worked in 27 schools in Tower Hamlets and had experience of schools with a similar capacity to the Canvey Island site.
109. Mr Fieldhouse explained that he had had several opportunities to inspect the building. Some concerns have been addressed and that he was working in

conjunction with Fire and Rescue Service in Essex and they were happy with the work done and they are continuing to monitor those actions.

110. He also explained to the Tribunal that he was approved to deliver accredited fire safety courses; he hadn't charged Canvey Kids Ltd for his services and the risk has to be based on reality.
111. Mr Fieldhouse also explained that he had recently been unwell and he had not attached the risk assessment or any other document carried out to his witness statement. He explained that they had given this to the Fire and Rescue Service and that the risk assessment is a matter for public record.
112. He explained that there was an action plan of works being done. In respect of the upper window with no restrictors he explained that it didn't particularly concern him-
113. He also did not consider that a fire exit sign pointing to a wall was a concern as the children should be monitored and the adults would lead them out.
114. The Tribunal also heard from Rabbi Goldman who explained in his evidence that he was appointed director of Canvey Kids Ltd on the 09 November 2022. He explained that the other two directors (Mr Schwartz and Mr Braver) have no active roles in the running of Canvey Kids Ltd and they were only put in place as the previous director, Mr Jacob Gross, intended to register the company as charity which did not occur.
115. Rabbi Goldman recognised that there were serious shortcomings in the past but he was not involved at this stage so he was unable to explain or challenge these previous shortcomings. He explained to the Tribunal that he remains fully committed to meeting the requirements and he is confident that he can provide the necessary support to ensure the smooth running of the setting and that it will continue to be fully compliant.
116. In respect of not meeting requirements, he explained that he has made several changes to how the setting is run and managed to ensure that it is fully compliant and there are no risks to the safety of the children.
117. He explained that the site is a former state school which was able to accommodate 1000 students and therefore it is large premises. JCOCI sublets parts of the premises to different users to meet the varying communal infrastructure requirements. The centre of the premises hosts a range of settings providing activities or services to the community. These can vary throughout the day and are dependent on the Jewish Calendar. JCOCI does not run any children's services. Rather it facilitates the building and is in charge of the general upkeep of the premises and provides a limited receptionist service, IT services and general maintenance.
118. Canvey Kids Ltd provides childcare for girls and boys aged 5 years and over from Monday to Thursday 1pm- 6pm. The manager for the girls department

is Mrs Grunfeld and Mr Schecter for the boys. Mrs Mirriam Spritzer is the deputy manager for both departments. These are his appointees and they report directly to Rabbi Goldman and will monitor compliance and health and safety issues as well as the general welfare of the children under their care.

119. Rabbi Goldman explained that he does not take an active role in day-to-day activities of Canvey Kids Ltd, but he does attend regularly to ensure the compliance and well running of the setting and to monitor staff and managers.
120. Rabbi Goldman explained that he had been a leader within the Jewish community for over 30 years, and is on the advisory board of a Yeshiva, and a college Yad Vozera for students with learning disabilities. He acknowledged that he had never been inside a non-Jewish school.
121. He explained that when he came to live in Canvey Island, he was elected by the community to the Executive Committee of the Canvey Island Community.
122. In respect of Canvey Kids Ltd, he had some previous knowledge of it as a member of the Executive Committee. When Jacob Gross had resigned he had been asked by the Executive Committee to take over. He explained that things had changed since he had been appointed as Nominated Individual and therefore the Respondent should consider matters afresh and give him the opportunity to make a fresh start. Rabbi Goldman was very open about the fact that he had no previous experience of providing this type of oversight in an educational setting prior to taking on the role.
123. Rabbi Goldman accepted that everything was a total mess when he initially took over. There was no Nominated Individual.
124. Rabbi Goldman discussed the visit on the 20 October 2021 when the unregistered schools team visited. He dealt with the Respondent's assertions that he was not being honest regarding his statement to them that he had no knowledge of who was running the Young Stars provision, which they say contradicted Ms Roter's comments to the inspection team that Rabbi Goldman was in charge. Rabbi Goldman explained that when he told the unregistered schools inspection team that he was in charge, he did not mean that he was in overall charge but that in the absence of Jacob Gross and Naftalie Noe, who both had previous involvement with Canvey Kids Ltd, he was willing to try to answer their questions.
125. He explained that he did ask Ms Roter to become the Head of Young Stars and that he still does not know who is in charge of Young Stars.
126. He explained that following the visit by unregistered school's team on the 20 October where they spoke with him and cautioned him. The Respondent explained that they were going to write to the Department for Education informing them of their concerns. He explained that the unregistered schools team did not accept the view that there were a series of clubs on site and

the Respondent did inform the Department for Education.

127. Rabbi Goldman explained that the Department for Education did write a letter to which Canvey Kids Ltd and the other clubs responded. He explained that they also informed the Department that this was a series of clubs and this was the last that they heard from the Department for Education.
128. Rabbi Goldman stated that the Respondent has made a '*foregone conclusion*' to close the setting down. Rabbi Goldman explained that Mr Langthorne from the Respondent's unregistered schools team was keen to close the provision down and that he phoned the fire rescue service stating that the setting should be closed down. Further, at a meeting on the 01 November 2022 which was attended by Mr Fieldhouse, Mr Langthorne tried to persuade the Essex Fire and Rescue Service they should close down this site. This was then followed by the inspection on the 08 November 2021 and then the Notice of Intention to cancel being served shortly thereafter on the 22 November 2021.
129. Rabbi Goldman explained that having considered the Childcare Act this also seemed to be unlawful service of the Notice of Intention to Cancel as the time for actions had not run out.
130. Rabbi Goldman explained to the Tribunal it was the manner and the way the Respondent was proceeding with the cancellation and how they have conducted themselves over the preceding months that had brought him to the conclusion that they are targeting Canvey Kids Ltd.
131. He did not consider that Respondent was interested in the safety of the children. He also reminded the Tribunal that the Respondent had accepted that the children were happy and settled and it didn't find anything wrong with the children's behaviours.
132. In respect of the closure times, he explained that the setting runs according to the Jewish calendar. He could not understand why the Respondent would not look at the Jewish calendar which given it was a provision that served the Jewish community, would be reasonable as opposed to being asked to notify them that they were closed for Hannukah. Rabbi Goldman explained that the setting was closed both for Hannukah and to rectify the compliance.
133. Rabbi Goldman also explained that there are cleaners that come in every night to ensure that the next morning the setting would be clean and tidy. The leaders normally tidy up between sessions. The site is being used being used by Canvey Kodesh in the morning and Canvey Kids Ltd in the afternoon. At the time of the November regulatory visit it was not being used by Canvey Kids Ltd as was closed for refurbishment/Hannukah.
134. Rabbi Goldman explained that he was slowly learning the ropes and what was needed to be able to meet the requirements. Therefore it came as a surprise to him that the Respondent came again for an inspection on 01 March 2022 and raised further requirements.

135. Rabbi Goldman explained that on 4 March 2022 he wrote to the Respondent explaining that they had rectified the actions that were raised. He told the Tribunal that this was yet another example of the Respondent targeting Canvey Kids Ltd and *nit picking*.
136. Rabbi Goldman admitted that when Ms Grunfeld left for maternity leave he did not notify the Respondent as required but that in all truthfulness he did not know about this requirement.
137. Rabbi Goldman stated that he had now corrected the safeguarding policy. He considered that regarding it as inadequate was very harsh. This he said was another example of targeting. They find spelling and information mistakes and have no regard to the fact that he is learning and that he has not previously worked in an educational setting. He did not consider that a policy which tells people to report matters to a CPO (he was unable to identify who that was) and the wrong Local Authority may be a safeguarding risk. He explained that no one would have referred to Norfolk when the setting was in Essex. He reminded the Tribunal that the policy is implemented by sensible people.
138. Rabbi Goldman explained that he relied on someone else to create the safeguarding policy and they had downloaded it from the website. He explained that he can recognise safeguarding issues as he has safeguarding knowledge on the whole.
139. He considered that it was disproportionate to expect the safeguarding leads to be aware of issues such as Female Genital Mutilation. Rabbi Goldman explained that he checked through the training the managers had subsequently received. The Designated Safeguarding Leads were trained by Essex County Council and the managers by Interlink. Neither training made any mention of this subject. In his oral evidence he then went on to question further as to why the Designated Safeguarding Leads would need this information as such things have not occurred in Canvey Kids Ltd.
140. Rabbi Goldman explained that if such safeguarding concerns did occur the safeguarding leads and leaders would identify that this an area of concern. They would know that these children were under stress and they would try and identify the issues. He did not understand why the Respondent maintained that this is insufficient.
141. Rabbi Goldman also disagreed that Canvey Kids Ltd was not an inclusive provision. He explained that the Equalities Policy quite clearly stated that a safe and caring environment, free from discrimination, was available to everyone in the community. He explained that there is a code of dress and he was aware of other organisations that allowed there to be a code of dress.
142. When asked how he would respond if a child had another code of dress, Rabbi Goldman explained that they would cross that bridge when they got to

it as it is very unlikely that any non-Jewish child will want to come to the provision as most children there speak Yiddish and all aspects are completely different and in accordance with the Jewish lifestyle. Therefore, he considered that the Respondents conclusions around this was an example of them being targeted.

143. He went on to explain that Ms Spritzer's comment that she would speak to her elders about such situations was the correct approach and this was again considered by the Respondent as not being inclusive. As she is a manager and the person who decides is a director, therefore she would ask Rabbi Goldman.
144. Rabbi Goldman explained than in respect of demanding compliance with a dress code, or prayers etc he would have to take legal advice. He explained that all children in our setting eat only kosher food.
145. Rabbi Goldman explained that it was ok to tell a child that their religion is wrong It doesn't offend the respect principle. With regard to providing non-kosher food this would have to be checked and legal advice taken . However, he couldn't say at the moment that it would be okay. A child who is coming into an environment where there is a totally different code of dress, language and lifestyle is going to feel inferior and he considered that it would not be in the interests of the child.
146. He went on to say that an Orthodox Jewish child going to a Christian school would also feel inferior or different. Rabbi Goldman was keen to stress that he did not say that they would not be made welcome but that they would feel inferior and different. When it was put to him that it would be up to the provider to ensure that the child did not feel inferior and different he responded by stating to Counsel, *I think you are not living in real life.*
147. The Tribunal asked Rabbi Goldman what his view would be if a music club rejected a young person from Orthodox Jewish community, he explained that he would understand it.
148. Rabbi Goldman again re-iterated that he considered it is unfair to say that Canvey Kids Ltd is a non-inclusive setting as it is not very likely that anyone non – Jewish would want to come to the provision.
149. In respect of the investigation into whether Young Stars is an unregistered club Rabbi Goldman confirmed that he declined to attend the PACE interview. He explained that the interview had nothing to do with Canvey Kids Ltd and was not sure why it was being raised at the hearing and it just further demonstrated the Respondent targeting and an intention to close the school.
150. Rabbi Goldman explained that at the time he understood the point of the interview related to Canvey Kids Ltd. He queried whether if he attended the interview it was going to make any difference to the Tribunal hearing and the Respondent's decision to cancel the provision. He was told it would not. He explained to the Tribunal that he did not obtain legal advice about the

- matter but that he spoke to his colleagues and they considered that this may constitute a contempt of court and therefore he decided not to attend.
151. Rabbi Goldman explained in his evidence that he would not work with the Respondent openly as he now considered it had a racially directed intent to close the setting, but that he had been working openly and honestly from the start and that he never been untruthful.
 152. In respect of the 13 June 2022 inspection, Rabbi Goldman accepted that it took time for him to become knowledgeable about the requirements but maintained that by this time and this inspection he had become knowledgeable.
 153. In respect of the breach of the broken lock, he explained that the female standing inside the door was aware of the inspectors and who they were and therefore he did not consider that this is a breach of requirement and security.
 154. In respect of the benches leaning on the wall. Mr Schechter was asked what they were used for and he advised that these were benches used for the children to sit on. The children were not in that room and they were not in the area at that time. The benches would be placed down for the children to sit on them prior to their attendance. When Mr Schechter asked the inspector, *what should I do with them?*, Rabbi Goldman explained that this was said sarcastically and that of course he understood the risk to the children if they were left in the position they were in.
 155. Rabbi Goldman explained that he considered Canvey Kids Ltd were having productive meetings with Essex County Council. He explained that the Council do not demand and they explain what needs to put in place and they give further training to assist Canvey Kids Ltd in meeting compliance .
 156. He explained that Respondent was doing its best to close the setting. He explained the attendance list demonstrated a discrepancy in respect of two members of staff. One member of staff was on the list by virtue of her maiden name and the second member of staff Ms T was called in as a substitute, she had a DBS check and that he did not understand why this action had been raised.
 157. Rabbi Goldman explained that Canvey Kids Ltd runs in the afternoon from 1-6 pm. When the children come and attend it will depend on age, sex, or dates. There are sometimes periods or days out for the whole week if there is a joyous occasion to be celebrated and it is unreasonable to notify the Respondent of these changes.
 158. When asked about how he recruited the managers Rabbi Goldman explained that he was seeking conscientious responsible individuals. It was not a competitive process and that he would speak to individuals and select who he considers is best for the role. He explained he was looking for sensible responsible people who understood children's needs. He explained that he has a good quick grasp of an individual by speaking to them and

knowing them.

159. He explained that the community take their responsibilities in respect of well-being and safeguarding very seriously and this was also because of Torah Law.
160. When asked about the actions and the time frame for completion he answered that he first knew of the actions on 02 December 2021. He then went on to clarify that he knew that there were actions raised prior to then but didn't know there was a time frame attached i.e. 26 November 2022.
161. When asked whether why he had not mentioned that he was a member of the Executive Committee of the Canvey Island Community to the Respondent prior to the hearing, Rabbi Goldman explained that he didn't think it helpful to say this. He considered that he was in a no-win situation . He told the Tribunal he saw no reason to inform the Respondent as they were out to get to him and they were jumping to conclusions. Rabbi Goldman went on to say that he would not supply the Respondent with any information outside what he had to.
162. Rabbi Goldman in respect of safeguarding mentioned that the Respondent should check statistics in the Jewish community in terms of abuse. It will find that this community has a smaller proportion of abuse reported on children. He explained that abuse on children is nearly non-existent in the Jewish community and he said he was aware that the Head of Safeguarding at the Local Authority didn't accept that, but he explained that she is looking at statistics for the whole population.
163. Rabbi Goldman also explained that whenever the Respondent attends to inspect the inspectors are very pressuring and intimidating. Sometimes the inspectors have to wait A person like Ms Rotar would be terrified of speaking to an inspector as they terrify and interrogate all people on the site. Therefore, the inspectors have to wait whilst the staff locate someone robust enough to deal with them such as himself.
164. In respect of the window he explained that this was not a perfect situation but that it is not really a risk to the children . Most of the windows have a safety attachment. He reminded the Tribunal that they had heard it is not a risk from Mr Fieldhouse. Rabbi Goldman accepted that the bottles of chemical cleaning should not have been there and that had now been rectified and they were stored in another cupboard.
165. Rabbi Goldman said that he would visit Canvey Kids Ltd about three times a week. He would spend between half an hour and an hour there and sometimes he may spend longer there. He looks around to ensure that the children are safe and looked after. He explained that he has both regular formal and informal meetings. The formal meetings occur every two weeks and the informal ones occur ad-hoc when he meets his managers. He also explained that when notes are taken of the meetings they tend to be in Yiddish

166. Rabbi Goldman was asked how he would deal with a safe-guarding disclosure from a child at Canvey Kids Ltd about staff. He explained that he would enquire if this was first time or if it had happened before. He would discuss it with his managers and they would investigate it before referring matters to the LADO if necessary.
167. He went on to explain that if it was a first time a complaint was raised he would be able to deal with it himself. He would have a discussion with a member of staff and establish whether they agreed it had happened. If they accepted that it had occurred, they would be disciplined and assurances would be required that there would be no repetition. In such an instance Rabbi Goldman did not consider that there would be a need to refer the matter to the LADO.
168. When asked about if a child reported that they had been struck by a parent, Rabbi Goldman explained that this was more delicate as there is such a thing as lawful chastisement. He explained that he would discuss it with the child and delicately discuss it with the parents. Thankfully he said, they had never come across a report such as this and it would depend on the circumstances if he decided to refer it externally.
169. When asked how Canvey Kids celebrates difference Rabbi Goldman said that they celebrate achievement and if a child has reached a milestone or goal in his life such as learning to sing or around musical talents.
170. He discussed that some children were from poorer backgrounds than others. He explained that disability and raising understanding around that was an important part of his community.
171. Rabbi Goldman considered that Canvey Kids Ltd is now very close to being fully compliant and he did confirm to the Tribunal that he considered the Respondent to be an unnecessary intrusion.

Tribunal conclusions with reasons

172. The Tribunal reminded itself that we are looking at matters afresh. We do that by taking into account all of the evidence in the hearing bundle and the oral evidence from all the witnesses, including Rabbi Goldman. We have applied our mind to the relevant sections of the Childcare Act 2006 and considered the requirements set out in The Childcare (General Childcare Register) Regulations 2008. We have considered at all times the principle of proportionality, which we must consider.
173. We have carefully considered the written and oral evidence and submissions dealing with the issues which remained in dispute as set out in the Scott schedule. The Tribunal reminded itself that the evidential burden rests with the Respondent. We are grateful to all of the witnesses who attended to give oral evidence at the appeal hearing, which assisted us significantly in reaching our decision.

174. We found both inspectors that attended on behalf of the Respondent to be credible witnesses and found that their evidence was supported throughout by the documentation. We were impressed with their oral evidence which was relevant to our role in assessing whether the decision to cancel registration remained a proportionate one as of today. We had the benefit of their detailed observations and findings from the inspection, as well as their comments on points made by Rabbi Goldman in his written representations.
175. We found the reactions of both witnesses to be genuine in respect of having their integrity questioned around discrimination and targeting against the Jewish community. They came across as highly experienced, professional and fair witnesses, who provided consistent accounts of what they witnessed during the inspections and explained the evidence in detail regarding how they came to the conclusions that they did. We accepted the evidence of the inspectors that due to the number of consistent breaches there needed to be an increase in the targeted inspections. We did not consider that there was any merit to Rabbi Goldman's assertion that the Respondent wished to close Canvey Kids Ltd down as it was a provision that primarily served the community of the Jewish faith although we accepted that this was his genuinely held belief.
176. We accepted that the whole compliance history of the Appellant is relevant to the issue of considering the Appellant's suitability for the Tribunal. We also accepted it cannot be reasonable or sensible for a provider with a poor compliance history to be able to shed its poor history by appointing a new Nominated Individual. However, we also consider that proportionality would be a relevant factor for both the Respondent and the Tribunal to balance if circumstances had resulted in new leadership as in the case of Canvey Kids Ltd. Therefore, we considered that a live issue for this tribunal was our assessment of the Appellant's ability to make and sustain compliance with regulations going forward. As in this case, a change in the senior management may in certain circumstances, be relevant in the Appellant arguing it is able to maintain compliance notwithstanding a poor compliance history.
177. The three "not met" inspections on 21 January 2020, 14 July 2021 and 8 November 2021 were not the subject of any oral evidence as none of the inspection findings were disputed. Rabbi Goldman stated he was not in a position to challenge the findings, describing the situation of the Appellant when he took over as "a shambles" whilst acknowledging that the Appellant had been operating for a few months with no Nominated Individual, (which itself is a breach of regulations), nor any senior management oversight.
178. We considered that Rabbi Goldman's evidence in this case was inconsistent, lacking in clarity and unreliable at times. We did not however consider that he was a witness who was not honest. We considered that there were occasions during his evidence when Rabbi Goldman was unable to recall matters such as he could not remember when they had started working with Essex County Council. He also could not remember whether there were any

Health and Safety considerations discussed at the time the fire exit was blocked. He also could not remember if he had spoken to Mr Schechter before he took issue with five points in his e-mail dated the 23 June 2022 referring to inaccuracies in the report relating to the inspection which occurred on 13 June 2022. He was unclear about when he did speak to Mr Schechter about the inspection findings as he was very busy in his duties as a Rabbi. He also did not remember being copied into an e mail dated 15 November 2021 from Jacob Gross to the Respondent following service of the draft report saying that actions would be completed.

179. We considered that unfortunately Rabbi Goldman had a very fixated view when it came to the Respondent and his opinion that they only wanted to close the setting. We were particular concerned that he considered their involvement as intrusive and would engage with them with minimal input. It is important that a Nominated Individual for a provider is able to work openly and constructively with the regulator. We considered that the relationship had reached an "impasse" and that we attributed this to Rabbi Goldman's perception of the organisation and his view of those employed within it. Rabbi Goldman had a set view on how he expected things should work and was not fully understanding what the Respondent's role involved and that it differed from that of the County Council.
180. Rabbi Goldman stressed that the cancellation of the only registered childcare provider designed around the needs and lifestyle of the Orthodox Jewish community in Canvey Island would be devastating to all its users and families, parents and children alike, as they don't have any other option available for them. This would cause parents to be unable to go to work and therefore would impact the children. However, we noted the evidence of Ms Hughes that as there were other clubs onsite, the children could attend those clubs.
181. We did not accept that Respondent had made a forgone conclusion to close the setting and considered that the subsequent inspection in March and June 2022 were evidence of the fact that the Respondent was seeking to give Canvey Kids Ltd the opportunity to demonstrate improvements. Further, we considered that Ms Hughes comments in evidence relating to the Canvey Kids Ltd site being run differently than other providers was due to her explanation to the Tribunal that at other sites you would usually expect differing activities to what she observed whilst at Canvey Kids Ltd.
182. We considered that Mr Fieldhouse was a professional witness who was trying his best to assist the Tribunal. We did note that he produced no documentary evidence of any of his visits nor the risk assessment completed that formed the basis of the ongoing conversations and actions with Essex Fire and Safety. Due to the extremely limited details contained in his statement coupled with the lack of documentation this meant that we were able to attach only very limited weight to his evidence in respect of the risk assessments undertaken and his conclusions. We considered that there was a lack of clarity specifically regarding the aspect of the premises relating to Canvey Kids Ltd and the layout. Mr Fieldhouse was clear that he had

considered the site as a whole, which we accepted, but was unable to assist the Tribunal in detail with their questions around the Canvey Kids Ltd part of the premises. He admitted that he had not been consulted prior to the fire exit being blocked and that the Respondent was right to raise a concern about it.

183. Further, we were not persuaded by his evidence that it was not a risk to have had a fire exit sign pointing to a blocked fire exit and that the age of children was not relevant to their ability to escape due to adults being present to guide them. He also was not concerned that there was a risk regarding an open window without restrictors, which the Tribunal were not persuaded by having considered the location of the window and the fact that it opened up to a roof area. Though the area in question was not being used by children, we accepted the evidence of Ms Hughes that children could still access the room at anytime.

Inclusion and Equalities

184. We considered that Rabbi Goldman's evidence on the issue of the Inclusion and Equalities Policy was an example of his fixed and entrenched views. Rabbi Goldman demonstrated a lack of understanding and insight regarding inclusivity and was instead accusing the Respondent of a failure to understand. Though he felt his responses were based in reality we considered that they were insular.
185. Further, we considered his responses to the Tribunal regarding how he would celebrate differences and promote diversity were extremely weak. The Tribunal considered the policy that had been submitted by Canvey Kids Limited and having heard the evidence from Ms Hughes and Rabbi Goldman concluded that there was a disconnect in our view regarding how the policy was cited in writing and how it was being implemented.
186. The Tribunal had concerns regarding the answers given during Rabbi Goldman's evidence regarding this. Rabbi Goldman did indicate in his evidence that Mrs Schwartz (the manager) could make the decision about whether an Orthodox Jewish child could attend, it was only if it was an "unusual application" (i.e. a Non-Orthodox Jewish child) that she could not make the decision whether the child could attend. Rabbi Goldman stated that he would seek legal advice if a Non-Orthodox child wanted to attend.
187. We considered that his comments that it may be appropriate to exclude an Orthodox Jewish child from music lessons in a Christian setting also demonstrated to us his entrenched perspective on such matters. We concluded that having regard to all the evidence that the regulatory requirement had been breached.

Safeguarding

188. This was the most concerning area for the Tribunal regarding the breaches to be considered and we concluded that having regard to all the evidence

that this regulation had been breached. We considered that the circumstances and the evidence regarding the breach of this regulation in itself would justify Respondent's decision to cancel registration.

189. It was apparent that Rabbi Goldman did not have the appropriate knowledge regarding safeguarding procedures and what steps need to be taken when a child discloses a safeguarding concern and we were not reassured that this would be addressed going forward.
190. We were concerned that Rabbi Goldman did not understand that evidence could be compromised when dealing with safeguarding disclosures. He explained he would initially investigate the matter himself and consider referring to the LADO only if needed. He explained that if it was the first time an incident occurred, they would normally settle it in the community. He would discuss it with staff and if they agreed it had happened and they would be disciplined and be asked to give assurances. He confirmed that this would include speaking to the child. Rabbi Goldman also confirmed in those circumstances, there would be no need to contact the LADO.
191. The Tribunal concluded that Rabbi Goldman held entrenched and potentially unsafe views that safeguarding concerns would not and/or very rarely happen in his community caused the Tribunal considerable concern. He explained that in the Jewish community they are fully aware of the importance and the obligations of safeguarding children from any kind of abuse. They are extra vigilant in observing any signs of abuse since the time they received the Torah at Mount Sinai. In closing submissions he stated that since our prevention methods are so sound, abuse very rarely occurs in our community. However, approaching any safeguarding disclosure with such an entrenched view could very well lead to children's disclosures not being listened to seriously and not being responded to appropriately with the potential risk that children will learn that it is not safe to make disclosures.
192. We note that the safeguarding policy was submitted twice and had errors contained in it twice which had not been identified by Rabbi Goldman. Rabbi Goldman considered that it would be common sense for an individual to know that they were not to contact Norfolk Local Authority LA as Canvey Island was not based there. He considered the lack of clarity of the reference to the CPO raised by the Respondent as being an example of Respondent being picky. We considered this to be a very blasé approach to a very important policy document. Rabbi Goldman admitted that it had been downloaded by another individual. We concluded that this was not indicative of a robust approach to safeguarding. Given Rabbi Goldman's evidence that safeguarding disclosures were extremely rare in his community we regard it as all the more important that the key policy document is accurate, up to date and easy to follow due to the lack of knowledge he demonstrated.
193. When asked about dealing with disclosure around chastisement at home Rabbi Goldman explained they would discuss matters with the child and delicately discuss with the parents. It would depend on an assessment whether they referred it to the LADO.

194. We concluded that in his responses Rabbi Goldman demonstrated a significant lack of safeguarding knowledge as would be expected from an individual with oversight of the provision.

Safety of premises

195. Safety and the identification of risks have repeatedly been raised by the Respondent in their inspections. Safety risks included benches lent up against a wall, cleaning fluid in the children's toilets and a fully open window with no restrictors. Rabbi Goldman considered that Mr Schechter was being sarcastic when he asked "what am I to do about them (the benches)?" to the inspectors and that it was the intention of staff to place them appropriately on the floor for use before the children attended. There is no suggestion in the inspectors notes that Mr Schechter was being sarcastic and Ms Hughes gave evidence that she believed Mr Schechter had not appreciated the risk or what he should do when it was identified by the inspectors.

196. The Tribunal accepted the evidence of Ms Hughes in that she stated that if it had been explained that the benches would be placed appropriately for use then there would have been no issue. Therefore, the Tribunal did not consider that this constituted a breach of the regulations as we considered on balance that there was a strong likelihood that the benches would be placed appropriately for use.

197. We did however consider that the cleaning fluid, open window with no restrictors did constitute breaches at the time of the inspection.

198. In relation to the fire exit blocked by a partition wall at the March inspection, Mr Fieldhouse informed the Tribunal that he had not been consulted prior to the wall being erected to make sure it would not pose a risk of fire. Rabbi Goldman was unable to confirm that fire safety had been considered prior to the wall being erected. Mr Fieldhouse acknowledged that the Respondent was correct to raise the issue.

199. The Tribunal must be satisfied that looking ahead there would be continued improvements and sustained compliance from the provider. The Tribunal considered that there was real demonstration by Rabbi Goldman throughout his evidence that he was not able to objectively consider matters from the regulator's perspective.

200. We considered Rabbi Goldman's evidence that the culture of recruitment for managers which was normally from the Jewish community and concluded that Rabbi Goldman did not demonstrate that there were sufficient processes in place to ensure that staff were recruited with the requisite knowledge and skills in order to conduct the role to a satisfactory level and therefore we were not satisfied this had been adequately addressed or would be addressed in the future.

201. During the November 2021 visit the photos showing the poor state of the premises were taken. Although Canvey Kids Ltd was said to be closed, the rooms were nevertheless in use by the children who were instead said to be attending the Canvey Kodesh club during the time they would have attended Canvey Kids Ltd.
202. Further, in relation to the poor condition of the premises seen in the photos, Rabbi Goldman indicated that new cleaners had been taken on as the previous ones had not been doing their job properly. He also stated that a form of risk assessment had been undertaken by a safety specialist who had been round the whole premises and identified what needed to be done to make it safe. He gave examples of the risks highlighted to him as broken tiles and making sure no wires were hanging out. The Tribunal concluded that this requirement had been breached and that there were very much still ongoing issues and there was no final documentation or report before the Tribunal as to how they would be addressed going forward .
203. Though Rabbi Goldman stated that they believed that they are close to being fully compliant, the Tribunal were not persuaded that this was the case.

Openness and transparency

204. When considering the evidence, we reminded ourselves that Rabbi Goldman was a man of good character and it was particularly noted that he was a man with high standing in his community.
205. We considered that throughout his evidence Rabbi Goldman demonstrated a lack of openness and transparency towards the Respondent and consider that this was motivated by what we accept is his genuinely held belief that the Respondent was targeting both him and the provision due to their religious faith. Though the Tribunal must be clear that we did not consider that there was any evidence to substantiate that belief, it was nevertheless one that he held. The Tribunal did not consider that Rabbi Goldman was dishonest in his dealings with the regulator and/or the Tribunal.
206. Rabbi Goldman also did confirm that inspectors were delayed in gaining access to the setting as he claimed the staff were “finding the right person” to talk to the Respondent. We considered this poor and unacceptable given that the Respondent has the right to enter premises without hindrance
207. In respect of the Young Stars provisions, Rabbi Goldman maintained he had nothing to do with Young Stars but said that Mrs Roter had “meant to say that he, as one of the elders of the Jewish community in Canvey, had requested her to open the setting as a service to the community, but not that he would be heading it. We accepted that there may have misunderstandings around what was meant by the Respondent inspectors and we the Tribunal had regard to the fact that the community had its own individual way of making arrangements and we could not conclude that this was a deliberate attempt to mislead the regulator.

208. The Respondent raised concerns that Rabbi Goldman refused to attend a regulatory interview to discuss his knowledge of other matters taking place on site and whether these matters posed a safeguarding risk linked to the registered setting. In relation to the non-attendance at the PACE interview we attached no weight to that. We considered that Rabbi Goldman had not sought legal advice about attending but had spoken to others in his community. He considered that the interview related to the operation of Canvey Kids Ltd and was somewhat confused as to why his attendance would be required given the forthcoming Tribunal hearing. He explained that he was advised that this may be a contempt of court and that he was seeking to have the minimal interaction with the Regulator. Having considered the documentation around this we consider that it was not made clear that the interview related to wider matters than Canvey Kids Limited and therefore we accepted Rabbi Goldman's evidence on this matter.
209. We also considered there was a continued lack of clarity looking at the evidence as a whole regarding the reasons given in respect of the closure of the setting i.e. Hannukah and particularly there was a lack of clarity regarding the times of the various clubs operating and when Canvey Kids Ltd would be operating. In November 2021 when the Respondent visited the setting to check whether actions set at the November inspection were met. Rabbi Goldman stated the setting was closed so they could work on the actions. This response satisfied Ms Stephens who consequently felt it was not necessary to suspend, notwithstanding that the actions had not been met. Ms Stephens was clear that Rabbi Goldman did not mention that the setting was closed for Hannukah. Rabbi Goldman stated that he made it clear at the time.
210. We concluded that Rabbi Goldman held a genuine belief that the Respondent was targeting him and the community based on their faith. This resulted in a lack of transparency in his engagement with them such as not telling the Respondent openly that he was a member of the Executive Committee. We considered that there was and remains a fundamental breakdown in the relationship between the provider and the regulator due to Rabbi Goldman's belief. This was evidenced by his confirmation in his evidence that he was reluctant to engage any more than necessary with the Respondent
211. We did not construe that his words that he was concerned that the regulator was seeking to "catch me out" was an indication that he had something to conceal but more we accepted his evidence that he considered that Respondent was "*nit picking*" and "*looking for fault.*" Though we did not consider that the regulator was 'nit picking' or inappropriately looking to find fault, Rabbi Goldman's genuinely held belief was an important consideration for us to assess how he had engaged with the regulator.
212. We did not accept that he had an accurate characterisation of the Respondent but we considered that these were very entrenched views that

he retained that undoubtedly impacted on the way he engaged with the regulator.

213. We therefore concluded that there was a lack of openness, clarity and transparency in how Rabbi Goldman engaged with the Respondent but this did not equate in our minds to a lack of honesty or integrity, nor did we consider that an ordinary person aware of all the facts would reasonably consider that Rabbi Goldman had acted dishonestly or without integrity in his engagement with the Respondent. However, Rabbi Goldman's entrenched views regarding the intention of the Respondent to close Canvey Kids Ltd because it was a provision in the Jewish community and his reluctance to accept criticism by the Respondent and ensure the requirements were met, even if he considered that they were not justified, has contributed to the decision that Canvey Kids Ltd is not suitable to remain registered.

Sustaining compliance

214. The Tribunal considered that Rabbi Goldman demonstrated a lack of experience in this area and given the passage of time we remain concerned that Rabbi Goldman was still not familiar with the regulatory considerations for running a provision and noted that he considered that he did have a good understanding of what was required. We noted that he had no previous childcare experience or experience in a regulated setting.
215. Rabbi Goldman admitted that he had been learning on the job and that in his view Canvey Kids Ltd was almost fully compliant. We considered that there was an absence of documentation in the evidence in respect of plans going forward detailing how improvements would both be made and sustained by the management team. We considered that Rabbi Goldman demonstrated a limited understanding of the regulations. Notwithstanding his position in the community, we consider that he did not have the relevant skills for assisting in the management of the setting. Rabbi Goldman also gave evidence that he believed he could commit much less time to the setting if and when it was meeting compliance.
216. Rabbi Goldman explained that he is not in day-to-day charge and attends the setting 3 times per week. Day-to-day compliance falls to the managers. Rabbi Goldman was not able to evidence any robust recruitment process in relation to the appointment of the managers when he took over position as Nominated Individual nor was the Tribunal satisfied that there would be a robust process going forward.
217. Rabbi Goldman also explained in his evidence that, between the inspection on 13 June 2022 and his emailed response to Respondent on 23 June 2022, he had not spoken to Mr Schechter about the inspection which concerned the Tribunal regarding communication between management. The Appellant has accessed the support of the Local Authority in trying to meet compliance. The only documentary evidence of this is a meeting with two members of JCOCI and the Local Authority on 1 June 2022. The meeting does not appear to have solely been about the Appellant (the only registered setting on the former school site) and in any event, the Local Authority has not confirmed

- that arrangements for safeguarding are compliant.
218. The Tribunal therefore in light of repeated breaches over five inspections cannot be assured having considered the evidence presented that the provider will meet compliance and sustain that compliance going forward.
 219. In respect of Rabbi Goldman's assertion that the Notice of Decision was issued as an unlawful notice. We note that the Notice of Intention to Cancel Registration was issued on the 22 November 2021, this was addressed to the Directors, and that the actions established at the previous inspection were due to be completed on the 26 November 2021. We accepted the evidence of Ms Stephens that the process and objection hearing was also discussed at the regulatory visit on 29 November 2021 with Rabbi Goldman, as were the actions. Ms Stephens also stated that an initial Notice of Decision was issued on the 07 December after receiving no response from Rabbi Goldman. However, once Rabbi Goldman had explained that he had submitted objections to the Respondent, which had not been received, the Respondent requested that they be re-submitted and continued with the objection hearing process as usual. Rabbi Goldman's objections were therefore received on the 08 December 2021 and were duly considered by the Respondent.
 220. The Notice of Decision was therefore issued after those objections had been considered on the 23 December 2021 and therefore we consider that the period of 14 days required after the Notice of Intention to Cancel Registration was sufficiently met.
 221. Overall, we considered that the evidence from the Inspectors called by the Respondent was fair, persuasive and clearly demonstrated the rationale for the outcomes of the inspection. The inspectors applied their process correctly and completed their work in a diligent manner.
 222. We have carefully considered the decision of the Respondent issued on the 23 December 2021 pursuant to cancellation. We have concluded, without hesitation, that at the time when the decision was made, it represented a proportionate response and the breaches of Regulations as established during the inspections, (save for the safety of the premises matter relating to the *benches* on the 13 June 2022 Inspection), were evidenced.
 223. However, our role does not end there, we are required to consider the developments since the point of the decision, which include any corrective efforts made by the Appellant. We have had regard to the steps that have been taken by the Appellant which has included seeking to update policies, engaging the assistance of the LA, undertaking training, seeking advice and input from other professionals. Unfortunately, we consider that progress has been limited and insufficient due to the seriousness of the concerns raised on a number of occasions, nor are we satisfied that compliance will be met and sustained going forward.
 224. The Tribunal has considered all of the material extremely carefully, applying

the principle of proportionality, which requires us to examine the reasonableness of a response against the nature of the concerns that response must meet. The Tribunal considered whether conditions attached to the registration would be adequate but due to the serious nature of the breaches and the continued failure and lack of insight demonstrated into the failings, conditions were not considered appropriate or workable. We have concluded that the decision to cancel the registration of Canvey Kids Limited remains a necessary and proportionate decision.

Decision:

The appeal is dismissed

The decision dated 23 December 2021 to cancel the registration of Canvey Kids limited is confirmed.

Judge Iman

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

Date issued: 01 September 2022