

Care Standards

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

[2018] 3424.EY

Hearing held on 28 October – 01 November 2019 at Royal Courts of Justice, Stand, London WC2A 2LL

BEFORE

**Monica Daley (Tribunal Judge)
Ms Sallie Prewett (Specialist Member)
Ms Jenny Cross (Specialist Member)**

BETWEEN:

New Generation Nursery Limited

Appellant

-v-

Ofsted

Respondent

DECISION

The Application

1. This is an appeal by New Generation Limited against the decision made by Ofsted on 24 July 2018, pursuant to Section 68 of the Childcare Act 2006. It was a decision to cancel the company's registration to provide childcare at its three settings: New Generation, Lovelace Street, London E8 4FF, The Linden Nursery School Byfleet Cricket Pavilion, KT14 7AB, and New Generation, Priestman Point, 23 Rainhall Way E3 3EY. All of the settings are part of a single registration.

Late Evidence

2. The Tribunal was provided with medical certificates for witnesses who had been unable to attend the hearing for reasons of ill health. There was no objection to these certificates being provided, and we decided to accept these certificates.

Representation

3. The Appellant, Company was represented by Ms Chichi Ikenga and Mrs Linda Ikenga who are Directors of New Generation Nursery Limited; they appeared in persons, in their capacity as directors. Unless their individual evidence is being specifically referred to, they are collectively referred to as "The

Appellants”.

4. The Respondent was represented by Mr Duncan Toole Solicitor for Ofsted.

Attendance

5. We heard oral evidence in the following order from the Respondents:
 - a. Natalia Moroz
 - b. Elizabeth Mackey
 - c. Sarah Stephens
 - d. Liz Corr
 - e. Ivor Kallin
 - f. Julia Crowley
 - g. Jennifer Devine
 - h. Pauline Nazarkardeh
6. We heard from Mrs Linda Ikenga and Ms Chichi Ikenga in their capacity as directors, and as witnesses of fact.

The Parties

7. The Appellant (“The Appellants”) is a private limited company incorporated on 16 April 2003. The Company has three Directors, Mrs Linda Ikenga, Mr Benjamin Ikenga and Ms Chibuzo (Chichi) Ikenga. Where the Directors give evidence, we have referred to them by their name. Mrs Linda Ikenga is the Nominated Individual.
8. The Appellants at the time were registered with Ofsted as a provider of childcare at three separate settings: Hackney-Nursery, registered in 2003 which transferred premises to 84 Lovelace Street Hackney in 2014 (“The Lovelace Setting”) and Bow, Priestman Point 28 Rain hill Way, London E3 3EY (“Priestman Point Setting”) and The Linden Nursery School, Byfleet, Cricket Pavilion, Parvis Road, Byfleet, West Byfleet, KT14 7AB (“Linden Setting”). All three setting were registered under a single registration in 2011.
9. The Respondent is the Office for Standards in Education, Children’s Services and Skills (Ofsted) and is the regulatory authority for childminding and childcare providers. Once a provider has been registered, Ofsted’s role is to establish whether the person or entity registered continues to meet the requirements for registration, under the Regulations made pursuant to the Childcare Act 2006, and remains suitable for registration.

Restricted Reporting Order

10. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matters likely to lead members of the public to identify the children to whom reference will be made so as to protect their interests. Consistent with this, the names of children and their mothers have been anonymised in this decision. We have used the generic term member of staff (“MOS”) to refer to the Appellants’ staff.

The Background

i. The Hackney Nursery (Lovelace Setting)

11. New Generation Nursery Limited and Mrs Linda Ikenga were registered with Ofsted in 2003 in respect of a nursery setting which is now at the Lovelace Street. Between, 2003-2013 the nursery occupied different premises (now demolished). The Nursery moved to its current setting at 8A Lovelace Street in Hackney 2014. At that time the current registration was created.
12. In 2014, the setting was graded as Good.
13. However, the last 5 inspections carried out on 16 August 2017, 8 February 2018, 23 August 2018, 12 February 2019 and 15 July 2019 the setting has been rated Inadequate. Notices to Improve and or Welfare Requirement Needs (“WRNs”) have been served on the Appellants.
14. Amongst the non-compliant (non-exhaustive) areas consistently highlighted as requiring improvement were:
 - Safety and supervision of children;
 - staff training and records;
 - supervision and monitoring
 - recruitment procedures
 - qualification of staff, and assessment,
 - planning and quality of teaching,
 - partnership with parents,
 - Key person and deployment.
 - planning and quality of teaching

i. Bow Nursery (Priestman Point)

15. The setting opened in December 2011 at Priestman Point, 28 Rain hill Way, London E3 3EY. Since the inception of the nursery it was managed by Ms Chichi Ikenga, the nominated individual’s daughter and one of the directors of the company. The nursery was registered on the Early Years Register only. The recent inspection history was that the setting was graded good in 2012, and 2014. More recently inspection judgments have found that the setting was graded Inadequate, on 7 December 2016 and 5 June 2017 and Requires Improvement on 11 December 2017.
16. Notices to Improve and or Welfare Requirement Needs (“WRNs”) have been served on the Appellants. The setting has subsequently closed. Amongst the non-compliant (non-exhaustive) areas consistently highlighted as requiring improvement were:
 - supervision of staff,
 - recruitment procedures
 - staff training and records
 - partnership with parents,
 - planning and quality of teaching,
 - Safety and staff deployment.
 - Safeguarding

17. Risk assessment

i. The Lindman Nursery (“Lindman”)

18. The setting has been in operation since 1972 and was re-registered in 2008 and again in 2011 when it was taken over by the company. This setting was registered on the Early Years Register, the compulsory part of the Childcare Register, and the Voluntary part of the Childcare Register. In December 2014 the setting was inspected and given a grading of “Good” it was noted in that report that it was not yet considered to be graded Outstanding.
19. Recent inspection outcomes were “inadequate” on 1 March 2017 and “Requires Improvement” on 11 September 2017. On 11 September 2018 there was a further inadequate inspection at the setting, which has since closed. Notices to Improve and or Welfare Requirement Needs (“WRNs” have been served on the Appellants. The setting has subsequently closed. Amongst the non-compliant (non-exhaustive) areas consistently highlighted as requiring improvement were:
- safeguarding, supervision,
 - monitoring,
 - Key person and deployment.

The Chronology

20. A brief chronology of the Appellants’ company is that the Nominated person, Mrs Linda Ikenga was the manager of the Hackney Nursery prior to its moving to its current site. She then became the owner of the nursery which was registered in 2003. In 2011 Mrs Ikenga expanded the business by opening the Priestman Point site. In the same year she took over the Lindman Nursery, and the Company re-registered with Ofsted on in that same year under its current registration.

The Decision under Appeal

This appeal is against a notice of decision dated 24 July 2018.

21. A Notice of Decision (“NOD”) was served on the Appellants. The NOD of 24 July 2018 is lengthy and contains a detailed account of the history of registration and previous action taken, as well as detailed accounts as to the inspections and the findings and enforcement notices served by Ofsted.
22. The NOD stated: - *“We have decided to cancel your registration: It is proposed to cancel your registration under Section 68 of the Childcare Act 2006 on the grounds that you no longer meet the prescribed requirements for registration. Ofsted believes that you are no longer suitable to remain registered as a day care provider due to your repeated failure to comply with the various requirements imposed by the regulations that apply to your registration.”* In a section headed “Conclusion” the Notice stated *“We remain very concerned that your consistent failure to meet requirements recently evidenced by two consecutive inadequate inspection judgements at New Generation (Lovelace Street). This means that children’s welfare and safety are at risk and children are not being supported to make good progress in their learning and*

development. Your history in in all three settings demonstrates that you have not been able to maintain most improvements found at inspections or monitoring visits. Where you have made improvements, these have not been sustained and you have often relied on Ofsted to point out non-compliance before rectifying issues, Ofsted need to have trust and confidence that providers are able to identify and address matters and to operate in a self-sufficient manner, we do not believe that you have the capability to meet the requirements and therefore we do not believe that you are suitable to remain a registered provider of childcare”

23. The Appellants Appealed against this decision on 10 August 2018.
24. On 4 February 2019 the Proceedings were stayed for 7 months. The terms of the order made by Judge Khan was that the Appellants had decided to close 2 settings Priestman Point and Lindman and the stay was to enable the Appellants to focus on the Lovelace setting with a view to bring the provision up to a Good grading. On 30 August 2019 the matter was listed for hearing for 5 days from 27 October 2019.

The Scott Schedule

25. The Directions dated 4 October 2018 required a Scott Schedule to be completed by the parties to narrow the issues in dispute between the parties. In the Scott Schedule, Ofsted asserts that the Appellants has consistently failed to comply with the requirements of the Statutory Framework for the Early Years Foundation Stage (EYFS) and that the Appellants has consistently failed to comply with the requirements of the Childcare (General Childcare Register) Regulations 2008. Ofsted asserted that the Appellants are not suitable for registration because the Appellants cannot meet the requirements for registration. Additionally, Ofsted asserted that the Appellants are not able to make and sustain improvements in order to meet the minimum requirements for registration.
26. The Appellants in the Scott Schedule, set out their position on each of the individual allegations, however they have largely set out their general case in their Skeleton Argument.
27. The Scott Schedule (SS) sets out the respective contentions by each party in response to both historic and remaining concerns and was the main focus of the oral evidence before the Tribunal. There were 145 Allegations set out in the Scott Schedule, 91 of which were disputed. All of the witnesses including, Mrs Ikenga and Ms Chichi Ikenga addressed the alleged failing in the Scott Schedule.
28. The Tribunal in order to deal with this matter proportionately, focused primarily on the 91 allegations that were disputed. There were two breaches one in relation to 3.47 EYFS 2017 – Staff miss opportunities to help children understand why healthy food is good for them and 3.62 EYFS 2017 – Providers must only release children into the care of individuals who have been notified to the Appellants by the parent, and must ensure that children do not leave the premises unsupervised. We have not made findings on those standards for

reasons that are set out below. We have also in reaching our decision considered those allegations that had been admitted. We decided that it was appropriate to consider those matters in deciding on whether Ofsted has acted proportionately. Although we have heard about all three settings, we have borne in mind that the Lindman and Priestman Point setting have now closed. We therefore in considering the question of proportionality focused on the Hackney Lovelace setting, as this was the only setting which was still operational; however, we were mindful that the respondent in reaching its decision was considering the totality of the allegations.

The Legal Framework

29. The legal framework for the registration and regulation of Childcare providers is to be found in Part 3 of the Childcare Act 2006 ("the Act").
- a. Section 68 of the Act provides for the cancellation of a person's registration in certain circumstances. Section 68(2) provides that Ofsted 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) if a registered person has failed to comply with a condition imposed on his registration under that chapter (c) that he has failed to comply with a requirement imposed on him by regulations under that Chapter.
 - b. The Early Years Register Regulations 2008. The prescribed requirements for Early Years registration are provided for in Part 1, Schedule 1 of the Childcare (Early Years Register) Regulations 2008. Those which are relevant in this case are as follows:
 - The applicant is an individual who is suitable to provide early years childminding (paragraph 1)
 - The applicant is to have the charge of the early years childminding (paragraph 2)
 - The applicant will secure that the proposed early years childminding meets the EYFS learning and development requirements (paragraph 4)
 - The applicant will comply with the EYFS welfare requirements (paragraph 5)
 - Every person (other than the applicant) who is to care for children for whom the early years childminding is provided is suitable to care for young children

The Hearing

30. We received and read a large indexed and paginated bundle which included a number of witness statements from both parties. We also received detailed opening skeleton arguments from both the Appellants and Ofsted. The hearing was listed for 5 days. We heard evidence and closing submissions over the 5 days from 28 October to 1 November 2019. We resumed to consider the Appellants closing submissions and to reach our decision on 9 December 2019.
31. We also received written statements on behalf of the Respondent from Samantha Colderwood and Seema Parmar, and Helen Penticost and inspection notes of Siobhan O'Callaghan. These witnesses were not available to give evidence at the hearing. Where this was because of personal illness, we were provided with medical certificates. The Respondent stated that Helen

Penticost was absent due to a pre-booked holiday. We recognise that the weight to be given to their statements was affected by the fact that they have not heard from these witnesses and the Appellants has not been able to ask questions of these witnesses and their evidence is thus untested, where we have placed reliance upon their evidence we have set this out in the decision and have also set out the weight attached to this evidence and the reason for our decision as to whether to accept or reject aspects of their evidence.

i. Oral and Written Submissions

32. Mr Toole stated that the proceedings had been stayed last year on terms agreed between the parties. The Appellants had agreed to close two of the settings the Priestman Point and Lindman Nurseries, these setting had remained closed. The remaining setting was the Hackney Nursery (“Lovelace”). The two nurseries had closed in order to enable the Appellants to focus on getting the Lovelace setting up to standard. At the latest inspection September 2019, the Lovelace setting was graded Inadequate.
33. He submitted that the decisions in the NOD had been made as a result of the overall history of the three settings, all of the breaches were relevant and relied upon to demonstrate the lack of capability of the Appellants to comply with the requirements. Mr Toole stated that since 2016 onwards the Appellants had been unable to sustain compliance with the requirements for registration. In respect of the Lovelace setting he stated that the setting has been graded Inadequate at the last five full inspections. Following the last full inspection on 15 July 2019, a monitoring visit was carried out, and on 7 August 2019, the setting was suspended. This suspension was lifted on 20 August 2019 after improvements were put in place.
34. In paragraph 13 of Ofsted’s *Skeleton Argument*; it was stated that-: “... Ofsted has given insufficient regard to evidence of meeting requirements in the past prior to 2016. 14. Whilst it is accepted that the Appellants has been able to demonstrate compliance in the past prior to 2016, this does not provide reassurance for the Respondent in circumstances where the Appellants has for a period of around three years, operated three settings at a level that is not ‘good’...16... Mrs Ikenga submits that the Respondent has an agenda to close the nursery and that Inspectors have not been willing to acknowledge improvement because of this agenda. This is disputed by the Respondent, who believes that their actions have been proportionate throughout, it is unprecedented for a provider to still be operating after being judged inadequate on five occasions in a row...”
35. Paragraphs 12, 13 and 21 of the Appellants’ *Skeleton Argument* set out their case. “... We accept that failings were found by Ofsted at all three settings between 2016 -2018. We were issued Welfare Require Notice (WRN) for those alleged failing and they were addressed. We do not however agree with all the WRN’s as some should have been recommendations at most actions and not WRNs. But Ofsted kept insisting that it was WRN because our history... 13. We

do not accept that the alleged failings warrant the conclusion drawn in the Notice of Intention to cancel, namely that the company does not have the ability to meet the requirements and are therefore unsuitable to remain a registered provider of childcare. In comparison to another nursery mentioned in our evidence...This nursery had a few complaints, issues with safe guarding and yet judged as good by Ofsted...²¹ It is understandable that Ofsted were concerned with the setting in the period 2016-February 2018 leading to the NOI to cancel. However, at each setting, improvements have been made. Ofsted accepted that sufficient improvements had been made at the Byfleet nursery and that they would not seek to cancel the registration if that were the only setting under the registration. This is evidence of the company's ability to make improvements. The Bow nursery had also improved and not deemed to be inadequate in December 2017. Improvements have also been made at the Hackney nursery. The company is confident that it can demonstrate the ability to meet the necessary standard moving forward. Given there is a history of each setting being good prior to the alleged failings, it is submitted that the Company has been able to bring about the necessary improvements and sustain them as well as doing more than what most outstanding nurseries would do."

36. We took into account all the evidence that was presented in the hearing bundle and at the hearing. We have set out the evidence insofar as it relates to the relevant issues before the Tribunal. Where we have made findings in relation to this evidence, we have set out the evidence relied upon in further detail. We have not attempted to set out below verbatim the evidence or set out the response given by the Appellants to each of the breaches given at the hearing.
37. We heard oral evidence from the witnesses listed below:-
- a. The Ofsted inspectors.**
 - b. Dr Natalie Moroz**
38. The Tribunal heard from Dr Natalie Moroz. She provided her account, of an inspection which took place on 20 July 2017, at the Bow Nursery ("Priestman Point").
39. Dr Moroz had a clear recollection of this inspection. She gave clear and detailed evidence which concerned the discussions that had taken place with parents and how Ms O'Callaghan had triangulated her findings by use of "a tracked child",
40. Dr Moroz also carried out the subsequent monitoring visit on 18 August 2017 at which 6 Welfare Notice Requirements (WRNs) were served. She had also carried out the follow up monitoring inspection which took place on 11 December 2017.
- a. Ms Elizabeth Mackey**
41. The Tribunal then heard from Ms Elizabeth Mackey; Ms Mackey was an Early Childhood Regulatory Inspector. She was responsible for the South East. She carried out a re- inspection at the Linden Pre-School on 11 September 2017.
42. She was aware that the nursery was part of the New Generation Registration

and as a result, she had a discussion with Siobhan O’Callaghan who had inspected Priestman Point, and Joanne Smith who had inspections Lovelace. She attended a meeting held with the Appellants on 11 October 2017 between Ofsted and the Appellants, at the offices of Ofsted.

43. Ms Mackey characterised the meeting on 11 October 2017 as a “really positive meeting...” in which the inspectors outlined their concerns and in which she felt the Appellants understood their concerns, and appreciated the meeting as being a productive and helpful meeting.

Ms Sarah Stephens

44. Sarah Stephens, an Early Years Regulatory Inspector, who carried out an inspection of the Linden Road setting on 11 September 2018. She concluded that the setting was inadequate.

The Local authority witnesses

Miss Liz Corr

45. The Respondents had two local authority witnesses Miss Liz Corr a Welfare Standards Officer of the Hackney Learning Trust. She had been involved with the Lovelace Street Nursery as it was one of her allocated settings. Her involvement was between 2014-2018.

Mr Ivor Kallin

46. The second local authority witness was Ivor Kallin he was employed by the Learning Trust as an Early Years Consultant and had formerly been a deputy head of a primary school. He had been asked by Liz Corr to work with the Lovelace setting by providing training and also helping with systems.

Ms Julia Crowley

47. Ms Crowley had been involved in carrying out inspections at the Lovelace Setting along with Jenny Devine in 2018 and had also carried out the most recent inspections in 2019. She had not been involved in any of the other settings.

Ms Jenny Devine

48. Ms Jenny Devine gave evidence of inspections that she had carried out of the Lovelace setting. These included a monitoring visit which took place on 23 July 2018 and a full inspection on 23 August 2018; she also carried out an inspection on 5 August 2019 when the registration of the Nursery was suspended.

The Decision Maker

Ms Pauline Nazarkardeh

49. Ms Nazarkardeh was a senior officer with Ofsted and her role was to supervise support, mentor and she was the line manager for a team of Early Years Regulatory Inspectors. She was also the decision maker in cases which involved refusal to register, suspensions and cancellations.

50. She stated that as a result of the Appellants’ decision to close the Priestman Point and the Linden Road Nursery a decision had been made to stay the proceedings in December 2018 to allow the Appellants to focus on making

improvements at the Lovelace setting

The Appellants

51. The Tribunal heard from both Ms Chichi Ikenga, and Linda Ikenga.

Ms Chichi Ikenga

52. She set out the background to her becoming the manager of the Priestman Point setting. She had also been present during inspections that had taken place at Priestman Point and more recently at the Lovelace setting. Although accepting some of the alleged breaches. Ms Ikenga disputed some of the findings and set out steps taken by her to address the enforcement notices.

53. She considered that changes that had been made to the nursery and improvements were not always acknowledged by Ofsted and where the Appellants had started to make a change, she considered that they had not been provided with sufficient time by Ofsted to allow the changes to become embedded.

Mrs Linda Ikenga- The Nominated Person

54. Mrs Ikenga was the Nominated individual, she also accepted some of the findings she considered others to be unfair and provided the Tribunal with context. She had had difficulty with staffing levels and changes in staffing. She considered some of the information provided by the Local Authority and also Ofsted was confusing and contradictory. Mrs Ikenga did not accept that the LA had provided an appropriate level of support. Although she had not always challenged Ofsted, she did not accept all of the findings. In particular she considered the evidence used to support the cancellation had been wrongly interpreted. She also in her evidence stressed that the Ofsted inspectors and others such as the parents had noted that the staff were caring towards the children and that no child was harmed in her setting. She did not think that Ofsted fairly acknowledged the changes and felt that the latest inspections had had an agenda.

55. We had a written statement from Sam Smith- Sam Smith was an early year's consultant who had herself been an Ofsted inspector who had been engaged by the nursery to assist them in meeting the requirements. She was not present at the hearing. Her statement set out the work that had been undertaken to improve the Lovelace Setting. She had also made an application to Ofsted to register a provision at the Lovelace Setting.

Closing submissions

56. We heard oral closing submissions from Mr Toole solicitor for Ofsted and accepted written submissions from the Appellants' which were considered by the Tribunal.

The Burden and Standard of Proof

57. In so far as any facts are in issue the Respondent bears the burden of proof and the standard is the balance of probabilities.
58. The burden rests on the Respondent to show, on the balance of probabilities, that cancellation is justified and necessary in the public interest. This involves consideration the existence and significance of any risk. The issue of proportionality involves a judgement, as viewed today, which balances the public interest against the interests of the Appellants and all involved. The Tribunal in this hearing stands in the steps of Ofsted that is we make the decision a fresh based on all of the evidence (up to and including the dates of the hearing).

The Issues

59. The broad issues in the appeal are: (a.) were there breaches of the relevant requirements? And (b) Have the requirements for registration ceased to be satisfied? And (c). Is cancellation of the registration a proportionate step?

The Evidence

The Alleged breaches of the Statutory Framework for the Early Years Foundation Stage 2017

60. In order to consider whether there were breaches of the relevant requirements, we have considered the Statutory Framework for the Early Years Foundation stage 2017 (EYFS 2017) we have considered each of the alleged breaches in turn. We decided that in making our decision we needed to consider the alleged breaches of the standards and whether the breaches were of such significance that the Appellants breached the relevant requirements
61. In respect of the alleged breaches in relation to the EYFS 2017 they are considered below:-

1.5 EYFS 2017 – Staff were not consistently modelling language to support children to develop good speaking and listening skills The Lovelace Setting

62. At the hearing the Tribunal heard from Jenny Devine she had carried out a monitoring inspection, on 5 August 2019 at Lovelace Road Setting, this followed a full inspection which had been carried out by Ms O’Callaghan on 15 July 2019. Ms Devine in her evidence dealt with her colleague’s inspection (page H950 paragraph, 6). She also exhibits Ms O’Callaghan’s report (H1003). (We did not hear from the report author, Ms O’Callaghan and there was no witness statement provided from her). In her report: under the heading: “*quality of teaching learning*”.
63. She stated that:- “... However some staff continued to not provide children with meaningful opportunities to speak. This is because they constantly ask direct

questions and not give children time to listen reflect and respond.” This was the only evidence in respect of this standard.

64. Mrs Ikenga disagreed with this comment although little information was provided by her in response.

1.6 EYFS 2017 – Ineffective planning in place for children’s next steps in their learning

The Lovelace Setting

65. Ofsted in their evidence relied upon the inspection carried out on 16/08/2017, and monitoring visits; on 7.03.2018 and 23.07.2018. And a re-inspection on 23.08.2018 and a further inspection on 12.02.2019.

The inspection on 16/08/2017

66. The Report was prepared by Ms O’Callaghan (at page H761) in her *Evidence Report*, she noted that long term planning is “themes for each month of the year and that there was a weekly environment plan with the name of a focus child for the week.” It was noted that planning for the day of inspection was not completed and there were big gaps in the previous day under the afternoon heading of: sand water, outdoor music and maths.

The monitoring inspection on 7.03.2018

67. This inspection was again carried out by Ms Siobhan O’Callaghan and Ms Jenny Devine. In her evidence, Ms Devine stated that during the inspection she was tracking a particular child who appeared to have communication and language difficulties. In paragraph 19 of her witness statement, she provided details of this child who had special educational needs. She noted that he had made little progress since starting the nursery. In her assessment this was due to poor planning and lack of engagement from other professionals.

68. In the Investigation Evidence tool kit report (page H120). Ms O’Callaghan stated that when she asked what his next steps were. She was informed that the planning for him was around feeling and behaviour and although his communication and language was considered to be lower than expected, his key worker stated that no next steps had been identified for him. Neither of the Appellants commented directly on this alleged breach. In general terms, it was stated that there had been an inspection undertaken on 7 February 2018, and as a result there were changes in the key person allocated for the children and the monitoring visit had taken place soon after.

69. The Appellants considered that there was not enough time between inspections and as a result some of the changes that had been put in place were incomplete. Mrs Ikenga also stated in her evidence, at paragraph 19 of her first witness statement that there was an issue with this child as the parents had been referred to speech and language therapy but had not complied and had missed many appointments. Mrs Ikenga noted that the child could not be “referred without the parents’ consent” and that the parents had refused. We also noted in her evidence that she stated that “... We were given advice as to what things we can do with the child.”

The monitoring inspection on 23.07.2018

70. This visit was carried out by Ms Devine in her Interview notes, she noted (page H144) that on this visit a new manager, showed her the plans for the children in the baby room and for the early years room concerned people who help us, and that the plan was for children to pretend play, dressing up as a paramedic. However, it was noted by Ms Devine that there did not appear to be any plans for the younger children. She queried in her interview notes whether this was a suitable activity for a child of 18 months or younger. She had asked how a 14-month-old child would be involved in this activity. The MOS stated that she planned for the younger child to play with Oats as a sensory experience. Ms Devine considered that the activity proposed for the younger child had not been planned
71. Ms Devine noted that “... *this demonstrates staff continue to not fully understand planning...*”

Re-inspection on 23.08.2018

72. This was a re-inspection carried out by Ms Devine. At paragraph 32 of her witness statement she noted that “...staff were observed to lack a good understanding of how to plan and organise resources well enough to support children’s communication and language needs”.
73. She observed that there were plans on the wall in the pre -school room for the children to make a bus. However, when she arrived at the setting, the staff and the children were all in the baby room and one pre-school child was observed to be in the baby room, there were no suitable toys for his age. He settled with some bricks, until 2 other pre-school children arrived one of who was running around and jumping across babies on the floor (page H167). In respect of the track child, the pre-schooler who had been in the baby room, she noted that the next steps identified for him were for him to begin to use 3 fingers to hold a writing tool and that there were no other steps identified. She considered this to be evidence of poor planning.
74. The Appellants’ in their response did not deal with the specific details of what was alleged to have occurred. Mrs Ikenga stated that they had found Ofsted to be contradictory and at time misleading. She pointed out that they had received criticism for having “... too ambitious plans or plans that were not challenging enough.”

Inspection 12 February 2019

75. This inspection was carried out by Julia Crowley, in her report (Page H918) she noted that the children were in a mixed age group and that as a result the babies’ accessed equipment which was inappropriate, and the older children lacked sufficient challenge. The Appellants did not accept this alleged breach. Ms Crowley gave compelling oral evidence. She stated that she had carried out an inspection on 12 February 2019 using The Inspector’s Handbook. Her starting point for the inspection was the question what was the setting like for a child? And what systems were in place for good quality teaching? She stated that she had triangulated the evidence by asking questions of MOS, Parents,

and by tracking children. She stated that some children had been wandering around the room. In one case, one child was leaning against a water tray. She noted that this child seemed disinterested in the activities and was not engaged and that no MOS sought to engage the child. She stated that there were very few toys out, and the activities that were being undertaken appeared tokenistic.

76. Ms Crowley stated that the children appeared to be left to their own devices, and that they, the children did not appear to have any expectation that staff would be involved with or interact with them.
77. She described an activity which involved stickers and felt tip pens, as this involved the younger children this did not feel age appropriate and there was nothing for the younger children to do. She noted that there were 8 children and 2 or 3 Staff and that no one appeared to be interested in the activity. In her questioning, Ms Ikenga noted that Julia Crowley had referenced the wrong name for the establishment in her report. Ms Crowley acknowledged this. Ms Crowley was asked whether the tribunal could be satisfied as to the accuracy of her report and that she was referring to the Lovelace setting, given this mistake.
78. Ms Crowley was asked about her inspection and how she carried it out. She stated that she had spoken with a MOS in depth concerning one child, who had been at the nursery for about 6 weeks. She had asked about his interests and what his next steps were. The member of staff had stated that she did not know and that she was just observing him at the moment. Ms Crowley had been concerned about the lack of urgency in this staff member.
79. She stated that Chichi Ikenga had acknowledged the weakness in certain members of staff and had discussed this with her, whilst she was making her observations. However, as an inspector Ms Crowley was concerned that MOS had been given responsibility when their practices were poor and clear weaknesses had been identified.
80. Ms Crowley was also concerned that there were child care consultants who were in place who did not appear to have had an impact on the culture of the setting.
81. Mrs Ikenga challenged this and asked what change would Ms Crowley expect between January and February?
82. Ms Crowley stated that she would expect a proactive practitioner to take immediate action on the findings.

Priestman Point Setting

83. Ofsted relied upon two inspections on 7.12.2016 and on 5.06. 2017, which took place as demonstrating a breach of the standard at this setting.

The Inspection on 7.12.2016

84. The inspection was carried out by Ms Seema Parmar who had provided a

witness statement which was signed and dated 19 November 2018 and supported by a statement of truth; however, she was not present at the hearing. As a result, we have attached less weight to this evidence.

85. In her inspection report she noted that: “...*planning was not precise enough to meet the needs of the children.*” She noted that “*some children received little attention whilst with others, staff were over directive*”.
86. We noted that Ofsted had not set this breach out in the Scott Schedule, and that as such the Appellants had not responded to the specific details in this evidence of the alleged breach.

The inspection on 5.06.2017

87. We noted that this inspection was carried out by Ms O’Callaghan on this date. In the Scott Schedule it was noted that “...staff do not work with parents to find out what children know or can do and use this information to plan for children’s next step”. This was disputed by Ms Ikenga who was the manager of this nursery at the time. She stated that forms had been given to parents asking for details concerning their child’s stages however these forms were not always returned by them.
88. Ivor Kallin, Early Years Consultant employed by London Borough of Hackney. Stated that he had tried to assist the Appellants in the Lovelace Setting, to improve the tracking and monitoring of children. He gave detailed evidence, which we accepted, of how he had tried to support the Appellants to develop monitoring. He considered that this would support planning and learning. He stated that he was not confident that this had been fully understood or adopted by the Appellants or that this was being used in planning.

1.7 EYFS 2017 – Lack of opportunities for children whose first language is not English and use their home language in the setting

Priestman Point

89. The Tribunal heard from Dr Moroz, she visited the setting along with Siobhan O’Callaghan on 20 July 2017; she also carried out re-inspections on 18/08/2017 and on 11 December 2017. In her evidence she stated that there was a child who was quite vocal and although her first language was not English there was a lack of opportunities for this child and other children whose first language was not English to use familiar words from their home language. She noted that although there were members of staff who spoke additional language, there were children who spoke English as an additional language and there was no use of key words from their home language.
90. Miss Chichi Ikenga, in paragraph 25 of her witness statement, stated that this assessment was unfair as there were parents who did not want them to use the child’s home language in the setting, as they wanted their child to speak English. She stated in her evidence that to expose them to their home language would have been going against the wishes of their parents.
91. Miss Chichi Ikenga produced two pro-forma letters which had been sent to

parents. The first letter asked for key words in the home language this letter was dated 24 January 2018. The tribunal was provided with both letters (pages i145& i146) the first letter dated 4 June 2018 stated:- "...It has become apparent that some parents would prefer to separate their home language from the nursery environment in case of confusion or those they would rather their child get better at English in the nursery..."

92. In some instances, parents had indicated that they wanted their child to speak English. In cross examination Dr Moroz indicated that the first letter which asked for key words was acceptable. She stated that the latest research indicated that children exposed to their home language were not at a disadvantage when speaking English.
93. The requirement was that the Appellants should take "reasonable steps" to expose the child to words in their home language.
94. Dr Moroz stated that in her view if the parents had the reason explained, this may have affected their response. She stated that although there were phrases on the wall and in the baby room and books there were no signs that these were being used.
95. In his evidence Mr Kallin was asked about the use of the two letters to parents. He stated that in his view the letters were the wrong approach as the letter would be daunting for parents whose first language was not English. He also considered that it would have been better to approach the parents with an explanation as some parents would be worried that speaking words in their home language would hold a child back, whilst there was clear evidence to the contrary.

1.8 EYFS 2017 – The learning environment in all areas of setting do not provide children with well-planned opportunities that stimulate their thinking and encourage active learning

The Lovelace setting

Re-Inspection 23/08/2018

96. Ms. Devine in her statement she set out that there was an activity set out involving water with bubbles. This involved members of staff putting cars in the water and tried to engage the children in playing with them. However, children did not engage in this and the activity was discontinued after about 20 minutes (page H 168). In her view this was evidence of a lack of well-planned opportunities to stimulate thinking and encourage learning.

Inspection on 12-09-2019

97. Ms. Crowley stated that there were few toys and the activities which took place appeared to her to be tokenistic. Ms. Crowley stated that in carrying out her inspection, she had tried to assess the setting from the view of the child. In her view there were children who were wondering around without activities. In the report (at page H919) under the heading "*quality of teaching and learning*". It was noted that it was inadequate. One of the reasons noted what that -: "... Due to lack of organization and adequate staffing children's self- chosen play is not well supported by staff. Children wander around the nursery environment

often not taking part, and are uninterested... Too frequently children play alone for extended periods at a time without adult interaction..."

98. The Appellants did not accept that this had occurred; Ms. Crowley was asked whether the evidence given by her was of another setting; as she had mistakenly referred to another setting in her statement. She stated absolutely not. She stated that there were several children and her observation was that if the child went to a member of staff they would respond. What concerned her was that there were children who did not attempt to go to MOS and as a result there was no interaction.

The Linden Road Setting

99. On 11 September 2017 Ms. Mackey carried out an inspection of the Linden Road Setting. She noted in her report (page H 267) that the indoor and outdoor areas did not provide children with sufficient opportunity to learn. She noted that although the children appeared interested in the activities they were not absorbed. She described one activity that involved singing nursery rhymes in her view this activity was carried out with too many children, whose ages differed.

100. Ms. Mackey stated that she did not think that the activity was stimulating or well planned. She noted that the activities lack challenge for the brighter children. The Appellants did not accept this. However, neither of the Appellants was present at the inspection although they had been notified that the inspection was to take place. Their response appears to be based on the criticism of the mix of younger and older children, as they stated in their response that the room had been sectioned off to accommodate different age groups.

2.1 EYFS 2017 – Ineffective monitoring, observation and assessment systems to meet children’s development and needs
The Lovelace Setting

101. We were referred to an inspection carried out on 16/08/2017 by Siobhan O’Callaghan. One of her findings was that the monitoring of children was ineffective. The Appellants agreed with this finding. It was asserted by them that the reason for this was that they were at the time introducing new systems.

102. On 7.02.2018 when the premises were inspected by Julia Crowley she stated that she also noted that the systems to assess and monitor children’s learning needs needed to be improved to meet the individual development needs of each child. This is documented in the bundle (at page H88). In their response in the Scott Schedule, the Appellants accepted that this standard had not been met. They cited that changes had been implemented and that those changes were on-going at the time however it would take some time for these changes to be embedded.

103. We also heard from Ivor Kallin, he had been asked to work with and assist the Appellants to bring the nursery up from inadequate to good standard. He had visited the Lovelace Setting in September 2016 and had carried out an audit. He stated that he had not identified assessment and monitoring of children as an issue at that stage. On 4/9/2017 he had had a meeting with Linda Ikenga and the setting manager to discuss the verbal feedback given by Ofsted as a result of the

inspection on 16.08.2017. He stated that the issues identified were considered to be remediable. On 9.10. 2017, Mr Kallin provided further support, following the September 2017 Ofsted re-inspection.

104. We heard that one of the areas in which he had provided assistance was in the area of Child Development and Monitoring. Mr Kallin stated that one of the issues was that the setting manager was not use to the system in place which had been used by the Priestman Point setting. She wished to introduce a system of monitoring with which she familiar with from her previous was setting, however he looked at her systems and considered them complicated.

105. Mr Kallin had referred them to the DfES guidance Development Matters in the Early Years Foundation Stage. He stated that this was to guide them on child development, that is, where you would expect children to be at different ages and that this could have been used to support the children. He had also provided video clips and had updated a tracking spread sheet this had been prepared by using the data in the progress books and the track cohort progress. On the basis of the information provided to him he had pointed out anomalies in staffs recording of development. (Page H731) He informed us that he had pointed out that based on the information some of the children appeared to have regressed. He stated that he considered that it was more likely that the monitoring was inaccurate. He stated that he had set up the system with the expectation that the manager and provider would then take ownership of the process.

106. However, it was his evidence that based on the responses from Linda Ikenga that he was not confident that this would happen.

107. We noted that the standard 2.1 EYFS 2017 was still not being met on 7/03/2018 when re-inspection took place. In response the Appellants stated that there was a short period of time between the inspection and the re-inspection taking place.

The Priestman Point setting

108. In respect of the Priestman Point setting inspections were carried out on 5 June 2017. Ms O'Callaghan Inspection Evidence Report provided information of an interview with a MOS concerning a tracked child (H823) this concerned the Communication and Language for a child aged 3. She stated that she was handed a document which indicated that the child was beginning to use more complex language. However, when Ms O'Callaghan asked where the MOS thought this child was in respect of their learning and development, she stated that she thought he had Communication and Language Delay. When Ms O'Callaghan asked another, more senior, MOS she said that she had written a report about him but she has not assessed his development as they did not have any tracking systems in place.

109. Although Ms Chichi Ikenga disputes that this standard was not met. Her dispute was centred upon her not having had sight of the inspection notes.

The Linden Setting Inspection on 01/03/2017

110. In respect of the Linden Setting, this is dealt with in the bundle (at pages H571

and H576). At an inspection on 01/03/2017. The inspector noted (H574) that there was a tracked child who was exceeding expectations. Although it was noted that this child's development was accurately recorded, no next steps had been identified for the child's learning and development. On 11/09/2017, Ms Mackey noted that there was a new manager in place and that she was unaware of what the arrangements were for monitoring the quality of the provision to ensure it met the needs of the children. As a result, the WNR notice was reissued.

2.3 EYFS 2017 – Not carrying out the progress check for children aged between two and three
The Priestman Point Setting

111. The Tribunal noted that this was referred to in the witness statement of Ms Seema Parmar (page H401 and H414). In responding to this breach, Ms Ikenga stated that there were children who had started at nursery after the cut-off point and that the Appellants was no longer doing the integrated reviews alongside the Health Visitor.

2.5 EYFS 2017 - Lack of links with relevant services, agencies and professionals involved with children who have special education needs and/or disabilities
The Lovelace Setting

112. On the 16.08 2017 the Lovelace setting was inspected by Ms Joanne Smith. In her report (at page H464) she noted that a referral had not been made of a child who appeared to have a special educational need. We note that the requirement is that practitioners should encourage parents and or carers to share information from the progress check with other relevant professionals. Although this had been described as a lack of links with relevant services this is not what the standard requires. In their response the Appellants dispute this. The Appellants states that the LA made changes to the SENCO and that a new SENCO was due to visit.

Safeguarding and Welfare Requirements

3.4 EYFS 2017 – Staff knowledge of safeguarding

3.5 EYFS 2017 – A practitioner must be designated to take lead responsibility for safeguarding children in every setting. Childminders must take the lead responsibility themselves

3.6 EYFS 2017 – Ineffective training for staff regarding safeguarding policy

The Lovelace Setting

3.4 EYFS 2017 – Staff knowledge of safeguarding

113. Ms Julia Crowley in her inspection on 12.02.2019 noted that staff knowledge of safeguarding was poor, and as such standard 3.4 was not met. Ms Crowley spoke with two members of staff about Safeguarding, one of them had been identified as the Safeguarding lead for the nursery (page H879-H888, H 918).

114. In paragraph 10 of her witness statement she stated that-: "The DSO demonstrated that she was unable to provide support, advice and guidance to staff on safeguarding issues."

115. Ms Crowley in her evidence stated that she had asked MOS questions concerning safeguarding. She stated that some of their answers gave her cause for concern. One of the areas was that she asked about was how they would deal with an allegation which concerned a member of staff. She stated that they were unclear what the nursery's policy and procedure were. One of them stated that they would talk to the member of staff about who the complaint had been made, and then document the concern. This approach was contrary to safeguarding practice and procedure.
116. In her notes, Ms Crowley stated that she was concerned that the safeguarding lead could not talk about the guidance on PREVENT or GM or the appropriate manner for dealing with allegations. She formed the view that the designated officer did not have the level of knowledge necessary to fulfil their role.
117. She noted that when she spoke to Ms Ikenga about this, she was informed that the Appellants were aware that this MOS had poor practice and that they would be dismissed by the end of February. Ms Ikenga stated that the MOS concerned was not able to retain information.
118. Ms Crowley was concerned that a member of staff who had identifiable weaknesses in their practice would be given a significant safeguarding role. She considered that this demonstrated poor decision making on the part of the nominated individual. She further considered that there had been deterioration in staff knowledge since previous inspections.
119. In cross examination Miss Ikenga pointed out that staff often became nervous when confronted with inspectors and that the answers were due in part to the fact that they staff were nervous and ill at ease. Ms Crowley acknowledged that this may have played a part, however she stated that she had tried to put practitioners at ease and that she had to follow the inspectors hand book and apply the same process to each inspection.

The Priestman Point Setting

3.5 EYFS 2017 A practitioner must be designated to take lead responsibility for safeguarding children in every setting. Childminders must take the lead responsibility themselves and 3.6 EYFS 2017 Ineffective training for staff regarding safeguarding policy

120. In her witness statement Seema Parmar dealt with issues concerning Safeguarding (H332, Para 7) Seema Parmar set out that she had become involved and carried out an inspection after the Local Authority Designated Officer had contacted Ofsted as there had been allegations made concerning a MOS. Although it was accepted that these allegations did not meet the threshold, the LADO was concerned as he had not been contacted by the setting. She stated that she had made enquiries concerning the provision and had noted that the setting had been rated as Good. She had carried out an unannounced inspection on 11 October 2016. She was able to ascertain that the allegation was that a MOS had hurt a child. The MOS had been informed about the allegation

and had approached all MOS and questioned them about the allegation and the child concerned had also been questioned.

121. Ms Parmar in her statement stated that:- (Para 16) “What became evident during this visit was the seriously inadequate poor staff practices and their lack of awareness, knowledge and understanding of the potential impact this may have had on the child’s emotional well-being.”

122. The parent who raised the concern about the nursery was considered to be from a vulnerable family and had a social worker. Despite this the setting had not notified the social worker when the child did not return as the manager had treated the child as having been withdrawn from the setting. As a result of this and other failings a Welfare Needs Requirement Notice was served.

3.9 EYFS 2017 – Suitability of staff members

3.10 EYFS 2017 – Insufficient suitability checks for staff

3.12 EYFS 2017 – Insufficient information about every individual who works in the nursery

3.15 EYFS 2017 – Ineffective recruitment procedures which give due regard to disqualification requirements

The Lovelace setting

Inspection on 7.02.2018

123. At the inspection carried out on 7.02.2018, Ms Devine asked to see the staff files as part of her inquiries. She sampled two files; one was for the deputy who had been recruited in August 2017. Ms Devine in her evidence stated that there were gaps in the MOS employment history, between the dates of 2016-2017. No additional references or information had been sought. There was no reference in respect of the second staff member, and there was a cook who was awaiting a DBS. Ms Devine also noted that there was no qualified level 3 in the baby room, and that although this person had a degree it was a non-childcare qualification.

124. On 23 .7.2013, Ms Devine again inspected the Nursery and met with two new MOS one of them had only one reference and was awaiting a second reference, Ms Devine noted that safeguards were in place in that at no point was she left alone with children. The other had been given notice because of domestic violence which she accepted had impacted on her work.

125. In relation to this standard the suitability of staff, the Appellants disagree that the standard was breached. They noted that checks were undertaken, and that safeguards were in place. In relation to MOS’s qualifications, Mrs Ikenga in her statement set out that “...over 75 % of the staff had relevant child care qualifications at the nursery...”

The Priestman Point Setting

126. In her witness statement, Ms Parmar set out that during her unannounced inspection on 11 October 2016, she identified vetting and recruitment of staff as an additional area of concern. At paragraph 19, she set out that an apprentice from a college who she had observed with a baby without supervision did not have a DBS check. She stated that this appeared to have resulted from a

misunderstanding concerning who should carry out this check between the setting and the college.

127. On 15 November 2016 Ms Parmar noted that there was an employee with gaps in their employment history.

128. In her response, Ms Ikenga dealt with the allegation concerning the apprentice being left alone. She stated that this was untrue. Ms Ikenga although not referencing a specific MOS, accepted in her statement that there was a MOS for whom a DBS check had been accepted from a previous employer as she had mistakenly thought that this was alright as long as the check was less than 12 months old.

129. Ms Ikenga stated that she had followed up on the gaps in the employment. This worker had been employed by an agency and as such had worked at some places for a very short period of time. Ms Ikenga stated that she had checked this with the agency and had also obtained references. We accepted Ms Ikenga's evidence on this point.

3.10 EYFS 2017 – Insufficient suitability checks for staff

130. In relation to *3.10 EYFS 2017 - Insufficient suitability checks for staff*; Ms Ikenga admitted that one member of staff did not have a DBS check from the nursery whilst we are unclear as to whether this was the apprentice,

3.12 EYFS 2017 – Insufficient information about every individual who works in the nursery

131. Ms Devine stated that a member of staff had gaps in their employment history at the inspection on 7.02.2018.

The Linden setting

3.9 EYFS 2017 – Suitability of staff members

Inspection on 1 March 2017

132. An unannounced inspection was carried out on 1 March 2017 by Samantha Colderwood; Ms Colderwood noted that all staff had criminal records checks; however, in her notes she stated that "systems for staff recruitment are not sufficiently robust".

3.15 EYFS 2017 – Ineffective recruitment procedures which give due regard to disqualification requirements

3.20 EYFS 2017 & 3.21 EYFS 2017 – Ineffective arrangements for induction and supervision of staff

The Lovelace setting

133. During the 16 August 2017 Ms Smith's inspection notes record that, she sought to determine whether this standard was met in relation to this setting by asking staff about the policies (pH763) this question was written as "How effective is the staff induction and supervision process in helping staff to understand their roles and responsibilities in respect of delivering the early years foundation?"

134. One of the issues that she asked about were whether staff knew what to do in

the event of a fire. (at H779) she set out that there were weaknesses in the fire evacuation procedure as there was more than one evacuation procedure on file. One of the procedures named a Fire Marshall who was not currently employed. She stated that the nursery was on the 4th floor. In her Key Lines of Enquiry, she spoke to a deputy who had been employed for 3 weeks and an agency member who was at the nursery for the first time. Neither knew what to do in the event of a fire.

135. In response the Appellants noted that all staff had been trained however the deputy had been in place for less than a month, and the LA training was not due to commence until September 2017.

136. During the 7 02.2018 inspection Jenny Devine stated that part of the discussion with Linda Ikenga was around staff supervision.

137. The notes of interview at page H126, records that Mrs Ikenga stated that she was thinking of implementing peer reviews as this was something that they had previously used when the Hackney (Lovelace setting) was at a different location, however she was waiting for Staff training from Ivor Kellin of the LA.

138. It was noted by the inspector that this was not a satisfactory response and that supervision was different from training. On 10.4.2018, during a monitoring visit, Mrs Ikenga was further asked about supervision. In response she provided supervision notes for 4 members of staff. One of those staff had taken over the role of SENCO it was noted that in her supervision that concerns were raised about the quality of her work (H135). Mrs Ikenga was asked why she had delegated the role of SENCO to this MOS given her concerns. She stated that it was because she had done the SENCO training.

139. At the hearing Mrs Ikenga stated that at times it might be appropriate to delegate a role to someone outside of their comfort zone as a challenge to raise their performance. It was noted that although there were better systems for monitoring staff performance. That Mrs Ikenga was still not sufficiently identifying weaknesses in MOS neither was Mrs Ikenga adequately dealing with poor performance.

140. On 23.08.2018 during the Ofsted inspection there was an activity taking place which was observed by the inspectors and Mrs Ikenga. It was noted that when discussing the activity, Mrs Ikenga thought that there could have been more engagement with the children. Ms Devine noted that staff did not change their practice although they were being observed. She considered that Mrs Ikenga was not providing them with sufficient feedback concerning poor performance.

141. We were told above gaps in staff knowledge of safeguarding, which breached the Safeguarding standards. The inspectors in their notes stated that supervision sessions *should* have been used to support MOS, and to test their understanding and address these weaknesses.

142. Given this, Ms Crowley considered that as well as the safeguarding requirement not being met it was also true that the standards for supervision were not met.

143. On 12.02.2019 when a further inspection was carried out. Ms Crowley noted that the notes of supervision were lacking in detail and had insufficient information that identified areas for staff development. (pageH884)

The Priestman Point Setting
7 December 2016 Inspection

144. On 7 December 2016 when Seema Parmar inspected the premises she noted that whilst she was carrying out her inspection the manager was carrying out routine domestic tasks. Ms Parmar considered that she should have been engaged in support staff by monitoring the effectiveness of their performance. She was also concerned that the manager, Ms Chichi Ikenga did not stay for the inspection feedback. Ms Parmar noted that although the NI Linda Ikenga was present for the feedback she had not been present for the inspection. The Appellants accepted that the standards in relation to 3.20, 3.21 and 3.22 were not met on 7.12.2016.

145. Subsequently, on her monitoring visit on 10 January 2017 Ms Parmar noted (in her statement), that there had been little progress as Mrs Ikenga and not had any supervision with Chichi Ikenga as the manager of the setting, and the findings at the inspection had not been feedback to MOS. In her statement she described this as a lack of leadership (H341 para 41).

146. We noted that this was the context in which Dr Moroz, on her joint inspection (with Ms O’Callaghan) noted that although there were arrangements for supervision, they were not effective and that the frequency was not sufficient. (At pH462) It was stated that during the inspection:-“...it was evident that your implementation of supervision, coaching and quality assurance practices to support staff were still in the very early stages of development. You were unable to provide evidence of outcomes of supervision meetings and the impact of this on improved quality practices in the setting.”

147. Ms Ikenga disputed this finding. Although she did not deal with the finding she set out that the inspector had, in 2014 stated that 6 monthly supervisions were fine. In addition, staff meetings were held every month. In her witness statement, dated 20 November 2018, Ms Ikenga dealt with the June 2017 inspection. She stated that after the inspection (20.6.2017) “I had a room meeting with the staff on the baby side to find out where things went wrong and how it could be made right. I believe they could see that I was not happy after everything I had tried to put in place. I think that if I had monitored them more frequently, I could have seen that the staff were unable to retain information and that they were not right for the position that they were in...”

148. Ms Chichi Ikenga does provide some notes of supervision in relation to the monitoring visit on 23 July 2018.

3.23 EYFS 2017 – No named duty manager
The Lovelace Setting

149. On 23 August 2018, Ms Devine inspected the Lovelace nursery and noted that there was no named duty manager. The manager had left in April however a

deputy had not been appointed. Although Mrs Ikenga in her witness statement dealt with the inspection on that date, she did not deal with the issue concerning the Deputy Manager. Ms Devine stated that as there was no deputy this meant that although two members of staff were present on her arrival, there was no management cover.

The Linden Setting

On 11.09.2017 when Ms Mackey inspected the premises there was no named duty manager in place. The Appellants accepts that this was the case.

3.27 EYFS 2017 - Ineffective use of the key person role to ensure that every child's care is tailored to meet their individual needs and the key person can build strong relationships with the children's parents

The Lovelace Setting

150. On 23 August 2018, during the inspection at the Lovelace setting, Ms Devine was observing a tracked child who was 9 months who had recently started at the nursery (H166). She noted that although this child was carried around a lot there was little interaction with him, and no 1:1 time with his key person. She noted that although the child's parents had given details of his routine, and had provided food. He had been given food from the nursery instead. She observed that he was throwing the food around and did not appear interested in eating it. Ms Devine spoke to his key person she noted that the key person did not follow his home routine although it was available. Neither did she offer him milk, without Ms Devine's prompting. She noted that based on the nappy chart, his nappy had not been changed; (it was 11 am.) Ms Devine stated that his key person showed little awareness of the importance of following home routines; she states that this is particularly important as the child had not long started at the Nursery.

Re-inspection 12.02.2019

151. At the re-inspection, Ms Crowley spoke with the parents of one of the tracked children (H903). She recorded in her notes that the parent of that child (Child A) had stated that she would like more information from the Key person about what her child was doing during the day and how she could support her child's learning.
152. Ms Crowley then triangulated her findings by speaking with the child's Key Person ("KP") about this and asked about how she communicated with A's mum. The KP stated that she was normally at lunch when A's mum came to pick him up. She asked the KP what the activities that A participated in at nursery told her about what A could do in terms of A's development? The MOS stated that she was unsure as A had only been at Nursery for 2 weeks. Ms Crowley asked her about the "all about me form". Although the KP knew about this form, she was not able to provide details of what was in the form.
153. In her the oral evidence, Mrs Ikenga told the Tribunal that the child concerned had not attended the nursery continuously and the Key Person had also been off for part of this period and this affected the KPs knowledge of the child.

The Priestman Point Setting

154. On 7 December 2016, in her notes of the inspection it is recorded that Ms Parmar spoke with a parent during her inspection. She asked who her child's KP was. (PageH406) Ms Parmar noted that the KP did not have information from the Home as to what her key child could do. She asked the KP whether the child's development was higher or lower than age expectations. Ms Parmar noted that the KP stated that she did not know.
155. In the summary of the inspection (pageH412) Ms Parmar stated that "Ineffective staffing arrangements mean that children do not settle or build secure relationships with a key person. Children aged two and under remain clingy as they are passed between different staff resulting in them being unsettled."
156. On 10.01. 2017, during the monitoring visit; Ms Parmar observed that one of the children she was tracking has been allocated a KP whilst he is with another MOS; she was informed that this was because the child felt more settled with this person. She noted that this child was being carried around by the member of staff. On 5.06.2017 during an inspection, Ms O'Callaghan spoke with the carer of twins. The carer stated that although the children had been attending the nursery for 3 weeks, she had not been informed of who their key person was. She also stated that she had not been given a daily book in respect of the children.
157. On 20.07 2017, during Dr Moroz visit, Ms Devine spoke with one of the parents who stated that she had a very positive relationship with the key person and that the communication was very good (Page H467) However she said that she has not been informed of where her child was in terms of their learning and development.
158. On that occasion it was also noted that there were 3 members of staff who were leaving and Ms Chichi Ikenga had not yet allocated KPs to replace these MOS, neither had she informed the parents of the changes. Ms O'Callaghan had observed that there was nothing in place for the handover. The KP role was noted to still be an issue, on the monitoring visit 18.08.2017. The Appellants accepted that this was an issue, but stated that this was because of new staff having started at the Nursery. Ms Ikenga had also informed the inspector that in respect of one MOS they were hoping that she would change her mind.

Linden Setting

159. On 1 March 2017 Ms Colderwood noted that the Key Person did not know enough about their allocated child. The Appellants did not accept that the standard was not met.

3.28 EYFS 2017 – Ineffective staffing arrangements and supervision of children

Lovelace Street Setting

160. During Ms Smith's 16.08.2017 inspection at the Nursery (Page H762) she observed the children going out to play in the external play area. She noted there were 12 children and 5 members of staff. Some of the children were

holding on to buggies and a child of 22 months was not secured by straps. Ms Smith noted that there was a danger that a child could run off. She states that although the manager acknowledged a risk, she believed that the formation of staff would prevent this from happening.

161. On 7.3.2018 (page H122) during a monitoring visit, Mrs Ikenga informed Ms Devine about an incident which occurred when the children were going to the outdoor play area. This involved a child running off from a member of staff and running into the road. The child was caught by a MOS and brought him back and so came to no harm. This incident was recorded in the incident log.

The Priestman Point Setting

162. On 7 12 2016, during her inspection, Ms Parmar witnessed that one of the children had been left in the toilet area and that this had not been observed by the MOS (page H430).
163. On 11.01.2017 at the monitoring visit (Page H411) Ms Parmar in her notes of inspection, observed staff feeding the babies in the baby room. She notes that staff feeding two children in the baby room changed care of the children by feeding the child nearest to them. This meant that changes in carer occurred whilst feeding was ongoing. This happens more than once. She noted that when one of the children dropped a spoon a MOS got up to change it and when she returned, she handed the spoon to a different member of staff who continued to feed the child.
164. On 5.06.2017 during her inspection Ms O'Callaghan observed an occasion when there were 8 children in the baby room of mixed ages whilst two MOS were near the stair gate in the area where children eat. One of the MOS was feeding a child she noted that the other MOS was talking to her colleague. As a result, the other area was chaotic as the children were not directly supervised. (Page H824). Ms O'Callaghan feedback what she had observed to the setting manager? These observations were contemporaneously recorded.
165. On 20.7.2017, Dr Moroz observed 1 MOS with 12 children, whilst the other MOS was changing the nappies of younger children. (Page H469) she considered t that this was poor deployment of staff.

**3.48 EYFS 2017 – Good hygiene practice is not followed by all staff
*Priestman Point Setting***

166. There were three occasions on which it was alleged that good hygiene practices were not followed; on 20.07. 2017 when the Priestman Point setting was inspected, Dr Moroz observes a MOS feeding a baby who has woken up after the other children. She noted that prior to feeding this child the MOS had been playing on the floor with play dough The MOS was observed to take the plate of food which has been saved for the child and place it on the floor and then feed the baby without washing her hand or the hands of the baby concerned. The Appellants in the Scott Schedule stated that this incident was not witnessed by them however they did not dispute that it had occurred.

Linden Road Setting

167. On 11.09.2017, Sarah Stephens carried out an inspection at Linden Road. One of the issues discussed with the manager was that staff had not had food hygiene training. She observed a MOS helping children during snack time. When food dropped on the floor, the MOS picked it up and continued to feed the children without washing her hands. At the monitoring inspection on 1.10.2018, MOS had still not undertaken food hygiene training.
168. When Ms Penticost asked about this, she was informed that the manager had spoken with Environmental Health and that this was not considered necessary. However, Ms Penticost informed the manager that all staff who handle food including helping children with snacks brought from home must have training in food hygiene.

3.52 EYFS 2017 - Inappropriate behaviour management

The Lovelace setting

169. The Appellants accepted that at the inspection carried out on 16.08.2017 the behaviour management approach applied by staff was inconsistent.
170. At the monitoring visit on 15.07.2019, Ms Devine noted that there was an occasion where a child acted aggressively to another child and although he was asked to say sorry, and then refused. There was no discussion with him about his behaviour.
171. She also noted that when a child refuses to wash his hands, he was taken by the wrist and led to the basin. Ms Devine stated that although the MOS was not aggressive, her actions were “not positive” as no explanation was offered to the child about the reason for hand washing.

The Priestman Point Setting

172. At the Priestman Point setting on 20.07.2017 during the monitoring visit Dr Moroz noted that a child was climbing on furniture. He was told by two MOS not to climb on the furniture and when he ignored the MOS he was left to continue and nothing further was said.
173. In his evidence, Ivor Kallin stated that when he undertook the Infant and Toddler Environment Rating Scale at the Lovelace setting. He recommended that the setting needed to have consistent practices in managing behaviour. He undertook training on behaviour matters. He introduced them to the 6 steps of behaviour. (Page H714). In his audit he stated that -：“ With Children displaying challenging behaviour you need to ensure that he knows that his Key worker is there for him keeping a close eye on him and working out what causes triggers to outbursts and intervening beforehand...” He was asked why he had written this, he stated that it was based on what he had observed.

3.55 EYFS 2017 – Safety of premises

Lovelace Setting

174. On the 16/08/2017, during the Inspection, it was noted that the deputy manager did not know whether the lift could be used in the event of a fire, this was of concern to the inspector as the premises are located on the fourth floor of the building.

Linden Road setting

175. On 11.09.2018 when the inspector, Ms Mackey attended the premises. She noted that there was no fire alarm. However, we accept that the Appellants had obtained advice from the fire brigade and because the building was a single storey Porto cabin, and food was not cooked on the premises, a fire alarm was not a mandatory requirement. The concern was that the deputy did not know this; The Tribunal was informed that the Appellants' objection to this was upheld on a complaint to Ofsted.

3.57 EYFS 2017 – Organisation of premises and equipment

The Priestman Point setting

176. On 10/01/2017 during the monitoring visit, Ms Parmar observed that there were children who were being changed on the floor outside the nappy room. The reason given was that they were older children who were too big to be changed on the mats in the nappy room. This was considered by Ms Parmar to be inappropriate.

3.64 EYFS 2017 – Ineffective risk assessment

Lovelace setting

177. Ms Parmar noted on her visit that on 15.11.2016 the sleeping area had flat packs and also that the vacuum cleaner was in the area. She considered that this was a risk hazard. Ms Parmar considered that the risk assessment procedure was not robust enough. On 16.08.2017, when Joanne Smith inspected the premises, she noted that there was polystyrene in the bathroom at child height. She noted that the backdoor for the outdoor area was broken and that the risk assessment written document was not updated to reflect this.
178. At the inspection on 5.08.2019 there was a disagreement as to whether the Appellants had undertaken a risk assessment in relation to a messy play activity. The Appellants put forward evidence that there were risk assessments undertaken in relation to this activity

The Priestman Point Setting

179. At her visit on 11.10.2016 Ms Parmar noted that there was a radio on the floor of the baby room with trailing wires and that the fire exit was blocked.
180. On 15.11.2016 during the inspection, Ms Parmar recorded that a telephone was on the floor this was considered to represent a hazard. The Appellants accepted that the telephone was a trip hazard, although they did not accept that wires were on the floor. During her inspection on 5.06.2017, Ms O'Callaghan noted that after an activity involving water play, water spilled and was left on the floor. Two children slipped on this water before it is mopped up by MOS.
181. On 20.06.2017, during a monitoring visit, Ms O'Callaghan noted that a delivery man was let into the premises with a heavy trolley which he took through the nursery. The Appellants accepted that this should not have occurred.
182. At the monitoring visit on 20.07.2017, Dr Moroz noted that although it had been decided by the Appellants that the windows should not be opened wide

because of issues with the restrictors this was not written down. This meant that new members of staff would not know about this. We are satisfied that if the opening of the windows required an explanation so that they would be made safe this should have been in writing and should have been part of the induction.

183. On 7.02.2018, during the inspection Ms Crowley and Ms Devine noted that the baby room was cold. This was because the heating in the building was not working. The Appellants stated that they had spoken with the premises manager and in the interim; until it was fixed they were using a portable heater. However, the room had not heated up sufficiently at that stage as Ms Crowley noted that a baby who was in the room feet were “cool to touch.” The Appellants did not accept that this affected the safety of the premises or that it was a failure to assess risk. It was the Appellants position that because the rooms became warmer as the day went on, this was sufficient and that risk assessments had taken place. The Appellants accepted that the room had not yet heated up when the inspector attended the premises.

The Linden Setting

184. At the inspection on 11.09.2017, Ms Mackey stated that in the outdoor area there was a tree stump which had mushrooms growing out of it. It was protected by an old slide. Ms Mackey did not consider that this was sufficient to manage the risk that the mushrooms might provide. The Appellants accepted that the standard was not met in relation to risk assessments on this occasion.

3.67 EYFS 2017 - Lack of appropriate and prompt support to children with additional needs and/or disabilities

185. At the monitoring inspection at the Lovelace setting, Ms O’Callaghan asked the Appellants about the steps that had been taken to support a child with special educational needs. Linda Ikenga stated that they had held a meeting with the child’s parent and had discussed how he would be supported by the settings SENCO and the strategies that would be used. However, the MOS identified as the SENCO, informed the inspector that she has had no previous experience of special educational needs and has not yet had any training. 3.67 EYFs 2017 required the Appellants to support children with SEN.

3.69 EYFS 2017 – Records are not accessible or available

The Lovelace Setting

186. On 7 .02 2018 when Ms Crowley and Ms Devine first attended the premises for the inspection there were two members of staff present, they were asked whether they could access the records held in the office. They informed the inspectors that although they had all of the children’s records on a card index system, they did not have access to the records. The Appellants disputed this finding and in doing so they rely on the fact that all documents that were asked for were provided.

The Priestman Point Setting

187. Ms Parmar in her witness statement (H 336 para 11) noted that during her inspection on 11.10.2016, she asked the manager to show her certain

documents that she had requested as part of her inspection. She was informed that the manager had left the keys at home. The Appellants responded that this was historic and had occurred in the context of the manager being off sick.

3.74 EYFS 2017 – Ineffective complaint procedure and not followed

188. At the inspection on 11.10.2016, Ms Parmar, in her witness statement stated that the written complaint made by a parent of harm to her child by a MOS (which was unsubstantiated) had not been responded to (H336 Para 23). Ms Ikenga, in answer to this alleged breach, accepted that the procedure had not been fully complied with. In her oral evidence she stated that this was the first time she had had to follow the complaints procedure and that she should have been quicker in following up the complaint. She stated that when the procedure was followed the parent chose not to respond.

3.75 EYFS 2017 – Details about how to contact *Ofsted* are not available to parents and/or carers

189. At the inspection on 7.12.2016, Ms. Parmar stated that she did not see a poster of the details of how to contact Ofsted. Ms. Ikenga stated that one was available and that when Ms. Parmar asked about this she invited Ms. Parmar to return to the room to look at it.

3.73 EYFS 2017 – Ensuring relevant information is available to parents and/or carers

190. We heard evidence from Dr Moroz, Julia Crowley and Ms Devine, that the Appellants did not always ensure that information was made available to parents. Amongst the evidence cited, was the inspection on 20 July 2017. Ms O’Callaghan asked whether parents had been provided with a copy of the Ofsted report. She noted that the parent had been informed by letter that a copy of the report was available on the Ofsted website. This occurred following the inspection on 20.07 2017. There was a discussion with a child’s mother, who had said there had been no explanation of the report and that she did not know where to find a copy of it. At the inspection on 7.03.2018, Ms Divine stated that parents were not made aware of changes to the key person.

191. The Appellants stated that there was a meeting due to be held that evening and the Appellants had planned to inform parents.

192. Further at the inspection in February 2019, Ms Crowley spoke to parents concerning their awareness of the plans for the nursery. She stated that she formed the impression that the parents did not know what was going on, and that the Appellants was not keeping parents informed as required.

3.76 EYFS 2017 – Attendance notes inaccurate

193. On 16.8.2017, the Appellants agreed that a child who had attended the Lovelace setting had not been signed in.

194. On 20.7.2017 the Appellants accepts that two children were not signed out,

when the attendance records were inspected by Ms Smith. However, Ms Ikenga stated that they were members of her family, and that the reason they were not signed out was that they had left the setting with her and she had forgotten to sign them out. (H485).

3.45 EYFS 2017 – poor understanding of the procedures to follow to support children with particular medication needs/allergies

3.46 EYFS 2017 – Staff do not always ensure they have parent’s permission for administering medication

The Lovelace Setting

195. There were three incidents concerning medicine administration and allergies.
196. In her evidence Ms. Devine stated that she attended the nursery on 17 September 2018, one of the standards that she was checking compliance with was medicine management. She checked that the medication permissions from parents were in place. There were two children who were taking medication. She recorded that although the dosage was on the bottle, when she asked how much was administer, one member of staff was unsure and stated the wrong dosage. (Page 211)
197. On 15.07.2019 in relation to her inspection of the register she noted that children at the nursery had a messy play activity, and it was recorded that a child with an oats allergy (although not involved in the play activity) had an allergic reaction and as a result had to be administered her epi-pen. She was further concerned that the baby room records did not record a fish allergy of one child although it was appropriately recorded in other areas. The Appellants stated that this information was recorded in the kitchen and also in the pre-school room.
198. Ms. Devine stated at paragraph 10 of her witness statement, that when she accessed the records, the records in relation to an Epi- Pen had instructions which stated that 911 (the US emergency number) should be called in an emergency.
199. The Appellants strongly disputed this evidence. In relation to the Epi-Pen both stated that they took Ms. Devine’s word for this, when they should have checked in her presence and that when they did, they did not accept that what she had noted was correct. They further stated that all staff would know that 999 was the correct number to call. Miss Ikenga provided an extensive account of what had occurred and how the child’s allergies were dealt with in her witness statement dated 13 September 2019.
200. In her evidence Ms. Ikenga stated that the parents also dispute the information as the medication was prescribed in the UK.

The Tribunal’s Conclusions with reasons

A. Were there breaches of the relevant requirements?

201. The Tribunal in reaching its decision has firstly considered each of the issues in turn.
202. In considering the evidence we have borne in mind that the inspectors carry out a statutory duty, this means that we have given some weight to the findings of the inspectors who provided contemporaneous inspection notes and reports. We have also considered the extent to which these reports and their findings were challenged at the time when the reports were made. We have, however, in considering Ms O'Callaghan's evidence, noted that there is no witness statement accordingly her evidence contained no statement of truth. Where conclusions have been reached in her report and the evidence has been found by us to be ambiguous or unclear, we have not been able to find the breaches referred by her as proved on a balance of probabilities..

1.5 EYFS 2017 – Staff were not consistently modelling language to support children to develop good speaking and listening skills

The Lovelace Setting

203. We have considered that although this was stated in the report, no further evidence was provided concerning this matter and the Appellants and the tribunal did not have an opportunity to ask questions of Ms O'Callaghan the report author at the hearing.
204. We found that as this alleged breach was not supported by further evidence such as notes of inspection or other records from Ofsted in the absence of this information, this allegation is not proved on a balance of probabilities.
205. It was stated in the report by Ms O'Callaghan that "... planning was not effective for addressing children's needs." We found that no reason was given by Ms O'Callaghan for reaching these conclusions in her report. There was no further information concerning this provided by Ofsted to support this conclusion. Accordingly, no response was given by the Appellants at the hearing as it was not included as an alleged breach in the Scott Schedule. In the absence of any further evidence concerning this breach, the Tribunal is unable to find it proved on a balance of probabilities.

The monitoring inspection on 7.03.2018

206. We found that at the monitoring inspection on 7.03.2018, the Appellants accepted had been given advice by the appropriate agency concerning the communication and language needs of a tracked child with Communication and Language difficulties. This meant that the Appellants should have had a plan which was developed along the lines of the advice which had been given. We heard evidence which we accepted that there was no plan in place. We considered that it was of particular importance to have plans in place for the next steps of a child with communication and language needs. We noted that this is a specific requirement for each child in accordance with 1.6 EYFS 2017, accordingly the failure to have a plan in place for this child meant that this standard was not met.

The monitoring inspection on 7.03.2018

207. We accepted that on the evidence before us on 23.07.2018, there was no specific plan of activities for the younger children to take part in whilst older children undertook activities. We find that it was inappropriate to have a plan of activities in which the needs of the younger children were only an afterthought, as was demonstrated on the evidence before us. We have also borne in mind that the context in which this plan was made was following 3 inadequate inspections. For these reasons we find that the planning in place was ineffective and that the standard was not met as alleged.

Re-Inspection 23.08.2018

208. Although we acknowledge, the Appellants' concern that during the re-inspection on 23.08.2018, that they appeared to have been given contradictory information. We saw no contradiction in Ofsted judgement. We noted that the same activity for one child might be too ambitious and for another child it might not be challenging enough. We noted that based on the inspection on 23.08.2018 there was a lack of planning for activities for children at the point of arrival (first thing in the morning) at the nursery. We noted that the requirement was for practitioners, under this standard was to consider the "...individual needs, interests and stage of development for each child in their care and to plan a challenging and enjoyable experience for each child..." We accept on the evidence before us that the plans in place were insufficient to meet the requirements of EYFS 2017 at the re-inspection on 23 August 2018.

The inspection 12 February 2019

209. We carefully considered Ms Crowley's evidence we found her to be a very effective and compelling witness. We noted her methodology and how she triangulated her findings by tracking a child, and by asking both parents and MOS for information before reaching her conclusion. We found her evidence to be measured and clear on this point. We noted that the child concerned had been in the nursery for 6 weeks and that the MOS was unable to say what had been planned for the child. We also noted that she gave compelling evidence of the lack of engagement of the children by some MOS. We accepted her detailed evidence that this standard in relation to 1.6 EYFS 2017 was not met on this occasion.

The Priestman Point Setting

The Inspection on 7.12.2016

210. We looked very carefully at Ms Parmar's inspection notes of 7.12.2016. We noted that she did not refer to her evidence to which child or children were observed or set out her conclusions concerning ineffective planning. Accordingly, we could not be satisfied on the evidence before us that the standard in relation to 1.6 EYFS 2017 was breached at this inspection.

Re: Inspection 5.06.2017

211. In her report Ms O'Callaghan stated that staff does not always work with parents in planning a child's next steps. We noted that in relation to the alleged breach of standard 1.6, there was no statement from Ms O'Callaghan or other information in the notes before us that we saw which gave rise to a breach of this standard. Given this we could not be satisfied on a balance of probabilities

that a breach of this standard had occurred on 5.06.2017.

212. We noted that although looking at the inspections at both settings (Priestman Point and Lovelace) in relation to this standard, there were incidents where we could not make findings of a breach on the evidence before us. However, we found when considering the totality of the evidence that there was clear and compelling evidence that the Appellants had failed to put plans in place that were satisfactory or which met the standard.
213. We asked the Appellants about how they had planned activities for the children and whether there were themes that they used. Mrs Ikenga in her evidence stated that the themes were child led. We had no evidence before us to suggest that the Appellants had detailed plans which could then be customised to deal with individual children at different stages of their learning.
214. We also took note of the statement (unsworn) by Sam Smith Early Years consultant who had assisted the Appellants to improve the standards of the Lovelace Setting. She stated that she had worked with the Appellants to put in place planning and learning to support the needs of the children.
215. Given the history of the setting, we would have been assisted by copies of and greater detail of these plans so that we could consider how they were being implemented in practice.
216. We noted that the inspections were carried by different inspectors on different days, which cited similar events on different occasions. We have carefully considered the standard "... Practitioners working with the youngest children are expected to focus strongly on the three prime areas. The three prime areas reflect the key skills and capacities all children need to develop and learn effectively and become ready for school." The three prime areas are identified at 1.3 as
- Communication and Language
 - Physical development
 - Personal, social and emotional development
217. The Appellants did not have plans which were strongly focused in these areas. They did not refer to such plans in their evidence and neither were plans along these lines referred to in the Statement of Sam Smith. On the basis of the findings of Ofsted and the information provided by the witnesses. We are satisfied that on more than one occasion that this standard was not met.

**1.7 EYFS 2017 – Lack of opportunities for children whose first language is not English and use their home language in the setting
*Priestman Point***

218. We accepted the evidence of Dr Moroz and Mr Kellin, and as such consider that the Appellants' emphasis was wrong in relation to standard 1.7 EYFS 2017. They appeared to have decided that parents could opt out of this standard. We find that this was not the case, as this standard does not allow parents or settings to opt out. The Appellants ought to have provided contextual

information to the parents which would have enabled them to make an informed decision. Although they have evidenced parents' position on the use of the home language. We do not consider that their approach to this standard was what was required. The Appellants failed to take the further steps suggested by Mr Kallin. For this reason, we accept the Respondent's evidence that the standard in relation to this requirement was not met.

1.8 EYFS 2017 – The learning environment in all areas of setting do not provide children with well-planned opportunities that stimulate their thinking and encourage active learning

The Lovelace setting

Re-Inspection 23/08/2018

219. We accepted Ms. Devine's evidence, that the activity observed by her in relation to water play was poorly planned and as described was insufficient to engage the children involved, accordingly we find that the standard was not met.

Inspection on 12-09-2019

220. Ms. Crowley stated that there were few toys and the activities which took place appeared to her to be tokenistic. We accepted Ms. Crowley's evidence that self-play was not well supported by staff and that it amounted to a failure to meet the standard in relation to 1.8 EYFS 2017.

221. The Tribunal found that Ms. Crowley gave clear and cogent evidence of what she had observed. She had made detailed notes of her observations which she relied upon in support of her oral evidence.

The Linden Road Setting

222. On 11 September 2017 Ms. Mackey carried out an inspection of the Linden Road Setting.

223. We considered that on the evidence of Ms. Mackey, (which we accepted), there was a lack of opportunity for activities, this was observed by Ms. Mackey during this inspection and accurately noted by her. She noted that the activities did not encourage active learning. We accepted Ms. Mackey's evidence as there was a consistency between her evidence and the notes that she had made that the activity involved to large a range of ages of children. We find that this standard was not met as set out in the inspection report of the inspection on 11 September 2017.

224. We noted that the EYFS 1.8 stated that each area of learning and development must be implemented through "planned purposeful play and that this should be a careful balance between independent and adult led play". That "These activities should enable children to problem solve and should develop their self-confidence". We were satisfied that this did not occur and that the standard in relation to EYFS 1.8.

225. In reaching our decision, we consider that the standard requires practitioner to make an ongoing judgement about the balance between activities led by children and activities guided by adults. In the Lovelace setting we find that there was a lack of guidance given by adults (inspection dated 12-09-2019)

whereas we accepted the evidence that in the Linden Road setting the areas (in-door and outdoor areas and the activities that were carried out) did not allow for response to the children's emerging needs and interests. We are satisfied that on the evidence before us, there was a failure to meet the standard evidenced in the inspections carried out at all three settings.

2.1 EYFS 2017 – Ineffective monitoring, observation and assessment systems to meet children's development and needs
The Lovelace Setting

226. We were referred to an inspection carried out on 16/08/2017 by Ms Siobhan O'Callaghan and on 7.02.2018, when the premises were inspected by Julia Crowley. Both noted that the systems to assess and monitor children's learning needs, needed to be improved.
227. We were satisfied on the evidence of the inspections and on the evidence of Ivor Kallin, who we accept had worked with the Appellants since September 2017 to try to assist them in improving their systems of monitoring. That the standard was not met on 7/03/2018.
228. We accepted Mr Kallin's evidence which was supported by email correspondence and notes, that the Appellants had been given considerable support from him and that he had used the information provided by them to track children's progress and point out anomalies. This was the context in which this standard was not met. We are satisfied that the Appellants were given sufficient time, and assistance to meet this standard.

The Priestman Point setting

229. On 5 June 2017, when Ms O'Callaghan carried out an inspection, she asked about systems to monitor a child who she was tracking. She was told by the MOS that there were no systems for tracking. Although we do not have the benefit of a signed statement from Ms O'Callaghan concerning her findings, in relation to 2.1 EYFS 2017. We found Ms O'Callaghan's Inspection report of the inspection on 5 June 2017 to be clear and uncontested.
230. We consider that the evidence that the MOS was unaware, of the system for monitoring meant that, at the very least the system was ineffective. Accordingly, we find that this standard was not met at this inspection.
231. In respect of the alleged breach on 23/7/2017, referred to during the monitoring inspection of the same date. We noted that this standard was not referred to in the SS as an alleged breach. Accordingly, no evidence was presented to us by Ofsted concerning this breach. We therefore are not satisfied, that the standard was breached on this occasion.

The Linden Setting

232. We heard from Ms Mackay that when she carried out an inspection the manager was unaware of the arrangements for monitoring a child. We accepted the evidence that as a result of the manager being unaware of the monitoring arrangements the standard in relation to 2.1 EYFS 2017 was not met in respect of the inspections carried out on 01/03/2017 and on 11/09/2017.

a. 2.3 EYFS 2017 – Not carrying out the progress check for children aged between two and three
The Priestman Point Setting

233. The Tribunal heard no oral evidence on the alleged breach of the standard in relation to 2.3 EYFS 2017, we did not hear from Ms Parmar. We were accordingly unable to test whether her observations related to children who ought to have been assessed by the nursery or those who had started attending after the assessment cut off point. Accordingly, we are not satisfied on a balance of probabilities that a breach of this standard occurred.

2.5 EYFS 2017 - Lack of links with relevant services, agencies and professionals involved with children who have special education needs and/or disabilities

The Lovelace Setting

234. In relation to 2.5 EYFS 2017, we accepted the Appellants evidence that they had had tried to maintain links with relevant service agencies and professionals. We have no evidence that they failed to encourage the parent to share information with other relevant professionals, either on this date or on the date of the monitoring visit on 7.03.2018, We also accept their evidence that they were working with the LA, SENCO and Speech Therapist when the monitoring visit took place on 10.04.2018 and that they know that the child who was referred to had missed a number of SLT appointments. Accordingly, we are not satisfied that a breach of the standard occurred

3.4 EYFS 2017 – Staff knowledge of safeguarding

The Lovelace Setting

235. Ms Julia Crowley in her inspection on 12.02.2019 noted that staff knowledge of safeguarding was poor, and as such her judgement was that standard 3.4 was not met. We heard evidence from her concerning MOS being unable to answer basic safeguarding questions. We are satisfied on her evidence that the staff ought to have been able to answer these questions. Accordingly, they lacked the knowledge needed in relation to effective safeguarding. We find that the standard was not met.

The Priestman Point Setting

3.5 EYFS 2017 A practitioner must be designated to take lead responsibility for safeguarding children in every setting. Childminders must take the lead responsibility themselves and 3.6 EYFS 2017 Ineffective training for staff regarding safeguarding policy

236. We noted that the Appellants accepted that the standards in relation to 3.5 and 3.6 were not met, during the inspection on 11 October 2016. Although they agreed that staff did not understand the safeguarding procedure, they disputed Ms Parmar's account that MOS were unable to access the settings Safeguarding Policies and Procedures of the setting.

237. We noted that the Appellants did not contest the substance of this failing. We

have considered the evidence set out in Ms Parmar’s witness statement and find that, on the evidence and on the admission of the Appellants, the standards in relation to EYFS 3.5, and 3.6 were not met at the inspection on 11 October 2016.

238. We carefully considered all of the evidence in relation to the Appellants failure to meet the requirements in relation to safeguarding at the Lovelace and Priestman Point settings. We consider that effective safeguarding is a fundamental requirement for a nursery. There should be robust and well thought out policies in place with which all staff are familiar. The DSO should serve as an important resource who should take the lead with some confidence.
239. We also accepted the evidence of Mr Kallin in which he had set out that he had as part of his role provided training in this area. He had carried out training in British Values, and had made comments on their draft policy (page H720). Although this was in relation to Lovelace, the Appellants were responsible for all settings and should have been able to put this policy into practice in all of their settings, with appropriate modifications.
240. We accept that in practice, staff changes may have meant that this training needed to be continual and on-going, however given the lesson that should have been learnt from earlier serious failing at the Priestman Point setting (11 October 2016 inspection) this does not appear to have occurred.
241. We find that on the evidence before us the standards in relation to 3.4, that staff knowledge of safeguarding was poor both at the Priestman Setting and at the Lovelace setting. We noted that the practice in dealing with an allegation was poor at Priestman Point. We further noted that MOS at neither setting could explain the policy sufficiently. We also accept that the arrangement for an effective Safeguarding lead was not in place. And that such training as had been given was not effective. Accordingly, we find that the standards in relation to Safeguarding 3.4, 3.5, and 3.6 were not met.

3.9 EYFS 2017 – Suitability of staff members

3.10 EYFS 2017 – Insufficient suitability checks for staff

3.12 EYFS 2017 – Insufficient information about every individual who works in the nursery

3.15 EYFS 2017 – Ineffective recruitment procedures which give due regard to disqualification requirements

242. We have considered all of the standards in relation to staff checks in respect of each of the settings.

The Lovelace setting

243. At the inspection carried out on 7.02.2018, Ms Devine asked to see the staff files as part of her inquiries. An issue was raised about whether the baby room lead was appropriately qualified as the MOS did not have a child care qualification.

244. We noted that Ms Devine in her notes recorded that the standard for suitable recruitment procedures was met on that occasion. In relation to the inspection on 23.07.2018 the notes (Page H173) recorded that DBS records were seen for all staff and in place including references and disqualification information.
245. On the basis of these notes we find that the standard was not breached on that occasion

The Priestman Point Setting

246. Although we accepted that Ms Ikenga had appropriately followed up gaps in a MOS employment history, we noted that in her evidence concerning the inspection at Priestman Point, that a member of staff did not have a DBS check. Ms Ikenga stated that this was because she had mistakenly believed that it could be accepted “if processed within the same year than an applicant came to apply for a job.”
247. We considered that this represented a gap in Ms Ikenga’s knowledge, and that as the Manager of the setting Ms Ikenga had a responsibility to check with the DBS. As Ms Ikenga failed to do this we find that her failure amounted to a breach the standards of 3.10 EYFS 2017 – Insufficient suitability checks for staff and 3.12 EYFS 2017 – Insufficient information about every individual who works in the nursery.

3.9 EYFS 2017 – Suitability of staff members

The Linden setting

248. At the unannounced inspection undertaken by Samantha Colderwood on 1 March 2017, it was stated that the arrangements for DBS checks were not sufficiently robust. We noted that no evidence was provided of what had led her to this conclusion in the notes. Accordingly, we find that there was insufficient evidence to find a breach of the standard in relation to 3.10 EYFS 2017 – at the inspection on 1 March 2017.
249. We find in relation to 3.9 EYFS 2017 – *Suitability of staff members*; that the baby room lead (Lovelace setting) did not have a suitable child care qualification. The standard requires that a MOS is “suitable to fulfil the requirement of their role” This means that as the lead MOS was expected to take charge of the baby room and was not qualified, they were not suitable, as defined by the standard.

3.10 EYFS 2017 – Insufficient suitability checks for staff

The Priestman Point setting

250. In relation to 3.10 EYFS 2017 -*Insufficient suitability checks for staff*; we noted Ms Ikenga’s admission that one member of staff did not have a DBS check from the nursery. On the evidence, and on Ms Ikenga admission, we are satisfied that this standard was not met.
251. We find that the standard was not met in relation to 3.9 EYFS 2017 and 3.10 EYFS. 2017 as had the checks been sufficient, this would have led to the discovery and rectification of the DBS issue concerning the MOS without a DBS check.

3.12 EYFS 2017 – Insufficient information about every individual who works in the nursery

252. In relation to 3.12 EYFS 2017- *Insufficient information about every individual who works in the nursery*; we were told about gaps in a MOS employment history that were observed at the inspection on 7.02.2018. However, we found no evidence of this in relation to the inspection report. Accordingly, we found no breach in relation to the standard on this occasion.

3.15 EYFS 2017 – Ineffective recruitment procedures which give due regard to disqualification requirements

Priestman Point

253. In relation to the standard 3.15 EYFS 2017, we heard no evidence that there was a member of staff who was disqualified by association on the dates concerned. Although we accepted that MOS were not aware of the policy. We were not informed of any instance where MOS were disqualified by association. Accordingly, we find no breach of this standard.

254. Ms Devine in her inspection noted that "...there were suitable arrangements in respect of the Lovelace setting..." 23.7.2019 for recruitment and that all of the files that she checked had the required information. Accordingly, we find no breach on at the inspection on 23.7.2019.

255. We were also not satisfied with the standard of evidence in relation to the Linden Setting. We noted that although it was alleged, the evidence concerning this was not set out clearly in the inspection report of the 23.7.2019. Given this we found this allegation not proved.

3.20 EYFS 2017 & 3.21 EYFS 2017 – Ineffective arrangements for induction and supervision of staff

The Lovelace setting

256. We considered the effectiveness of the induction procedure. On 16 August 2017, Ms Smith found it to be ineffective, and not in accordance with 3.20 EYFS 2017 & 3.21 EYFS 2017.

257. The Appellants stated this was because the deputy had been employed for a short period of time. We noted that the deputy was in place for three weeks and that this was a short period of time for the deputy. However, the purpose of induction is to provide the new MOS with a thorough introduction to the setting, it is not the responsibility of the Local authority, regardless of the training that they offer. Accordingly, we find that the arrangements for induction were not effective.

The Priestman Point

258. The Appellants accept that the standards for 3.20, 3.21 and 3.22 EYFS 2017 were not met on 18.08.2017 when the monitoring visit was carried out, however in the Scott Schedule this is noted as being because there were new members of staff.

259. We have not considered the alleged breach in relation to the Linden Road setting, as we noted that there had been a complaint concerning the inspector and we were not able to hear from the inspector directly concerning her observation. Neither were the Appellants afforded the opportunity to challenge this evidence at the hearing.
260. In relation to the evidence, we note that the standard at 3.21 states that-: “Effective supervision provides support, coaching and training for the practitioner and promotes the interests of the children. Supervision should foster a culture of mutual support, teamwork and continuous improvement, which encourages the confidential discussion of sensitive issues.”
261. We note that the Appellants accepted that the standard was not met continuously in relation to Priestman Point. We also noted that by July 2017 when Dr Moroz inspected, the frequency of supervisions had not increased. We are satisfied that given that in June 2017 the manager Ms Ikenga had been made aware that there were issues that needed to be addressed she ought to have increased her supervisions.
262. We also noted that Mrs Ikenga did not during this period provide formal and documented supervision sessions for Chichi Ikenga as manager of Priestman Point. We find that there was a breach of the requirements. It is insufficient to say that they discussed matters as mother and daughter. There were management issues that needed to be addressed by specific and targeted supervision. We found that this did not occur.
263. We find that the supervision of staff at Lovelace was too infrequent, and not specifically targeted. We have reached our decision on the supervision notes before us. We also accepted Dr Moroz evidence that based on what she saw; the supervision that had taken place was not effective in bringing about the needed changes. Her opinion (which we accepted) was that supervision ought to have been carried out more frequently given the inadequate findings by Ofsted. We are satisfied that the standards 3.20, 3.21, and 3.22 EYFS 2017 in relation to staff training, support and skills were not met.
264. We also noted that in relation to the inspection in September 2019, supervision had been delegated to the consultants for some members of staff. As the nominated person Mrs Ikenga ought to have taken this responsibility to supervise her staff. At this stage Priestman Point and Linden had closed, this was the only setting. We find that that staff had not been appropriately supervised, not all of the members of staff were aware of what was required to improve the grading to Good. We are satisfied on the evidence before us that these standards in relation to supervision were not met.

3.23 EYFS 2017 – No named duty manager
The Lovelace Setting

265. We noted that the standard 3.23 required that there be a deputy, who in their judgement was capable of taking charge in the manager’s absence. We find that as there was no manager at the premises on 23 August 2018, when the inspection was carried out, on that occasion the standard had not been met. On 11.09.2017 when Ms Mackey inspected the Linden Setting there was no

named duty manager in place. Accordingly, we find that the standard was not met.

3.27 EYFS 2017 - Ineffective use of the key person role to ensure that every child's care is tailored to meet their individual needs and the key person can build strong relationships with the children's parents

266. We considered the findings made by Ms Devine, on 23 August 2018, and Ms Crowley at the Re-inspection 12.02.2019. We accepted Ms Devine's evidence which was essentially unchallenged, that there was a failure of the MOS who had been appointed as a Key person, to follow the routine of the baby in their very early days of transition to the nursery. We find that this was a failure of the Key Person to meet the standard in relation to 3.27 EYFS 2017.
267. We further noted the evidence of Ms Crowley that there was a breakdown in communication between the MOS who acted as key person to the track child as she was not available when this child was collected by their parent. We accepted this evidence, and find that the standard was not met at the re-Inspection at the Lovelace Setting.

The Priestman Point Setting

268. We find that the standard 3.27 EYFS 2017 was not met at the Priestman Point in relation to Key Persons on 7.12.2016, 10.01.2017 or on 20.07.2017.

We consider that this failure to liaise appropriately with the parent, demonstrated that the use of the key person was ineffective. In respect of Priestman Point we noted that a Carer in her conversation with the Ofsted inspector was concerned that she had not met with the twins' key person who was responsible for their care. We heard evidence of a baby who was unsettled, and the setting manager had not reallocated this child to the Key person who he was comfortable with. We accepted that the standard 3.27 was not met on the dates when Ofsted inspected the setting.

The Linden Setting

269. In relation to the Linden Road Setting we did not hear from Samantha Colderwood and there was insufficient information in her inspect to enable us to conclude on a balance of probabilities that the standard was not met.
270. We have considered each of the allegations in relation to failure to meet the standard in respect of 3.27 EYFS 2017. The Key person's role was to act as a bridge between the nursery and the parents and ensure that children's care was tailored to meet their individual needs. We are satisfied that on a number of occasions that there was ineffective use of the key person role across all of the settings.
271. We accepted the evidence that at the Lovelace setting on 23 August 2018, the Key Person failed to follow the routines of a child who was new to the nursery and did not offer the child the food provided by their parents. We noted that one Key Person had been unable to meet with the parent of a child she was caring for, because she was having her break when the parent collected the child. We noted that the context in which this occurred was that the child was new to the setting and the KP had not met the parent and that effective arrangements should have been put in place to allow such a meeting to occur.

3.28 EYFS 2017 – Ineffective staffing arrangements and supervision of children

Lovelace Street Setting

The Priestman Point Setting

272. We noted that the Standard EYFS 2017 3.28 requires that staffing arrangements *must* meet the needs of Children and ensure their safety. The Appellants are required to ensure that children are adequately supervised and decide how to deploy staff to ensure that children’s needs are met.
273. We consider that this is more than ensuring the correct ratio of staff to child at the setting. It means that the Appellants were required to ensure that staff deployment was monitored throughout the day and that it is flexible and responsive. At the Lovelace setting in 2017 Ofsted raised concerns about the arrangements to supervise children in the external area. Seven months later an incident occurred in which a child could have been seriously hurt. This was because the Appellants had not reviewed the staffing arrangements. We are satisfied that the standard was not met on both dates.
274. Although the Appellants did not accept that they breached the standard in relation to staff ratios on 5 June 2017, (when two staff were in one area. and 8 children in another) during the course of the inspection. They stated that this was an oversight of the staff concerned.
275. Further, we noted that before a child ran off (reported on 7.3.2018) whilst the children were going to the external play area, the Appellants had previously expressed the view that the arrangements were appropriate.
276. We find that the duty to keep the staffing arrangements under review was that of the Appellants, and this should have occurred on a daily basis. This was not just about having sufficient MOS but about how and where they were deployed and what they were doing in practice. The Appellants should have challenged their MOS’ poor practice when they observed that it was occurring. The fact that these matters occurred during an inspection suggests that MOS had not previously been challenged about this poor practice.
277. At the Priestman Point setting, although it was noted by the Ofsted inspectors that there were sufficient numbers of staff, we accept the evidence that the arrangements observed to be in place on the dates of the inspection were not robust enough. The staff did not place themselves at all times in a manner which offered appropriate support to the children.
278. Given what occurred we are satisfied that the failing was systemic. There was no suggestion that the settings did not have the correct staffing ratio. However, staff did not always interact with the children so that the staffing to child ratio was consistently maintained, even when sufficient MOS were present in the setting. We find that the standard was not met on the dates set out above.

3.48 EYFS 2017 – Good hygiene practice is not followed by all staff

279. We noted that 3.48 EYFS 2017 requires all staff who handle food should be competent and trained in food hygiene. We are satisfied that on 20.07 2017 the MOS concerned was not competent in her handling of food and did not adhere to hand washing as a basic requirement. We are satisfied that at the inspection at Linden Road and on the monitoring visit, the inspectors were informed that staff who were handling food were not trained in food hygiene. We find that the standard was not met on the dates when the inspection took place.

3.52 EYFS 2017 - Inappropriate behaviour management

280. 3.52 EYFS 2017 provides that behaviour must be managed in ways which are appropriate. This is not defined in the standard which deals predominantly with corporal punishment. There is no suggestion that any form of corporal punishment occurred at any of the setting.

281. We are satisfied that although behaviour was not managed in a manner which was consistent or that best evidence practices were used. The standard at 3.52 appears to us to deal with Corporal Punishment, rather than behaviour management in general; accordingly we accordingly find no breach of this standard.

3.55 EYFS 2017 – Safety of premises

Lovelace Setting

282. On the 16/08/2017, during the Inspection, it was noted that the deputy manager did not know whether the lift could be used in the event of a fire. This was of concern to the inspector as the premises are located on the fourth floor of the building.

283. The 3.55 EYFS 2017 requires the Appellants to have suitable arrangements in place to deal with fire safety. We are satisfied that the suitability must also be in relation to the knowledge of this procedure held by all members of staff. Accordingly, the fact that the deputy was unaware of the fire procedure at the Lovelace setting meant that in the event of a fire, they could not effectively evacuate the premises. We find that this was a failure to meet the standard on 11.09.2018.

Linden Road setting

284. On 11.09.2018 when the inspector, Ms Mackey attended the premises, she noted that there was no fire alarm. However, we accept that the Appellants had obtained advice from the fire brigade and because the building was a single storey Porto cabin and food was not cooked on the premises, a fire alarm was not a mandatory requirement. The concern was that the deputy did not know this; however, we understand that the Appellants' objection to this was upheld on a complaint to Ofsted.

3.57 EYFS 2017 – Organisation of premises and equipment

Priestman Point setting

285. We accepted the evidence of Ms Parmar in her statement, of her inspection on

10/01/2017, that children were being changed on the floor. This was accepted by Ms Ikenga and we find that this was inappropriate. The standard requires the premises to be organised in such a way as to meet the needs of children, this includes privacy; we find that this did not occur on the date of the inspection.

3.64 EYFS 2017 – Ineffective risk assessment
Lovelace setting

The Priestman Point

The Linden Setting

286. This standard required the Appellants not just to manage risks and have policies, but to demonstrate how risk was managed. We noted that there were a number of incidents at all three settings which demonstrate that the Appellants' risk management procedures were not instinctive. There were a number of occasions where the Appellants did not automatically identify that something presented a risk, for example, letting a tradesperson in with a heavy item which was transported through the Nursery. Although this may not have been immediately apparent, the Appellants ought to have had identified this in advance. We noted that the Appellants were renting the Lovelace premises and the heating was the responsibility of the landlord. However, there is a duty on the Appellants to comply with the requirements to deal with risk of harm and if the steps taken were ineffective this means that the standard was not met.

287. We noted that there were more immediate and obvious hazards. We accepted the evidence that there was water on the floor on 5.06.2017, and that the failure to clean it up represented a hazard which resulted in more than one child slipping. We consider that the Appellants did not consistently deal with risk assessments at either of the setting. For this reason, we find that this standard was not consistently met by the Appellants.

3.67 EYFS 2017 - Lack of appropriate and prompt support to children with additional needs and/or disabilities

288. At the monitoring inspection at the Lovelace setting, Ms O'Callaghan asked the Appellants about the steps that had been taken to support a child with special educational needs. It was accepted by the Appellants that the MOS identified as the SENCO informed the inspector that she has had no previous experience of special educational needs and has not yet had any training. 3.67 EYFs 2017 require the Appellants to support children with SEN.

289. We find that a fundamental part of giving such support to a child with additional needs under 3.67 EYFS 2017 requires that MOS should have experience or training in effective strategies that support the child's learning and development. We noted the written reports from Ms O'Callaghan that the MOS nominated to this role was unable to do so effectively because she lacked the knowledge and experience.

290. We find that this meant that this child and others with SEN lacked appropriate support at the setting. We find that without appropriate support this child would not be able to have effective strategies identified so that their progress could

be measured and if necessary targeted interventions could be put in place. Accordingly, we find that the standard was not met.

3.69 EYFS 2017 – Records are not accessible or available

Lovelace Setting

291. On 7 .02 2018 when Ms Crowley and Ms Devine attended the premises for the inspection there were two members of staff present, they were asked whether they could access the records

Priestman Point Setting

292. Ms Parmar in her witness statement said that she asked the manager to show her certain records which she wished to access as part of her inspection. She was informed that the manager had left the keys at home.
293. In relation to 3.69 EYFS 2017, the standard requires documents to be easily accessible and available. We found that the standard was not met at the settings on 11.10.2016 (Priestman Point) and 7.02.2018 (Lovelace setting) as the records were not accessible to the inspectors on request.

3.74 EYFS 2017 – Ineffective complaint procedure and not followed

294. Ms Parmar in her notes of inspection on 11.10.2016, referred to a complaint by a parent who had not been responded to. We find that although EYFS 3.74 did not require a written complaints procedure (this is considered to be good practice). There is a requirement to keep a record of all complaints. Investigate complaints and provide a written response. We find that the Appellants accepted that this did not occur. Accordingly, we find that this standard was not complied with.

3.75 EYFS 2017 – Details about how to contact *Ofsted* are not available to parents and/or carers

295. At the inspection on 7.12.2016, Ms. Parmar in her statement said that she did not see a poster of the details of how to contact Ofsted. Ms. Ikenga stated that one was available and that she invited Ms. Parmar to return to the room to look at it and she declined.
296. We noted that there are no details of the failure of the Appellants to have details of Ofsted on their board, in breach of 3.75 EYFS 2017. There was no evidence of this in Ms. Parmar's witness statement, and in her notes. We find that there was insufficient evidence before us upon which we can conclude that this standard was not met.

3.73 EYFS 2017 – Ensuring relevant information is available to parents and/or carers

297. We heard evidence that the Appellants on a number of occasions did not ensure that information was made available to parents.

298. We noted that **3.73 EYFS 2017** included keeping the parents informed about all relevant matters such as the outcome of Ofsted Inspections and changes to the key person such as informing parents of who their child's key person is. We have found that on 20 July 2017, 7.03.2018 and in February 2019 the standard was not met on this occasion.

Attendance notes inaccurate

299. On 16.8.2017, the Appellants agreed that a child who had attended the Lovelace setting had not been signed in.

300. On 20.7.2017, the Appellants accepted that two children were not signed out, when the attendance records were inspected by Ms Smith. However, Ms Ikenga stated that they were members of her family, and that the reason they were not signed out was that they had left the setting with her and she had forgotten to sign them out. (H485). This requirement relates to the Appellants need to keep accurate records in relation to MOS and children in particular in relation to the hours that they attend. The Appellants accepts that the records were not accurate according we find that the standard was not met on the evidence provided above.

3.45 EYFS 2017 – poor understanding of the procedures to follow to support children with particular medication needs/allergies

3.46 EYFS 2017 – Staff do not always ensure they have parent's permission for administering medication

The Lovelace Setting

301. We have considered the evidence concerning the alleged breaches of this standard.

302. We find that in relation to 3.45 of EYFS 2017, this standard requires information to be retained and for policies in relation to administering medication. We are not satisfied on a balance of probabilities, that the information stated that 911(the US emergency number) was to be called in an emergency, rather than 999 as is the standard practice in the UK. Accordingly, we preferred the Appellant's evidence, and find that a breach did not occur.

303. However, we accepted Ms. Devine's evidence that staff displayed a poor understanding in relation to the dosage on 17.9.2018. We also find that in relation to the information not being displayed in the baby room, that whilst it was displayed elsewhere this was inconsistent and not acceptable. We accepted the inspectors' conclusion that there is a risk that a new member of staff would have placed reliance upon this information. We also accept that the use of oats in the setting did not support a child with an oats allergy. Accordingly, the standard in relation to 3.45 EYFS 2017 was not met by the Lovelace setting on the date of the inspection. We consider that a breach of this standard potentially has very serious implications.

304. We have not considered the standards in relation to 3.47 EYFS 2017 and 3.62 EYFS 2017. We noted that the allegations concerning these matters occurred on one occasion.

305. In relation to 3.47 EYFS 2017 which concerns understanding why health food is good. We find that this adds little to the totality of the allegations before us.
306. In respect of 3.62, 3.62 EYFS 2017 – Providers must only release children into the care of individuals who have been notified to the Appellants by the parent, and must ensure that children do not leave the premises unsupervised.
307. We heard no direct evidence concerning this standard. The breach of this standard would be serious and accordingly we consider that we would require direct evidence to find a breach accordingly we make no finding in relation to this matter.
308. We accepted that any inspection can only be a snap shot of the settings and as such it does not always reflect the setting. We accept that it is possible that circumstances on a day might give rise to a breach. However, the evidence that we have considered even with contextual information provided by the Appellants is that there was evidence of widespread breaches of the Early Years Foundation Stage Requirements of the child care register.
309. We find that these breaches occurred at all of the settings on multiple occasions and over a considerable period of time. Accordingly, it would be accurate to describe this as a continual pattern of breaches of the standards which demonstrates a lack of capacity by the Appellants to meet the standards over a sustained period of time.
310. We noted that although there were some improvements and that support was given from the local authority Early Years Team these were not sustained by the Appellants. We noted that the Appellants relied upon their previous *good* rating however it has been over 3 years since the Appellants had a Good rating at any of the settings. The Appellants had support from the LA to sustain improvements. We find that up until September 2019, there has been a failure to consistently meet the standards in the EYFS 2017. We have heard no evidence upon which we could place any confidence that the position has changed since the September 2019 inspection.

B. Have the requirements for registration ceased to be satisfied?

311. In their submissions, Ofsted submitted that the Appellants had failed to comply with the requirements for the EYFS and with the requirements of the childcare register and that this failure meant that the Appellants are no longer suitable to be registered (That is, the requirements for registration have ceased.) The issue for us is, whether as a result of the breaches, we accept that the Appellants have ceased to satisfy the Requirements. The Appellants do not accept this; the Appellants sincerely believe that they have the capacity to comply with the requirements if given more time.
312. The Appellants had engaged a consultant, Ms Smith. In her written statement, she set out that she worked with the Appellants in order to make improvements for the last 6 months from March to September and that though the

- improvements had been made; they were in the early stage.
313. We noted at the hearing that the Appellants produced evidence that there were parents who were supportive and who thought that their children were well cared for. The caring nature of MOS came across at the inspections. Ofsted, in the inspection records, noted that in general the inspections recorded that the members of staff were noted as being caring of the children.
314. Mrs Ikenga in her evidence and in her cross examination, emphasised that no child had come to any harm in her settings, and we accept that there is no evidence that any child came to physical harm although we noted that there was potential for harm on more than one occasion. We considered these factors in reaching our decision
315. We found that Ms Chichi Ikenga and Mrs Linda Ikenga gave honest evidence, albeit they were at times, very subjective. This meant that they were not able to stand back and look at what went wrong and in so doing, display insight into how and why, the settings were failing to meet the requirements. Further, at times, they failed to display urgency in response to the findings. For example, although Ms Smith in her evidence considered that the changes were in the early stages, this ignored the reality of the situation, that there was evidence of on-going breaches for a period of over three years.
316. We found that the Appellants approach to enforcement notices was reactive, rather than proactive. An on-going criticism of the Appellants was that at times both the Nominated individual and Ms Ikenga as manager were focused on routine domestic tasks, whilst the Appellants witnessed poor practice from MOS which should have been their first concern.
317. We noted that Inspectors at times found both the NI (Mrs Ikenga) and Ms Chichi Ikenga defensive and argumentative. At the 10 January 2017, Ms Parmar stated that Mrs Ikenga questioned the regulatory approach adopted by Ofsted this may have meant that rather than considering the settings objectively, they had become defensive.
318. Ms Parmar stated that she had tried to raise concerns with Mrs Ikenga about the manager (Ms Ikenga's) ability to drive the improvements forward at the Priestman Point and realised that this would be difficult given the relationship of mother and daughter.
319. We noted that in the notes of the meeting with the Tower Hamlets Early Years' Service on, 12.4.16. Ms Chichi Ikenga agreed that taking on the role of cook temporarily had an impact on the management of the setting. Whilst acknowledging this, Ms Ikenga did not display insight as this continued to be an issue. At the inspection on 11.12.2017, Ms Ikenga was asked how you find out about the quality of practice in your setting. She stated that she started doing observations on the staff. "...Unfortunately, it was finding the time, was a problem, as I was cooking and low number of children and staff, So I was verbally feeding back..."

320. Our findings are that the steps that were taken to address concerns may be characterised as too little, and not taken with sufficient urgency.
321. It was consistently noted that members of staff were not undertaking their role effectively. We found that although aware of this, the Appellants failed to put effective supervision in place. Chichi Ikenga recognised that there were weaknesses in staff performance. Rather than addressing this through targeted and direct supervision, she chose to tackle this by staff meetings. It was also noted that when supervision sessions were held, this appeared to be around performance management and capability.
322. We found that as a manager, Ms Chichi Ikenga, lacked experience, we noted that she was unaware of the DBS requirements, her inexperience and the lack of in-depth supervision from Linda Ikenga meant that the gaps in her knowledge were not picked up or sufficiently addressed.
323. Ms Ikenga did not have the experience to adequately supervise the staff at the Priestman Point setting. This meant that when the premises were inspected in 2017, supervision was found to be ineffective.
324. We also noted that Mrs Ikenga had not identified the need for Chichi Ikenga to have formal supervision sessions, and as such failed to recognise and address potential weaknesses in Ms Chichi Ikenga's practice, or question whether she had the necessary skill set for managing the nursery.
325. We noted that there was no information made available to us concerning her plans for Chichi's development, or identification of actions that she would need to take as a manager to ensure that the setting improved. We consider this demonstrated that the Appellants lacked the necessary insight to make sustained changes.
326. We found that despite a stay in these proceedings being granted, the Appellants failed to address weaknesses at the Lovelace setting. It was noted at the inspection in September 2019, that the issue of supervision was dealt with by the Appellants asking the consultants to undertake supervision of staff. We consider that this reduced staff supervision to the level of a tick box exercise.
327. We find that, rather than a recognition that as the registered provider, Mrs Ikenga needed to ensure that staff fully understood their roles and that supervision was an integral part of developing staff's skills, which had previously been identified as missing (in respect of safeguarding, teaching and learning, assessment of children and planning for their development) Supervision was treated as an add-on. We consider that supervision should have been used to imbed the procedures and the operations which were unique to the nursery so that staff was familiar with what was required. We find that this did not occur.
328. We find that Mrs Ikenga as NI displayed weakness in her judgement in appointing staff to the role of SENCO and giving additional responsibilities for

safeguarding when she herself had identified weaknesses in their practice. We did not have a clear picture of her overall role as nominated individual throughout the period. As a result, we could not be confident that if the setting was to remain open that Mrs Ikenga would be able to improve the grading to Good as required by Ofsted.

329. We find that the Appellants had been provided with sufficient opportunity to prove that they could meet the requirements. In October 2017 when the Appellants met with Ofsted, Ms Mackey stated that at that meeting the NI confirmed that she understood why Ofsted were concerned and acknowledged her responsibility.
330. Ms Mackey stated that the enforcement action open to Ofsted was explained. Mrs Ikenga stated that she would oversee the quality of practice through termly meetings and supervision. However, we find that such supervision as was undertaken was insufficient. We are satisfied that the purpose of this meeting was to leave the Appellants with no doubt as to what would happen, if the setting failed to improve and maintain a Good standard.
331. We are satisfied that the Appellants repeatedly and over a sustained period of time, failed to meet the standards in the EYFS 2017. We find that the Appellants failed to put effective plans into place so that improvements could be sustained. We have determined that the breaches were so serious that the Appellants ceased to satisfy the requirements for registration.
332. In making this decision we have asked ourselves what if anything has changed since 24 May 2018, when the NOD was issued. We noted that in February 2019, the Appellants closed two settings to focus on bringing Lovelace setting up to a 'Good' rating. This has not occurred. Given this, we find that there is no evidence which undermines the decision made by Ofsted on 24 May 2018.

C. Is cancellation of the registration a proportionate step?

333. As set out above, our consideration of the issues is made at today's date. We have found that there were repeated breaches of the requirements regarding standards. We find that the requirements for registration have ceased to be satisfied. We have set out our findings regarding the insight, understanding and capacity of the Appellants to address the issues of concern.
334. In our view, the Appellant is not able to meet the relevant requirements of the Regulations. The real issue is whether the Appellants will be able to do so if lesser measures than cancellation were to be taken. We have a discretion which must be exercised in accordance with the principle of proportionality.
335. We address the issues by reference to ordinary principles for the avoidance of any doubt. Ofsted has satisfied us that that the decision taken was in accordance with the law, we have considered and accepted Ms Narzarkardeh evidence. She stated that the chances given to the Appellants to demonstrate compliance were unprecedented. She was rightly proud that 96% of Nurseries in the London area were good or outstanding. She stated that to allow a provider

- to continue to operate meant that children who were going to the Nursery were being deprived of an opportunity to go to a Good Nursery.
336. We are satisfied that the decision taken was objectively justified and necessary in order to protect the public interest in the protection of the interests of children accessing general childcare and early years provision, as well as the maintenance and promotion of public confidence in the system of regulation.
337. In reaching our decision on the issue of proportionality, we took into account that the impact of the cancellation is undoubtedly serious. The business that Mrs Ikenga and her family have developed over many years will be brought to an end because of Ofsted's decision. This will have an impact on the Appellants, with consequential impact upon employees and the children and families who used the service.
338. In addition, the fact of cancellation had (and continues to have) a significant impact upon the reputation of Mrs Ikenga and her family, and may very well impact upon their (individual) futures in the provision of general childcare and EYFS services. We recognise that when assessing proportionality, alternatives to the most serious response should be considered. The Appellants sincerely believe that the Lovelace Setting can sustain improvement, and to leave it operating allows the possibility that it may be sold as a going concern.
339. Our task is to confirm the decision or to state that it shall have no effect. It is, however, open to us to exercise discretion so as to (a) impose conditions on the registration of the person concerned or (b) vary or remove any condition previously imposed on registration - see section 74 (5) of the Act.
340. We place very significant weight on the public interest in young children being looked after in the general childcare and EYFS setting in a way that is compliant with the Regulations. We have considered the issue of proportionality by reference to other measures available to Ofsted in the exercise of its regulatory powers. Given our findings we do not consider that further WRN (s) would be adequate to address the issues. The Appellant failed to meet the key aspects of the WRNs issued
341. We have asked whether a Notice to Improve would be sufficient to address the issue of concern. We found that although NTIs have been served in the past and although there has been some compliance, the NTIs have failed to secure meaningful or sustained improvement.
342. We find that new WRN (s) or an NTI issued now would be inadequate to address the issues that we have found proved.
343. In applying a proportionate approach, we have reminded ourselves that part of our function is to put ourselves in Ofsted's shoe and assess the impact on the children at the nursery. We reminded ourselves of Ms Narzarkardeh observation which we accepted that six months is a long time in the life of a young child, and that for a child to remain in a setting which has been considered to be inadequate for a sustained period of time, is detrimental to

that child, not only during the period at the nursery but potentially throughout their education.

344. In our view it is probable that if the setting remains open this will expose children to the real risk of receiving care that would fall significantly below the standards required in terms of the General Childcare and EYFS frameworks. This would not be the best interests of children who might access its services in future.
345. We recognise that the Appellants case is that it is providing a caring service and that to close the nursery would adversely affect the families who use its services. However, all children are entitled to the provision of a quality of service at a level that meets appropriate standards.
346. We do not consider that the Appellants have demonstrated the ability or capacity to effect or sustain any real improvement in the service provided. We have balanced the impact of the decision upon the Appellants' interests against the public interest. We consider that the facets of the public interest engaged undoubtedly outweigh the interests of the Appellant and all those affected. In our view the decision to cancel registration was (and remains) reasonable, necessary and proportionate.

The Decision

347. The decision to cancel registration is confirmed and the appeal is dismissed

Tribunal Judge Daley
Care Standards
First-tier Tribunal (Health Education and Social Care)

Date Issued: 20 January 2020