

**Care Standards**

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

**Heard on 30 November and 1 December 2015 at Dartford Magistrates' Court**

**Before  
Judge John Burrow  
Caroline Joffe Specialist Member  
Janice Funnell Specialist Member**

**[2015] 2474.EY**

**IN THE MATTER OF AN APPEAL**

**BETWEEN**

**OLUSHOLA OMOWUNMI FADIYA**

**Appellant**

**and**

**OFSTED**

**Respondent**

**DECISION**

1. A restricted reporting order is made under Rule 14(1)(a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any document or matters likely to lead members of the public to identify any child minded by the appellant or any family of a child so minded.
2. Mrs Fadiya appeared at the hearing and gave evidence. She was unrepresented. She called her husband, Richard Fadiya; Mrs A, a parent and Mrs O, a parent. Ofsted was represented by Duncan Toole of the Ofsted Legal Services. He called Elizabeth Mackey and Lisa Toole (no relation), Inspectors with Ofsted.
3. The bundle ran to 735 pages. Additional evidence was served by Mrs Fadiya, being a statement of Mr and Mrs G, a statement of Paul Fadiya, a statement of Mrs O, and a copy of the Childcare Register Requirements. Ofsted served a chronology, a Scott Schedule of allegations and a record of a visit to the premises on 17 November 2015 by Lisa Toole. Neither party objected to the new evidence, it appeared relevant, and we allowed it in.

4. Mrs Fadiya was registered as a childminder on the Early Years Register, and the General Childcare Register on 11 February 2003. Childminding took place at her home address. On 2 July 2015, Ofsted cancelled both registrations under Section 68 (a) and (c) of the Childcare Act 2006. Ofsted stated Mrs Fadiya had failed to comply with the Early Years Foundation Stage requirements, and failed to comply with the requirements of the Childcare Register. Further Ofsted stated Mrs Fadiya has failed to comply with the prescribed requirements in the childcare (Early Years Register) Regulations 2008, and the Childcare (General Childcare Regulations) 2008, and that she is not suitable to be a registered childminder.

### The Case for Ofsted

5. Ofsted inspected the premises on 6 January 2006 and the judgment was “inadequate”. There were a number of breaches of the Regulations, including inadequate communication with parents, insufficient opportunity to get fresh air and exercise, a lack of risk assessments which compromised children’s safety, an inadequate supply of toys and no written policies for parents. Five Actions to Improve were issued.
6. There was a further full inspection on 3 July 2006, which resulted in a “satisfactory” rating (now classed as “Requires Improvement”). The “Actions to Improve” (ATI) issued in January 2006 had been met, save for more age appropriate resources.
7. A further full inspection was carried out on 9 October 2009, where the judgment was “inadequate”. There was a failure to carry out risk assessment, there was no proper self-evaluation procedure and the next steps needed for progress were not being planned. An ATI was issued, requiring Mrs Fadiya to ensure written records of childminding activities were available for inspection.
8. A further inspection on 26 April 2010 resulted in a “satisfactory” (requires improvement) rating. Mrs Fadiya was not using observations of the children to plan appropriate play experiences, and was not taking into account children were not being suitably challenged. There was no suitable exchange of information with other practitioners, and learning and development was not supported. Three recommendations were made.
9. On 16 July 2013 Ofsted sent Mrs Fadiya an Intention to Cancel Notice. This was because of her failure to provide a Declaration and Consent Form and a Disclosure and Barring Service (DBS) form to Ofsted in respect of two of her own children resident in the house who had turned 16. This was despite Ofsted sending requests in July 2009, July 2010, December 2012, March 2013 and April 2013. There had been no response to the Intention to Cancel Notice by 7 August 2013, and Mrs Fadiya was sent a Notice of Decision to Cancel. Some but not all of the correct forms were eventually received on 29 August 2013, and cancellation was delayed. The remaining forms were received in October 2013, after further chasing by Ofsted.

10. Following receipt of an anonymous concern about leaving children in a vehicle unattended, a further inspection was carried out on 11 November 2013, which was graded "inadequate". Mrs Fadiya showed an inadequate understanding of safeguarding and welfare requirements as evidence of suitability of person's resident in the premises had not been provided. She was not supervising children adequately, children's progress was not being monitored effectively, and Mrs Fadiya was not carrying out regular observations and assessments of children. Mrs Fadiya's first aid qualification had expired, and systems of self-evaluation were not robust. Six ATIs and two recommendations were served.
11. A monitoring visit occurred on 11 February 2014 to check compliance with ATIs. Two had not been met, including poor safeguarding. A number of hazards in the premises were noted, including loose carpet at the top of the stairs, a tripping hazard for children. There was no copy of a risk assessment available. It was concluded prompt and effective action to meet the ATIs had not been taken.
12. A further full inspection took place on 8 May 2014, again resulting in an "inadequate" grading. There were no systems to ensure children developed. No progress checks had been done for children aged between 2 and 3. Mrs Fadiya was unaware of what should be included in such a progress check. There was a lack of behavioural strategies. Some records were missing and some, such as attendance records had not been fully completed. A DBS form had not been completed. A Welfare Requirement Notice (WRN) and ATIs were served. On 17 June 2014, Mrs Fadiya was sent notification she had failed to meet the WRN.
13. On 19 March 2015, a further full inspection was carried out, resulting in an "inadequate" grading. Two early years children were being minded. Mrs Fadiya was observed trying to feed the younger child who was refusing food and turning away. Mrs Fadiya said, "Eat, eat" and turned the child's face to the spoon, but again the child turned away. Mrs Fadiya said to inspectors, "I have to force feed him, he needs it." She said this is what the parent wants, but the parent later denied this in her evidence. Mrs Fadiya persisted and the child began to scream and knocked the food out of her hand. She said she did the same with another child. The inspector said she had never come across this behaviour before in an inspection.
14. On this inspection Mrs Fadiya demonstrated a poor understanding of learning and development, activities were not encouraged, and toys were inaccessible. They were stacked unsafely on a fireguard and on shelves. Mrs Fadiya had received support from the Local Authority development worker, but had not met suggestions made to her. The kitchen was dirty and cluttered, and the garden had loose paving slabs and an uncovered drain, and there was no risk assessment. Due to these concerns, immediately after the visit Mrs Fadiya's registration was suspended. The inspector said she had never suspended registration at the point of inspection previously. On 14 April 2015 Mrs Fadiya was sent a Notice of Intent to Cancel.

15. A further visit took place on 24 April 2015. Building work was being undertaken in the house and garden. Mrs Fadiya assured inspectors there would be no repetition of the "force feeding", and when the period of suspension expired on 30 April 2015 it was not renewed.
16. A further monitoring visit took place on 13 May 2015. There were hazards in the house from building works, the kitchen was damp. A WRN and an ATI were issued.
17. A further monitoring visit took place on 29 May 2015. The building work was still not finished, and Mrs Fadiya could not say when it would be. A risk assessment had been carried out and building material had been moved. There was a lack of resources available and a child complained of being bored. A further WRN was issued.
18. On 1 July 2015 a further monitoring visit found Mrs Fadiya had not undertaken any training courses. Building work was not completed. Some new resources had been purchased, but there was still inadequate resources for the older children. A stair gate was broken. Written observations of children were inadequate.
19. On 27 July 2015 a monitoring visit found the living room to be smelling of mold and damp. Building work was pending. Mrs Fadiya had completed two on-line training courses in Safeguarding and Speech and Language.
20. A further monitoring visit took place on 26 August 2015, when two children were present. Some WRN concerns had been met, including removing the mold on the wall. Building work was underway and the dining area floor was strewn with builders' tools, including a Stanley knife, nails and bags of plaster and large sections of plasterboard. There was an insecure barrier between the tools and the children's play area. The house was noisy with a lot of plaster dust in the air, and the children had insufficient room to play and there were insufficient resources. There was no risk assessment and safeguarding was inadequate.
21. Mrs Fadiya said there were only two children and she intended to take them out, although she accepted bad weather had meant they may return early. The children could not be taken to preschool as one was too old. She said she had put the tools away at night, but the builders took them out during the day. She admitted the premises were not suitable for childminding. The inspector did not consider the environment safe and Mrs Fadiya's registration was again suspended because of risk of harm. Earlier ATI's had not been met and further ATI's and WRNs were issued.
22. A compliance visit took place on 18 September 2015 and building work in the house had been completed and was underway in the garden. Mrs Fadiya said it was not possible to care for the children at the child's own home, as she had children from different families.
23. On 6 November 2015 a further visit was carried out. A strong smell of damp was still present in the lounge. There were hazards in the garden where

Astroturf had not been secured, and the plastic step from the lounge to the garden was broken with jagged edges. Mrs Fadiya said there were no concerns with the garden. The inspection outcome was “not met with enforcement” as Mrs Fadiya was not meeting safeguarding, welfare or learning and development requirements. Risk assessment was poor, there was poor understanding of signs of abuse, limited understanding of health and poor access to toys. She was unable to show how learning and development was supported. Subsequently a WRN was issued.

24. A further monitoring visit was carried out on 17 November. The WRN issued on 6 November 2015 had been met, but Mrs Fadiya still showed inadequate knowledge of learning and development, and some aspects of safeguarding and radicalisation, and a further ATI and 4 WRNs were issued.
25. Mark Holmes, strategic manager of EY Services with Medway Council, stated he was the lead officer with responsibility for providing advice and guidance for childcare providers. He said in the period 20.5.2012 to 20.3.2015, there were a total of 58 contacts with Mrs Fadiya, including 18 visits to the premises. He concluded a very significant level of professional advice and guidance was provided, which was significantly greater than a childminder would normally receive. Records showed that on a number of occasions some or all of the recommended improvements were not actioned by Mrs Fadiya.
26. Elizabeth Mackey, Ofsted inspector, said she had visited the premises 4 or 5 times. She said although Mrs Fadiya talked of love for the children, she had not been able to assess risks and take action to address them. Further, Mrs Fadiya had not demonstrated an ability to increase her knowledge of learning and development. Ms Mackey said she had not seen children engrossed in play and Mrs Fadiya had not shown she understood the need for observation and planning.
27. Lisa Toole, Ofsted inspector, had visited the premises and spoken to Mrs Fadiya. She found there was a lack of evidence to suggest Mrs Fadiya was providing and supporting a broad range of activities, and that she had a basic lack of understanding of learning and development.

### The Case for Mrs Fadiya

28. In her grounds of appeal Mrs Fadiya said she was just encouraging child B to eat, not force feeding him. The child was unwell. She said she loved the child and would not hurt him. She would never feed a child like that again. She had suffered financially when her registration had been suspended. Her daughter had not been able to attend university.
29. Building works had been delayed because builders had gone on holiday. The kitchen had been tidied up and she would keep it that way. She said she understood safeguarding and child protection and the EYFS and would make changes to her practice. She had completed 2 on-line courses in safeguarding and speech and language. She said she shared her working

practices with parents and professionals, and provided appropriate resources. She has never received a complaint from parents or children.

30. In other documentation Mrs Fadiya said she had made improvements to the premises and the garden and they were now suitable. She said she would provide appropriate learning and development. She said she has learnt from the inspections and advice and will make changes. Mrs Fadiya said she was providing sufficient resources and opportunities to explore. There were a number of receipts in the bundle relating to building work at the premises, and awards given to the children by their schools. She included a number of photographs of the premises showing the building work she had undertaken.
31. In her witness statement of 12 November 2015, she said risk assessments on the premises, self assessments, safeguarding and complaint procedures were in place, although there were no written examples of these submitted by her. She said all persons over 16 resident in the premises had completed their DBS. She said she had complied with the requirement of the Childcare Register. Premises were now brighter, damp free and suitable. She said she would attend further training courses.
32. There were some 14 references from parents who had had their children minded by Mrs Fadiya, although some parents had written more than one reference. The references included assertions that parents had no concerns about the childminding, that they considered their children had developed well, that Mrs Fadiya was friendly, caring, trustworthy and reliable, that there were suitable creative activities, that the children enjoyed attending, and were not suffering emotionally or psychologically. It was said Mrs Fadiya's communication skills were excellent, and she was good at motivating children.
33. In her evidence to the tribunal Mrs Fadiya said she was prepared to work with Ofsted and improve her service. She said it was demoralizing that Ofsted had not praised the work she had done in improving the premises. She had improved the garden with decking and re-laid the paving slabs. She had rearranged the toys so they were safe. No toys had fallen and no one had been injured. She knew the children she minded and implemented appropriate learning activities. She accepted she had not done a recent learning and development training course.
34. She said the step from the lounge to the garden had been in disrepair for some time, but no one had been injured. She had put in a downstairs toilet to avoid the necessity of the children going upstairs. It was pointed out there was no concern about this, merely that a piece of carpet needed to be made safe. She accepted it had taken 4 years for her to submit completed DBS checks for all relevant family members.
35. Mrs Fadiya said she had reflected and learnt from the Ofsted reports, and had made changes. She had rearranged toys and drawn up activities for children. She had bought new toys such as a car garage, a toolbox and puzzles.

36. It was put to her she was merely reactive and not proactive about risks to the premises. When they were pointed out to her she might take action, but she consistently failed to anticipate risk and take preemptive action. She said it was easy for inspectors to come in and point out difficulties, because of her history. She was trying her best. The builder's tools were not meant to be there. She admitted she had left children unaccompanied in the car twice. The premises had been damp for some time and she had intended to carry out improvements anyway, not just because it had been pointed out by inspectors. It was put to her that there was still damp and mold in the house 5 months after Ofsted had first pointed it out.
37. It was put to her that Ofsted inspections from 2006 – 2015 had indicated insufficient resources were being supplied. Mrs Fadiya accepted she was selling toys to parents, but there were two copies of the toys. She suggested it was not inappropriate to store toys on the fireguard and mantle piece.
38. It was put to her that concerns about risk assessments had been expressed in 2009 – 2015. She said she was now in a position to pick up gaps and she was trying her best. She accepted she had been advised of actions to be taken by the LA support workers and that they had stressed it was important she carried out the works. She accepted the premises were unsuitable for childminding on 26 August 2015, but she was just trying to help parents out. She had told the builders children were coming, but this was their work. She said she did risk assessments every 3 months.
39. She accepted that, despite concerns being raised about her knowledge of learning and development, she had not recently completed any courses in this area. She said they only had one laptop which was used by all the family and she rarely used it. She had done a PACEY course 2 years ago in learning and development. She had contacted the LA Early Years Support Group but had an unsatisfactory reply, although she accepted they had said she could go on a couple of courses.
40. Mr Fadiya gave evidence and said he supported his wife. He reiterated they had intended to fix the damp and that this was not just as a result of the inspections. They were ready to work with Ofsted and move on.
41. Mrs O said her son was childminded by Mrs Fadiya between July 2014 and August 2015. He developed well and was confident and she was happy with the care provided. She dropped in any time of the day and had no concerns. On 26 August 2015 she dropped her 6 year old son at the premises. Mrs Fadiya was intending to take him out. She was concerned there was not enough room. He is always saying he is bored at home and school if he does not have an I Pad. She does not accept Mrs Fadiya force fed her son, merely that she was persevering.
42. In a statement by Paul Fadiya it was said Mrs Fadiya constantly encourages the children's skills, that she is gentle and relates to them well with love, care and support. He said she has widened her knowledge of learning and development and the premises have been improved.

43. Mrs A, parent, said Mrs Fadiya has childminded her two sons from 2007 to 2015. She had been excellent and caring. She is flexible and can supply support within a short notice. She encourages suitable creative activities and provides good food.

#### Decision of the Tribunal

44. We had regard to the documentary evidence in the case, along with evidence given during the hearing. We had regard to the legal framework for the registration and regulation of child-minders which is largely contained in Part 3 of the Childcare Act 2006. Broadly the provisions of the Act seek to significantly upgrade the requirements for the provision of childcare, particularly in the areas of learning and development, assessment and safeguarding. The new standards in these areas are set out in detail in the Early Years Foundation Stage (EYFS) document and the General Childcare Register Requirements.

45. The Act envisages a regime of registration, inspection, safeguarding and cancellation or suspension of registration where standards are not being met. The EYFS are given statutory effect by the Childcare (Early Years Register) Regulations 2008 which provides inter alia that an early years child-minder must be 'suitable' and that the child-minding must meet the EYFS learning and development and welfare requirements, and must ensure children's health and safety. Every person living or working on the premises must be checked and suitable. There is also a requirement for "suitability" when childminding older children in the Childcare (General Childcare Register) Regulations 2008.

46. Mrs Fadiya is registered for early years child-minding and with the General Childcare Register. A decision to cancel registration is made by Ofsted under Section 68(2) of the 2006 Act. Ofsted state that Mrs Fadiya has not satisfied the requirements for registration and failed to comply with relevant regulations and is unsuitable.

47. Under Section 74(1) of the 2006 Act, there is a right of appeal to the First Tier Tribunal. The burden of proof lies on the Respondent Ofsted, and the standard of proof is on the balance of probability. The Respondent must also show the decision is proportionate and necessary. Because the First Tier Tribunal step into the shoes of Ofsted in remaking the decision, and the appeal is not simply a review of the Ofsted decision, new evidence arising after the decision by Ofsted is admissible.

48. Under Section 74(4) of the 2006 Childcare Act, the First Tier Tribunal may confirm Ofsted's decision to cancel or direct the decision shall not have effect. If it does not confirm the decision to cancel, the First Tier Tribunal may impose, vary or cancel any condition.

49. We noted that the findings by Ofsted in the various inspections was not generally challenged by Mrs Fadiya. Instead she generally accepted the findings, although she sought to put a different interpretation on some of



them. For example with the feeding incident on 19 March 2015 she said she was merely persistently encouraging the child, not force feeding him, even though she had used these words, and she accepted what she had done was unsuitable and she would not do it again. In respect of leaving minded children unattended in the car, she said she had only done it twice and she had locked the door. In respect of the condition of the premises and the garden, she said building works had been unexpectedly delayed, but were now completed. In other areas, such as risk assessments and learning and development she generally accepted the shortcomings revealed by the Ofsted inspections, but said she had learnt and would now comply.

50. We considered the evidence. We noted in 10 years of Ofsted inspections Mrs Fadiya had never achieved a higher rating than 'satisfactory', a rating which is now considered to equate to "Requires Improvement". She has never received a "Good" grading. Inspections in 2006, 2009, November 2013, May 2014, March 2015 and November 2015 had resulted in "inadequate" or "Not met with enforcement" gradings. Notices to Improve and Welfare Requirement Notices had been issued on numerous occasions and not all had been met by their completion dates. Mrs Fadiya's registration had been suspended on two occasions on 20 March 2015 and 26 August 2015.
51. The LA had made some 58 contacts with Mrs Fadiya, including 18 visits to the premises, a significantly greater number than usual. On multiple occasions some or all of the recommended improvements had not been made.
52. The EYFS and the requirements of the Childcare Register had not been met on numerous occasions. There was a discernible failure to comply in several areas over a long period of time. Failures in learning and development were found in inspections in January 2006, November 2013, February 2014, May 2014, March 2015, April 2015, July 2015 and August 2015. Failures in risk assessments were found in inspections in October 2009, February 2014, March 2015, August 2015, and November 2015. Failures in providing suitable premises were reported in March 2015, April 2015, May 2015, and July 2015. It had taken Mrs Fadiya 4 years to fully comply with DBS requirements despite frequent requests by Ofsted.
53. In the opinion of experienced Ofsted inspectors, who knew the premises and Mrs Fadiya, she did not possess the ability to make and sustain improvements over time. In particular they had concluded that while she may have made improvements in the premises recently and from time to time resolved individual hazards pointed out to her, she lacked the ability to identify hazards herself, or independently take action to resolve them, putting minded children at risk of harm. On the evidence before us, we accepted these assertions.
54. Taking all these matters together, we concluded the requirements of the EYFS and the requirements of the Childcare Register had not been met on frequent occasions, despite substantial and persistent support from Ofsted and the Local Authority. We accepted Mrs Fadiya had made improvements in the premises recently but we also accepted, because of her long history of

non-compliance, she did not have the ability to consistently meet and maintain compliance with these requirements. We noted the parents' references and we accepted she could be a caring childminder, but she seemed incapable of risk assessing and safeguarding minded children. We gave Mrs Fadiya's assertions she had learnt and would change full consideration but because these failures had reoccurred and repeated over a significant period of time, despite substantial support from the LA and Ofsted, we concluded Ofsted's decision to cancel registration was proportionate and necessary. We carefully considered the effect on Mrs Fadiya from the cancellation of her registration, including the financial effect, but we concluded the risks involved in allowing her to continue childminding were such that they outweighed the detrimental effects on Mrs Fadiya.

55. For these reasons we concluded she was unsuitable to be registered as a childminder. We upheld Ofsted's decision to cancel registration.

**Judge John Burrow**  
**Care Standards**  
**First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 11 December 2015**