

First-tier Tribunal Care Standards

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

**NCN: [2020] UKFTT 483 (HESC)
[2020] 4052.EY (VKinly)**

Hearing held by Remote Video link

On 14- 17 September, 21- 22 September and 27-28 October 2020 and the 6 November for a deliberation day in the absence of the parties

BEFORE
Tribunal Judge Daley
Specialist Member Ms M Harris
Specialist Member Mr J Hutchinson

BETWEEN:

New Dawn Resources (UK) Limited

Appellant

-v-

Ofsted

Respondent

DECISION

The Application

1. This is an application brought by the Appellant, New Dawn Resources (UK) Limited (NDRUKL) to appeal against the decision of Ofsted, the Notice of Decision ("NOD"), is dated 9 April 2020.
2. The Appeal, which is dated 2 May 2020, is brought by Mr Sebastian Townsend Ukegheson, the Secretary/Director of the company, against Ofsted's refusal to register the Rehoboth Children's Home ("The Children's Home").
3. The grounds for the refusal which were set out in the NOD are that -:
The organisation had not demonstrated that it will be able to operate in line with provisions of The Children's Home Regulations 2015, in particular that:

The organisation has not demonstrated that it will be able to operate in line with Regulation 5 engaging with the wider system to ensure children's needs are met.

The organisation had not demonstrated that it would be able to operate in line with Regulation 13, in respect of leadership and management of a Children's Home which would create a culture that helps children to reach their full potential, promotes their welfare, and lead in line with the home's Statement of Purpose

The organisation had not demonstrated that it would be able to comply with Regulation 31 – the registered person must ensure that the employment of temporary staff does not prevent children from receiving continuity of care.

The organisation had not demonstrated that it would be able to comply with Regulation 32 the requirements that any individual employed to work at the home who is in a position in which they have regular contact with children satisfies the requirements of integrity and good character.

And Regulation 47 in respect of the financial viability of the business.

The Parties

4. The Appellant is a limited company, New Dawn Resources (UK) Limited incorporated in 2007 (Company NO 6352942) ("NDRUKL"). The registered office address for the company is 12 Shaw Avenue, Barking Essex.
5. The Respondent is the Office for Standards in Education, Children's Services and Skills (OFSTED) and is the registration and regulatory authority responsible for the registration and regulation of Children's Homes. Pursuant to the Children's Home Regulations 2015.

Attendance

6. Mr Ukegheson the Director and Company Secretary of NDRUKL represented the Appellant; the Appellant's witnesses were Mr Ukegheson, and Ms Cheryl Carter. Jacqueline Rainsford Butler and Mr Linus Itoya also attended on behalf of the Appellant; however their witness statements were agreed, so they did not give oral evidence.
7. Mr Toole, solicitor for Ofsted, appeared on behalf of the Respondent. Also in attendance throughout the hearing were Phillip Cass the lead Ofsted Inspector, Ms Corrine Barker Ofsted Inspector, Mr Nicolas McMullen Senior HM Inspector, Rachel Holden a Senior HMI Social Care North East Yorkshire and Humber Region.
8. The Parties and their witnesses attended the hearing by video link.
9. The hearing was conducted remotely by video link (VKinly) over 8 days; all of those who attended were present by video link. In addition the matter was listed for a reading day on 18 September 2020, and the Tribunal held a deliberation in the absence of the parties on 6 November 2020.

10. There were some connection issues with the video link during the 8 day hearing, in that there were occasions where for periods of time, the technology failed. Where this happened to the parties or tribunal members, this resulted in small delays. Where this resulted in portions of the evidence such as questions or answers from witnesses being missed then a summary of the questions and answers, were provided by counsel or alternatively the question and answer were repeated.
11. Mr Ukegheson had a number of observers who were in attendance from abroad, some of whom were legally qualified and had been put forward as representatives of Mr Ukegheson, Mr Ukegheson stated that they were not always able to connect to join the hearing, however he did not seek an adjournment on the basis that his representative/representatives had been unable to appear on his behalf.
12. The hearing was recorded throughout the 8 days; however, the Tribunal in making its decision has referred to its notes of hearing and has not used the recording as an aid memoir. **The evidence in the decision is not set out verbatim.**
13. As this was an appeal of the Notice of Decision dated 9 April 2020, we heard this matter afresh. We were reminded that the burden of proof was with the NDRUKL as the Appellant and that as such we would consider the circumstances that existed at the time of the hearing rather than at the date when Ofsted had reached its decision, this meant that we were entitled to take any new matters which had arisen since the NOD into account. The burden of prove was on NDRUKL and the standard to which we had to be satisfied on any disputed fact was the balance of probabilities.
14. The procedure adopted was that Mr Toole, on behalf of Ofsted took the tribunal through the application for registration process, the information that the inspectors obtained either by way of the inspection on 23 January 2020 or as a result of any information obtained after the inspection or as a result of representations of NDRUKL, the Appellant. We then heard of the findings by the Ofsted inspectors and the decision-making process used by the Ofsted decision makers in reaching its decision to issue the Notice of Proposal and finally the NOD.

Background

15. The background is set out in considerable detail in the Tribunal order of Judge Khan dated 3 September 2020. The parties are referred to this order which provides additional information. In brief, on 19 September 2019, the Appellant submitted an application to the Respondent to register as a provider of a Children's Home which would operate from 100 St Georges Road, Dagenham Essex, RM9 5JT. The target date for the opening of the Children's Home was 30 September 2019.
16. The application was to register a home to accommodate six children with emotional or behavioural difficulties between the ages of 6-17 years old. The

proposed registered manager was Sebastian Townsend Ukegheson. Mr Ukegheson, who is also a lawyer, had in the past acted as registered person for two Children's Homes and had applied to manage a third, although he had later withdrawn his application in respect of the third home.

17. Alongside the application for the Children's Home was an application for the post of Registered Manager submitted by Sebastian Townsend Ukegheson. Arrangements were made for a registration visit and fit person interview to be carried out on 23 January 2020. The visit was carried out by Regulatory Inspection Managers Philip Cass and Corrinne Barker. Following the visit, on 14 February 2020, Ofsted issued a Notice of Proposal to Refuse Registration.
18. On 16 March 2020, Mr Ukegheson made written representations on behalf of the Appellant. The written representations were considered by SHMI Rachel Holden, the representations were not upheld. A NOD was issued on 9 April 2020. The Appellant appealed this decision on 4 May 2020.
19. On Monday 15 June 2020, a case management hearing was held and directions were given by the Tribunal for the hearing of the appeal. Amongst the directions was a requirement for the parties to exchange supplementary statements and evidence in response by Friday 24 July 2020. The Respondent was required to prepare and file an agreed paginated and indexed hearing bundle by 4pm on Friday 07 August 2020. The Order made on 18 June 2020 was subsequently varied to provide that the bundle should be sent to the Tribunal and the Appellant on 4pm Friday 28 August 2020.
20. On 25 August 2020, at a telephone case management hearing, the Tribunal listed this matter for a preliminary hearing on 3 September 2020. At the preliminary hearing, the parties agreed to the list of issues, and directions for the hearing which included an extension of time for the Appellant to complete the Scott Schedule. Mr Ukegheson also made an application on behalf of the Appellant for witness summonses for various employees and ex-employees of Ofsted. The full details of the application are set out in the order dated 3 September 2020.
21. Mr Ukegheson also applied for additional documents including an email from himself sent to Ofsted dated 25 September 2017 concerning Laurel Leaf Homes Limited, and also documents relating to the case of Mr Steve Gisarin under case number [2019] 3649.EY, a case involving an Ofsted decision. A copy of Mr Ukegheson's complaint dated 30 January 2019, and an organisational chart from the Respondent setting out the structure of Ofsted showing all the inspectors, managers, and directors including their country of origin, colour and ethnic background from 2010-2020.
22. Two applications were made one on 1 September 2020 (considered on 4 September 2020), and an application on 7 September was considered on the papers on the same date.
23. The application on 1 September was for leave to file additional documents out of time, Judge Khan ordered that this application should be considered by the

Tribunal hearing the Appeal on 14 September. The Application on 7 September concerned a number of issues including an application to appeal the order of Judge Khan dated 3 September 2020, Judge Khan dealt with part of that application.

Preliminary issues

24. We considered the application dated 7 September and two further applications for additional documents made on 15.09.2020 and 16.09.2020 during the course of the hearing.
25. The application made on 7 September 2020, was for (i) a stay of the proceedings. (ii) an application to appeal the order of Judge Khan (dated 3 September 2020). (iii) a request for additional documents and, (iv) Mr Ukegheson sought permission for a legal representative to be placed on the record as representing him in these proceedings. (Judge Khan granted permission for a legal representative to go on record on 7 September and set out procedural steps to be followed by Mr Ukegheson). In his order of 7 September Judge Khan adjourned the applications in respect of the other issues, and ordered that they to be considered by this Tribunal at the hearing of the appeal.

Mr Ukegheson's application for a stay of the proceedings

26. In his application Mr Ukegheson stated:-
"The stay of proceedings is required because issues of race and equality has been mentioned by Rachel Holden in two pages of the decision dated 09 April 2020 and the Respondent have stated that they have concerns about the Appellant because he complained of racial discrimination harassments and victimisation. Respondent concludes that this means that Appellant has not met requirements of Regulation 5 Children's Home (Regulation) 2015 amongst other allegations made by the Respondent in the decision to disqualify the Appellant. There is also further evidence e.g. (1) Bounce Back Loan from Barclays Bank...(2) Based on issues raised by witnesses for the Respondent. The Appellant wishes to add two more witnesses and more documents..."
27. In respect of the Application to stay the proceeding until the outcome of the County Court Proceedings, Judge Khan in his order of 7 September had stated
"...I consider that any application for a postponement/vacating any final hearing shall be particularised and shall clearly set out the relevance of the County Court proceedings to the proceedings before the Tribunal. I am not clear as to what would be the purpose of any stay given the separate and distinct jurisdictions. In respect of the application to admit any further late evidence the Appellant was directed to make an application on the proper form and include the relevance of that evidence to these proceedings..."
28. At the hearing, Mr Ukegheson repeated his written application; he indicated that issues of race were raised in this appeal, as he considered that the

decision made by Ofsted was on the grounds of his race. He stated that he wished to stay these proceedings until after the outcome of his county court proceedings in which Ofsted was a party in a claim for racial discrimination.

29. Mr Toole, solicitor for Ofsted opposed the application for the proceedings to be stayed; he noted that Mr Ukegheson had not particularised his grounds for making the application, neither had he set out how the county court proceedings were relevant to this appeal.

Mr Ukegheson's application to appeal the order of Judge Khan dated 3 September 2020

30. We treated Mr Ukegheson's application to appeal the order of Judge Khan, as effectively a request to review the order. His application had been for various inspectors and former inspectors from Ofsted to be summoned to give evidence in these proceedings about their past dealing with Mr Ukegheson. The full details are set out in the order of Judge Khan dated 3 September 2020.

31. Mr Toole stated that in regard to the application for witness summonses, this matter had been dealt with as a preliminary issue by Judge Khan. He stated that no new information had been presented by Mr Ukegheson concerning the relevance of these witnesses to this appeal.

Mr Ukegheson's application to file late evidence

32. The third limb of his application was for late evidence to be admitted. Mr Ukegheson stated that this evidence was in the form of a witness statement from Mr Linus Itoya and Jacqueline Rainsford Butler together with certificates of their training. He stated that Mr Itoya's statement had already been provided to the Respondent subject to a minor amendments being made. He stated that these statements went to the issue of suitable staffing. Mr Ukegheson also wished to provide additional evidence of the Bounce Back Loan that he had been granted. He stated that he could provide these documents by the start of the hearing on the following day if necessary.

33. Mr Toole noted that no good reasons had been given for the late filing of this evidence. Mr Toole also stated that he was reluctant to call Mr Cass to give his evidence, until he had been provided with an opportunity to see these documents.

34. He stated that without knowing what was in these documents, he could foresee difficulties, if he called Mr Cass to give evidence, as he would be part way through his evidence before the documents were produced. He stated that it was possible that Mr Cass would need to give him instructions, which he would be unable to do whilst giving his evidence, there was also a potential unfairness as Mr Cass may be asked questions by Mr Ukegheson on documents that he had not seen before.

35. In answer to a question from the Tribunal, Mr Ukegheson confirmed that the late evidence would be limited in its scope to the two witness statements and

certificates which provided details of the qualifications of the two proposed staff members and information on a "Bounce Back Loan". He stated that this would be the limit of his additional evidence.

36. Mr Toole stated that although he was not consenting to the application for late evidence, he conceded that these documents were relevant to the issues before the Tribunal. He stated that he would be content for the Tribunal to admit this evidence if, they were limited to the witness statements and supporting documents.

The Tribunal's decision on the application dated 7 September

37. We firstly considered whether to stay the proceedings. We had regard to rule 5 (h) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, which permitted it to postpone proceedings. We reminded ourselves of rule 2, which required the Tribunal to have regard to the overriding objective which was to deal with cases fairly and justly, in ways which are proportionate to the importance of the case. It also noted in particular the obligation to avoid delay so far as this was compatible with a proper consideration of the issues.

38. We noted that the matters in the county court, although involving the same parties, were separate and distinct from these proceedings, which involved the Children's Home Regulations. We noted that our jurisdiction is to consider the appeal against the decision not to register the Rehoboth Children's Home.

39. We noted that Ofsted had prepared for the hearing and had witnesses who had also attended to give evidence. We noted that Ofsted had incurred costs in preparing for this hearing. We considered the overriding objective and decided that to stay the hearing at this stage would be disproportionate to the issues that had to be determined. Accordingly, the application for a stay of the proceedings was refused.

40. The Tribunal also refused the application to appeal the order of Judge Khan.

41. We noted that no new evidence had been presented concerning the witness summons and that this matter had been fully adjudicated on by Judge Khan. We decided that it was difficult to see the relevance to the matters in issue. We decided that if, contrary to what appeared to be the case, the evidence appeared to be relevant during the course of the hearing Mr Ukegheson could explain why this evidence had now become relevant and could renew his application.

42. In respect of the late evidence, the witness statements and qualifications of Mr Itoya and Ms Rainsford-Butler, we bore in mind that Mr Toole on behalf of Ofsted had conceded that this evidence was relevant. We were concerned that this evidence had not been served on Ofsted in compliance with the directions. However, in determining whether to admit this evidence, we had regard to Rule 2 of the Tribunal Procedure Rules, in particular, the overriding objective. We decided that it was in the interest of justice that it had as full a

picture as possible of the Children's Home, including the qualifications of the staff. We noted that this was directly relevant to one of the issues before us. The Tribunal directed that the documents **should be served by 9am on 15 September 2020**.

Additional applications for late evidence

43. The Appellant made two further applications for additional documents, On 15 September, Mr Ukegheson stated that in the course of preparing to file the additional documents he had overlooked some of the documents as he was putting the bundle together, late at night and had been over tired and human error had crept in.
44. The Tribunal granted his application. These additional documents are numbered (I227 to I257).
45. Mr Ukegheson made a further written application, on 16 September 2020, for the following additional documents "(i) documents concerning leadership and management (ii) Financial viability (Bounce Bank Loan entire agreement) and (iii) a further Cash flow." He further applied for the bundle used for the application notice in August 2020 to be admitted as evidence. This bundle which he called "a mini bundle" had been prepared for the preliminary hearing.
46. We decided to refuse this application.
47. We noted that in making his application on 14 September 2020, Mr Ukegheson had reassured us as to the limited nature of the additional documents that he wished to serve. Mr Toole had set out to the Tribunal the difficulties that he would be faced with, if he needed to take instructions whilst Mr Cass was giving his evidence. We further noted that we had heard considerable evidence from Mr Cass concerning the financial viability of the business, and he had not been able to consider this additional cash flow and comment on it in his oral testimony.
48. Mr Ukegheson had provided us with no good reason as to why these documents could not have been served at an earlier stage. Judge Khan in the directions had ordered the parties to serve documents by 10 July 2020.
49. We decided that it would be unfair to Ofsted to admit this evidence at this stage, as Mr Cass would not have an opportunity to deal with these documents, and Mr Ukegheson had specifically stated the limited nature of the documents he sought permission to include. No good grounds were given by him why this evidence had not been provided at an earlier stage and this application was refused.

Legal Framework

50. **Section 13 of the Care Standards Act 2000**
Grant or refusal of registration.

(1) Subsections (2) to (4) apply where an application under section 12 has been made with respect to an establishment or agency in accordance with the provisions of this Part.

(2) If the registration authority is satisfied that—
the requirements of regulations under section 22; and
the requirements of any other enactment which appears to the registration authority to be relevant,

Are being and will continue to be complied with (so far as applicable) in relation to the establishment or agency, it shall grant the application; otherwise it shall refuse it.

(3) The application may be granted either unconditionally or subject to such conditions as the registration authority thinks fit.

(4) On granting the application, the registration authority shall issue a certificate of registration to the applicant.

(5) The registration authority may at any time—

Vary or remove any condition for the time being in force in relation to a person's registration; or

Impose an additional condition.

Section 22

Regulation of establishments and agencies.

(1) Regulations may impose in relation to establishments and agencies any requirements which the appropriate Minister thinks fit for the purposes of this Part and —

(a) regulations made by the Secretary of State may in particular make any provision such as is mentioned in subsection (1A), (2), (7) or (8), and

(b)...—

(i...

(ii) May in particular make any provision such as is mentioned in subsection (2) or (7) in so far as relevant to those establishments and agencies.

(1A) Regulations made by the Secretary of State may prescribe objectives and standards which must be met in relation to an establishment or agency

The relevant regulations are The Children's Home (England) Regulations 2015

Section 21

An appeal against—

A decision of the registration authority under this Part;

(b) An order made by a justice of the peace under section 20 or 20A]; or

(c) a notice served under section 22B (1)],

Shall lie to the Tribunal.

(2) No appeal against a decision or order may be brought by a person more than 28 days after service on him of notice of the decision or order.

(2A) No appeal against a notice under section 22B (1) may be brought by a person more than 28 days after the notice was served on him.]

(3) On an appeal against a decision of the registration authority, other than a decision to which a notice under section 20B relates,] the Tribunal may confirm the decision or direct that it shall not have effect.

(4)...

(4ZA) on an appeal against a decision to which a notice under section 20B relates, the Tribunal may confirm the decision or direct that it shall cease to have effect.]

(4A) On an appeal against a notice served under section 22B (1) the Tribunal may confirm the notice or direct that it shall cease to have effect.

(4B) If the Tribunal directs that a notice (“the first notice”) under section 22B(1) shall cease to have effect it must direct that any other notice under that section which is connected to the first notice shall also cease to have effect.

(4C) For the purposes of subsection (4B), notices are connected if they impose the requirement mentioned in section 22B (2) in relation to the same establishment.]

(5) The Tribunal shall also have power on an appeal . . . —

to vary any condition for the time being in force in respect of the establishment or agency to which the appeal relates;

to direct that any such condition shall cease to have effect;

(c) to direct that any such condition as it thinks fit shall have effect in respect of the establishment or agency[; or

(d) to vary the period of any suspension.]

Children’s Home Regulations 2015

Regulation 5

Engaging with the wider system to ensure children’s needs are met

In meeting the quality standards, the registered person must, and must ensure that staff—

(a)...

(b)...

(c)... and

(d) seek to develop and maintain effective professional relationships with such persons, bodies or organisations as the registered person considers appropriate having regard to the range of needs of children for whom it is intended that the Children’s Home is to provide care and accommodation.

Leadership and Management Standard

Regulation 13.—(1) The leadership and management standard is that the registered person enables, inspires and leads a culture in relation to the Children’s Home that—

(a)helps children aspire to fulfil their potential; and

(b)promotes their welfare.

(2) In particular, the standard in paragraph (1) requires the registered person to—

(a)lead and manage the home in a way that is consistent with the approach and ethos, and delivers the outcomes, set out in the home’s statement of purpose;

(b)ensure that staff work as a team where appropriate;

(c)ensure that staff have the experience, qualifications and skills to meet the needs of each child;

(d)ensure that the home has sufficient staff to provide care for each child;

(e)ensure that the home’s workforce provides continuity of care to each child;

(f)...

(g)...

(i)...

(ii)...

(h)...

Staffing of Children's Homes

31.—(1) The registered person must ensure that the employment of any person on a temporary basis at the Children's Home does not prevent children from receiving such continuity of care as is reasonable to meet their needs.

(2) The registered person must ensure that—

(a) at all times, at least one person on duty at the home has a suitable first aid qualification;

(b) any person who works as a nurse at the home is a registered nurse.

Financial Viability

47.—(1) The registered provider must carry on the Children's Home in such manner as is likely to ensure that the home will be financially viable for the purpose of achieving the aims and objectives set out in the statement of purpose.

The hearing

Evidence

51. We heard from

- Phillip Cass the lead Ofsted Inspector
- Ms Corrine Barker- Ofsted Inspector
- Mr Nicolas McMullen Senior HM Inspector
- Rachel Holden a Senior HMI Social Care North East Yorkshire and Humber Region. On behalf of the Respondent
- Mr Sabastian Townsend Ukegheson on behalf of the Appellant
- Ms Cheryl Carter
- Who all gave evidence on affirmation.

The Respondent's case

Mr Phillip Cass

52. Mr Cass gave his evidence over two days. He had provided two witness statements. In his first statement Mr Cass set out that he was employed by Ofsted since 2016, he was employed as a Social Care and Regulatory Inspection Manager in the East Midlands. His previous experience, prior to working for Ofsted, included working as a Senior Children's Homes' Manager, who was responsible for setting up, registering and managing Children's Homes and providing professional supervision and support for Children's Home managers and experience as an Assistant Unit Leader for a local authority.

53. Mr Cass carried out the assessment of NDRUKL proposal to register Rehoboth Children's Home ("The Children's Home"). This task involved reviewing the application to register and all associated documents and visiting the proposed home and interviewing the proposed Registered Manager (RM) and

Responsible Individual (RI). His role was to make an assessment of the home's suitability to be registered and then put forward evidence and recommendations to the decision maker, Nicholas McMullan (Senior HM Inspector, Social Care, East Midlands Region).

54. The Children's Home was based in London region, however on 10 September 2019, the East Middle offices of Ofsted was asked by the London Regional Office to deal with the registration, which led to Mr Cass's involvement as an East Midland Inspector. The request was made as it had been decided that the registration should be carried out by someone not connected to the London region, as Mr Ukegheson was involved in a tribunal case with the London region which had just concluded.
55. Mr Cass noted that the application had first been made in April 2019 six months prior to Mr Cass's involvement, which in his experience was longer than he would have expected. Although Mr Ukegheson described the delays as victimisation, Mr Cass stated that he investigated the reason for the delay and was satisfied that the reason for the delay was largely due to changes that Mr Ukegheson had made during the application process, and difficulties that this caused with the Ofsted application process.

The Application to register the Children's Home and Regulation 5

56. Mr Cass introduced himself to Mr Ukegheson by telephone on 19 September 2019. He, explained why the application was not being dealt with in London and talked through the registration process with Mr Ukegheson. Mr Cass stated that Mr Ukegheson wished to make changes to the Registered Manager and wished to put forward Mr Itoya as the Registered individual and also, as the deputy manager. Mr Cass stated that this would not be satisfactory. He had given Mr Ukegheson "The Guide to Registration" as he hoped this would help Mr Ukegheson to better understand the process, what was required, and what he would need to be able to demonstrate before registration would be granted.
57. On 30 September 2019, Mr Ukegheson had put forward Jacqueline Rainsford Butler as registered manager; he set out that she would complete her own application. Mr Cass responded by email setting out that as soon as the RM application was received, he would be able to carry out the assessment. Mr Cass stated that although an application form was received from Ms Rainsford Butler it had to be returned because some information was missing.
58. Mr Cass accepted that some applicants who wished to amend their application during the process found the administration frustrating. At the time changes had to be made manually. He stated that Mr Ukegheson emailed expressing his frustration with this. He also expressed a belief that additional barriers were being put in place by Ofsted to delay his registration as he had "dared to challenge Ofsted managers and inspectors in London."
59. Mr Cass stated that he found this concerning. As a result, he replied to Mr Ukegheson by email on 16 October 2019.

60. He stated that in his email of the 16.10.19, he had summarised Mr Ukegheson's concerns and had invited him to use Ofsted's complaint process. He stated that in reply SU declined to make a complaint, although he gave consent to Mr Cass to make one on his behalf, Mr Cass stated that it was inappropriate for him to make a complaint on Mr Ukegheson's behalf. There was also a difficulty in that he did not know how to articulate exactly what Mr Ukegheson complaint was about.
61. In his evidence, Mr Cass provided information about the subsequent email correspondence between himself and Mr Ukegheson which he considered was becoming more and more acrimonious on Mr Ukegheson's part. In his witness statement, Mr Cass referred to receiving information from Veena Seesurrin Ofsted legal services, litigation lawyer. She informed him of a letter from solicitors acting on behalf of the Applicant which set out Mr Ukegheson's intention to issue proceedings against Ofsted for discrimination and victimisation.
62. Mr Cass stated that in respond on 24 October 2019, Mr Ukegheson sent him an email in which he indicated that whilst he was waiting for the application to be progressed he would start offering a 16-plus service to local authorities that may need it, "...as it is legal to do so and Ofsted have no powers to stop me from doing so..."
63. Mr Cass stated that he was concerned about this proposal as he could foresee a number of flaws with this. Amongst his concerns were the fact that, he considered that Mr Ukegheson could not operate this alongside a children's home, given the potential age range of the children at the home. He wrote to Mr Ukegheson pointing out that children under 16 could not be placed in a 16-plus provision.
64. He stated that in his opinion, given that Mr Ukegheson was considering this step, five months after the initial application for registration, he considered that this indicated a disorganised approach to establishing a children's home. He was also concerned that Mr Ukegheson did not appear to appreciate that a post-16 provision was required to register with Ofsted.
65. On 15 November, he wrote to Mr Ukegheson pointing out that he was free to decide what ever service he wished to operate, however which every type of service whether post-16 or not he would need to register the home with Ofsted.
66. Mr Cass stated that he considered the tone of his email had been conciliatory and respectful. In reply Mr Ukegheson invited Mr Cass to stop patronising him, he stated that he was "not an imbecile" and further stated that he had "a strong feeling that Mr Cass was prejudiced about his setting up a children's home" and was "searching for an issue that would help him make a negative decision."
67. We were referred to a schedule attached to the Scott Schedule which provided details of emails sent by Mr Ukegheson which Ofsted considered to be similar

in tone. Mr Cass stated that although he had some sympathy for Mr Ukegheson's frustration, he considered that the tone and language used by him was not measured or professional. Mr Cass was concerned about the tone of the correspondence, as he was concerned that Mr Ukegheson was unlikely to develop a constructive working relationship with Ofsted.

68. In his statement, Mr Cass set out that although there were some matters which were outstanding in the Applicant's application, he was however, "sympathetic to the financial pressures that would be a consequence of the delay." As a result, he agreed to begin some of his assessment tasks, although he would normally wait until the documentation was completed.
69. On 6 January 2020 he reviewed the application., The only outstanding checks related to the nominated individual reference for Cheryl Carter, he took what he told us was an unusual step of arranging the registration visit and the fit person interview prior to the application moving to stage 3 of the registration process as it had been 8 months since Mr Ukegheson had made his first attempt to register.
70. Mr Cass stated that because of the tone of the correspondence he decided that he would take a colleague, he also sought permission to record the interviews as he wanted to ensure that he had an accurate record. Mr Ukegheson initially agreed to this, however on 22.01.2020, he indicated that he wished to have a solicitor present at the interview. On the morning of the interview (23.10.2020) Mr Ukegheson withdrew permission to record the interview and indicated that he would no longer have a solicitor present.
71. We heard from Mr Cass that one of the issues that arose in the pre-meeting correspondence concerned Mr Ukegheson's health. He had been made aware through correspondence that Mr Ukegheson had a disability which amounted to a protected characteristic under the Equalities Act 2010. He wrote to Mr Ukegheson to enquire about the nature of the disability and to ask whether adjustments needed to be made. Mr Ukegheson was offended by this as he had provided a health questionnaire in which he had set out details of his health including the fact that he had a diagnosis for cancer.
72. Mr Cass stated that he had been unaware that a diagnosis of cancer amounted to an automatic protected characteristic, however Mr Ukegheson had not accepted his explanation.
73. Mr Cass was asked about regulation 5, which required Mr Ukegheson to be able to build a relationship with Ofsted. He stated that originally he had some sympathy with Mr Ukegheson as he had considered the registration process unnecessarily cumbersome. However, he was concerned about Mr Ukegheson's views and how he expressed them. He stated that during the course of his interactions with Mr Ukegheson at any point of disagreement Mr Ukegheson he accused him of being a "White supremacist." He referred to the difficulty of having a professional relationship with someone who, to his mind, had views which were so entrenched.

74. Mr Cass stated that the regulatory role of Ofsted meant that a good relationship was important. In his view, this meant that although providers were not required to like Ofsted, and in his experience “often hit choppy waters” in their relationship, they were required to have a professional relationship with Ofsted as Mr Ukegheson needed to be able to accept challenges from Ofsted constructively.

The Ofsted Registration inspection visit

75. On 23 January 2020, Mr Cass carried out the Registration Visit and Fit Person Interview with his colleague Corrine Barker. In answer to questions, Mr Cass stated that he had wanted the meeting and interviews to be recorded as he felt that it was important for there to be a definitive account of the interview; however as an alternative his colleague, Ms Barker made notes.

76. We were informed that Mr Cass’s first impression when he attended the building was that it was in a residential area and well presented, from the outside. Mr Ukegheson, Cheryl Carter, and Jacqueline Rainsford Butler were all present at the home.

77. The premises comprised a first floor with five good sized bedrooms and a family bathroom. He stated that the bedrooms contained appropriate furniture. One of the bedrooms overlooked a flat roof which joined a separate clear, plastic corrugated roof covering and a walkway. Both Ofsted inspectors considered this to be a potential hazard, should a child climb out of the window and stand on the roof.

78. As a result, there had been some discussion about the potential use of the room including using it as a “staff sleep-in room” as it was not considered appropriate for a bedroom for a child, however he was told that no bedroom space was required for staff sleeping, as only waking night staff would be employed. Mr Cass was concerned that the plans for the use of the building were not firmly settled.

Regulation 31

79. Mr Cass stated that although staffing did not form part of the fit person interview, during the site visit they heard from Ms Rainsford Butler about the staffing plans and he was provided with a template rota. He was informed that there would be two shift teams. Two day and two nights.

80. The shifts consisted of Shift team 1 would comprise of Ms Rainsford Butler, as temporary leader until the post was filled, a named agency worker would be the second member. Shift team two would comprise Linus Itoya and a second team member would be provided by the agency. In shift team 3 (waking night care) the senior would be an agency worker. Shift 4 (waking night care) would comprise of a named agency worker, who would be a senior on a temp to permanent basis. Mr Cass was concerned that although a named agency worker was proposed to be the second team member on a temp to permanent basis, he saw no evidence that there was a temp to permanent arrangement

with a recruitment agency.

81. Mr Cass stated that there was no evidence that any worker had been offered, or accepted a job. There was no evidence of the qualification or experience or of any vetting of any agency workers.
82. We asked what Mr Cass would expect to see prior to registration. He stated that he would normally expect interviews to have taken place and conditional offers of employment to have been made. Mr Cass stated that he was informed that the recruitment would be carried out by a recruitment agency and of the temp to permanent contract. He asked Mr Ukegheson to confirm the arrangements, by providing written evidence. In his witness statement, he referred to the Guide to Registration, which clearly stated that you must have available all recruitment records for staff that have been recruited and that they must be available for the inspector.
83. In paragraph 118, of his first witness statement, Mr Cass stated that he was concerned that Mr Ukegheson, Ms Rainsford Butler and Ms Carter were unwilling to acknowledge that Ofsted could not register a children's home that had no staff in place to care for the children admitted.
84. He further stated that there was also no structured induction plan, and no budget to training. In response to this, Mr Ukegheson had explained that he could agree credit terms with a Trainer who would carry out staff training. Mr Cass stated that he considered training and induction of particular importance as Mr Ukegheson's cash flow was based on the home admitting 4 children upon opening.
85. Mr Cass stated that in a good children's home you would expect to see a staff team coming together and consolidating their practice with one or two children in order to provide a stable environment. He was asked about how this would work for a small business with a tight budget. He acknowledged this would be difficult to have a full staff complement. However, he stated that he would expect the staff team to have been interviewed and conditional offers of employment having been made.

Regulation 47

86. Mr Cass referred to, the NDRUKL company accounts. He had asked Mr Ukegheson for the accounts and was informed by email on 27 September 2019 that as the company had only been used for a consultancy, no useful information would be provided by these accounts. This was confirmed by Mr Cass on review of the company accounts.
87. Mr Cass stated that in an email dated 27 September 2019, Mr Ukegheson set out details of the credit available to him. He referred to the cash flow forecast provided by Mr Ukegheson: this forecast was dated 28 March 2019. The forecast had an entry for a start-up loan of £25,000 and other cash balances of £10,000.00. He stated that Mr Ukegheson provided a further cash flow forecast dated 3.01.2020, with a cash flow projection of £60,000. This was

described in the credit balance as three separate Director's loans, two totalling £25,000 and one of £10,000.

88. Mr Cass asked Mr Ukegheson in his interview about cash reserves. He was told by Mr Ukegheson that the business had access to a start-up loan, and an invoice factoring system in place which would enable him to borrow against invoices whilst he was awaiting payment. In the notes of interview, it was stated that "Mr Ukegheson would supply the evidence that he has financial viability". Mr Cass stated that Mr Ukegheson appeared unconcerned about the financial arrangements for the Children's Home; he expressed confidence that after two months, he would not need to borrow any money.
89. Mr Cass stated that of the financial forecast, to his mind the first forecast was more realistic, concerning potential income this depicted £2,500 per week per child with 4 children occupying the home by month 12. He considered this forecast, although realistic, was optimistic. However, he found the estimate of outgoings to be particularly low. He noted that there was no additional allowance for night staff or staff training. The allowance for children's expenses to his mind was insufficient, in that it failed to take into account the need to budget for food, birthday gifts, treats trips and clubs etc.
90. He was asked about whether he fed this back to Mr Ukegheson. He stated that he did and referred to the updated cash flow. This was dated 3.01.2020. He stated that the estimated income had gone up with anticipated occupancy of four children. He stated that this forecast was based on 66% occupancy of the Children's Home from day 1, with full occupancy expected by month four.
91. Mr Cass stated that to his mind this was not realistic as he considered that it was dangerous to bring children into the home too quickly, as the adults needed to be a settled team. However, he stated that the estimated outgoings were now more realistic in that the needs of the children for additional funds for necessities had been addressed. However, there was still an issue with the lack of budget for deputy manager, for night care allowance, training and staff development, national insurance etc. Mr Cass had asked Mr Ukegheson about this, he had stated that he would provide an updated forecast however this has not been provided, and this remained the position at the date of the hearing.
92. In his witness statement, Mr Cass referred to an email Mr Ukegheson sent him on 29 November with an enclosed document entitled Mr Sebastian Ukegheson which referred to a claim which he had brought against London Borough of Newham and Laurel Leaf Homes.
93. He stated that this document referred to loans that had been taken out on behalf of NDRUKL. Mr Cass was concerned about this as he stated that Mr Ukegheson had a poor credit rating and only appeared to have access to loans from high rate lenders. Mr Ukegheson had informed him that he would only need access to loans for a very short period of time, he had also stated that he had an arrangement in place with the agency, which would pay the agency staff, and that Ms Carter was going to deliver training.

94. Mr Cass then turned to the lease arrangements for the Children's Home, which was a lease with an option to purchase. This option to purchase was to be exercised in November 2020. Mr Cass was concerned about what would happen if NDRUKL was unable to purchase the premises and the potential instability that would result for any children who were within the premises. Mr Ukegheson set out a number of options which included extending the lease whilst he arranged a mortgage, coming to an arrangement with a neighbouring children's home, which meant that children could be placed at that home, or as a last resort, he had a 4 bedroom home which could be used by the children until he could purchase another property.
95. Mr Cass referred to the notes of the visit, and the fit person interview, in which Mr Ukegheson was asked to confirm his understanding of the role of Registered Manager and his personal accountability. He was asked about his vision for the service and his relationship with Ofsted. He also discussed his plan for the use of CCTV. Mr Cass noted that there was a difference between Mr Ukegheson's planned use of CCTV within the building and the views expressed by Cheryl Carter and Jacqueline Rainsford Butler.
96. Mr Cass stated that Mr Ukegheson explained his motivation for setting up a children's home and his approach to running the Children's Home by reference to his previous experience. Mr Ukegheson had discussed the fact that it was not his intention to be at the Children's Home on a day to day basis. He also noted Mr Ukegheson's plan to step back from management, so that Ms Rainsford Butler would eventually take over and apply to be the registered manager.
97. He stated that after the interview and on the basis of Mr Ukegheson's correspondence he formed the view and remained of the opinion that NDRUKL and Mr Ukegheson as registered manager had not demonstrated that the requirements for registration had been met.
98. Mr Ukegheson cross-examined Mr Cass at some length. Mr Cass agreed that they had initially had a cordial relationship at the outset he maintained that Mr Ukegheson's approach to registration as chaotic. He had tried to take things forward by dealing with the registration even though they were awaiting information from the registered individual. Mr Cass did not accept that he was trying to be unhelpful or patronising to Mr Ukegheson. He reiterated that when he had asked about Mr Ukegheson's disabilities in preparation for the meeting, he had been trying to prepare so that he could make reasonable adjustments. He denied that he had asked Mr Ukegheson, for details of his disability, when he had known that Cancer was a disability. He accepted Mr Ukegheson's assessment that Ofsted was perhaps not as representative as it could be, however, he did not accept that the decision not to register NDRUKL or Mr Ukegheson as registered manager was motivated by racism.
99. We heard from **Corrine Barker**. She had attended the Registration and Fit Person Interview with Mr Cass for the purpose of taking notes. Ms Baker had been employed as a Social Care Regulatory Inspection Manager since 1 August 2017. Prior to working at Ofsted she had been a Children's Services

Manager with Children's Social Care, she was also a qualified social worker.

100. In her evidence, she re-called Ms Rainsford Butler informing her that four members of staff had been recruited, however she stated that they were shown no offer letters and there was some discussion about whether offers could be made on a provisional basis.
101. She set out that although there was a deputy manager referred to by name, Mr Linus Itoya was not reflected in the home's cash flow forecast. She stated that Ms Carter's interview to assess her suitability started at 14.30 and concluded at 15.15. She stated that Ms Carter presented well with a good understanding and relevant experience and knowledge in her role as responsible individual.
102. However, she noted that Ms Carter did not have a detailed knowledge of the financial arrangements having not reviewed the financial viability of the home although Ms Carter assumed that Mr Ukegheson would have sufficient cash reserves, Ms Carter considered the home to be financially viable.
103. Ms Barker stated that Mr Ukegheson's fit person interview had lasted over 2 hours. In her view this was unusually long. Ms Barker stated that in answering the questions he gave lots of examples and this was not always helpful, as this meant that the registration visit had been over long. She stated that although Mr Ukegheson displayed a good knowledge of the registration, not all of his plans were child centred. In particular, she questioned the manner in which CCTV would be used. She referred to the fact that the children could not consent to the use of CCTV. She was also concerned about the privacy aspects, and the fact that there was a difference between how the senior staff saw CCTV being used and how Mr Ukegheson envisaged its use.
104. Ms Barker stated that she did not consider the cash flow to be sufficient. She shared Mr Cass view that the plan to open the home and transition in a short period to having 4 children was too soon and she did not consider this to be in the interest of the children. She agreed with Mr Cass's concerns about the financial viability of the business and the insecurity caused by the lease and the nature of the arrangements that he would put in place if the lease ended prematurely whilst there were children at the home.
105. Ms Barker set out that although, Mr Ukegheson spoke about his desire and motivation to set up a children's home this was at odds with statements that he made about Nigerians which she considered to be racist. She stated that she felt that Mr Ukegheson was trying to demonstrate his personal integrity however she was concerned about his use of stereotypes. This caused her to call into question his suitability to be the registered manager as she considered that these views may affect his interaction with staff and children.
106. She was asked whether she thought this was a throw-away remark or something that Mr Ukegheson would repeat to children. She stated that in her view she considered that he might repeat this remark in the presence of children.

107. On questioning from the Tribunal, Ms Barker accepted that she had not confronted Mr Ukegheson about his remarks. On cross examination by Mr Ukegheson, Ms Barker stated that she did not accept that this remark had been written in an email as she recalled it being said at the interview. She accepted that her recall was not as detailed as Mr Cass' as she stated that her role as second person had been to document, however she considered that her notes were accurate notwithstanding criticisms made of the accuracy of the notes by Mr Ukegheson.
108. She disagreed with Mr Ukegheson that he had not been given sufficient time to provide information requested. She referred to the length of the interview with Mr Ukegheson. Ms Barker stated that the onus had been on the applicant to provide information to support registration. She did not accept that her notes were not accurate, although not verbatim they were an accurate account of what had occurred. Ms Barker stated that based on her experience she was also of the opinion that the Applicant did not meet the criteria for registration.
109. We heard from **Mr Nicholas McMullen**. In his statement, he set out that he was employed by Ofsted as the Senior HM Inspector, Social Care East Midlands Region (Senior HMI Social Care). He was responsible for leading a team of HM Inspectors and two Regulatory Inspection Managers for the East Midlands region. He had been employed by Ofsted since May 2010. He had previously been a senior manager of children's social services in a local authority.
110. Mr McMullen stated that he attended the case review via teleconference, to consider Ofsted's response to the application by NDRUKL. Mr McMullen stated that he had not had any previous involvement in the registration. The meeting took place on 10.02.2020, and he was designated the decision maker. The review was attended by Peter Walker (Social Care Compliance Inspector) Philip Cass (Regulatory Inspector Manager) and Corrine Barker (Social Care Regulatory Inspection Manager).
111. He stated that before the review he was provided with a range of documentation including a summary of the evidence collected by Philip Cass in his assessment of the application. He stated that having considered the evidence and evaluation, he accepted and agreed with the assessment and recommendation from the inspectors that he should refuse the application.
112. Mr McMullen set out that the reasons for his decision. He stated that he considered that there was a reasonable expectation homes registered by Ofsted would be financial stable. There was a lack of suitable arrangements for staffing and management of the proposed home. He stated that in his view NDRUKL had failed to demonstrate that they could comply with regulations 13, 31 and 32 (leadership and management, staffing, fitness of workers and employment of staff). Mr McMullen stated that he had concerns about the stability of the staffing and the management arrangements. He also agreed with Mr Cass that displayed an inability to engage with the wider system in accordance with regulation 5, to ensure the needs of children were met. He

stated that he concluded that NDRUKL had failed to demonstrate that they could maintain effective professional relationships with bodies including Ofsted.

113. Mr McMullen's decision was communicated to NDRUKL in the Notice of Proposal which was sent to the Applicant on 14 February 2020. He stated that written representations were received from Mr Ukegheson. He stated that in order to bring checks and balances to the process, he decided that a senior manager from another region with no previous involvement should evaluate the decision in light of Mr Ukegheson's written representations.
114. He asked Rachel Holden to carry out the evaluation.
115. In answer to questions, Mr McMullen was asked about whether the existence of the £50,000 bounce back loan would change his mind about his decision concerning the financial viability of the business. Mr McMullen stated that this did not change his opinion as even though Mr Ukegheson might have access to the finance, there would be no evidence that this sum would be available as reserves as Mr Ukegheson had a number of expenses and loans and there was no evidence as to how this sum would be used.
116. In cross examination, he was asked about Mr Cass's lack of knowledge concerning Mr Ukegheson's diagnosis that cancer as a disability and whether this and the general delays in the registration process could have contributed to Mr Ukegheson's tone.
117. Mr McMullen did not consider that this was a reasonable excuse for the tone adopted by Mr Ukegheson. He stated that Mr Ukegheson could have availed himself of the complaint's procedure operated by Ofsted and if necessary, he could take it further to stage 3, or alternatively he could have made a complaint to the Ombudsman.
118. He was asked about Mr Ukegheson history of dealing with Ofsted. He accepted that Mr Ukegheson had dealt with Ofsted positively in the past when he was a manager of a Children's Home and that there had been no issues. However, he repeated that in his view, Mr Ukegheson's responses to Mr Cass had been disproportionate. In Mr McMullen's view, this demonstrated a real difficulty in building and sustaining good relationships as required by Regulation 5.
119. Mr McMullen was asked about the number of staff that should be employed and whether it was reasonable for nine members of staff to be engaged. He stated that the needs of the child should dictate the number of staff.
120. Mr McMullen stated that having reviewed the evidence and having heard from Mr Ukegheson he remained of the opinion that the decision in the notice of proposal had been correct.
121. We heard from **Rachel Holden**, a Senior HMI Social Care North East Yorkshire and Humber Region. On 16 March 2020, following a request from Nick McMullen, she agreed to act as independent reviewer. As part of the review exercise she was provided with the NOP and the written

representations made by Mr Ukegheson and emails dated 19 and 24 March 2020, the fit person interview and emails received by Mr Cass throughout the registration process.

122. Ms Holden looked at each of the regulations referred to the NOP in turn. In her witness statement she referred regulation 47 (financial viability) She stated that she reviewed the conclusions from Philip Cass; she stated that the decision was made in consultation with Ofsted's finance business partner and senior finance officer. She stated that based on her analysis of the documents submitted by Mr Ukegheson, she concluded that NDRUKL did not demonstrate financial viability. She referred to the lease arrangements, it was her view that the Statement of Purpose ought to have been for short-term placements rather than long-term as there was the real possibility that if the property was not purchased by the Appellant the lease would not be renewed.
123. Ms Holden stated that in her view, the arrangements for staffing via an agency were unclear as there was nothing to confirm the deferred payment arrangements that Mr Ukegheson had referred to in the interview
124. In respect of regulations 13, 31, and 32, she stated that the Statement of Purpose was not clear and child focused, as it was fluid about the number of children proposed. She was concerned about the communal area available at the home and the mix of children and how their needs would be met. Ms Holden also stated that she was concerned over the use of CCTV and whether using CCTV as behaviour/allegations would create a homely environment.
125. Ms Holden stated that in respect of Regulation 5, she reviewed the correspondence between Mr Ukegheson and Mr Cass. She stated that the tone of the communication from the start of the application gave her cause for concern about the comments and the language that Mr Ukegheson used in his fit person interview. Ms Holden referred, in particular to a comment that he was alleged to have said at the interview. That is "I am not like those other Nigerians. I don't tell lies..." Ms Holden in her examination in chief and during her cross examination stated that these comments meant that in her view there were concerns raised about whether he would welcome children from different backgrounds.
126. Mr Ukegheson referred Ms Holden to an email dated 28 August 2019, which he stated was where the comments about Nigerians was made. He questioned the accuracy of the note of interview. He also asked her about the racial make-up of Ofsted and stated that she did not have a problem with "...an *all-white Ofsted management team*..." Ms Holden reiterated that the decision had been made on the available evidence. She expressed the view that the registration had been carefully considered and that the decision to refuse registration was because the application did not meet the requirements.

The Appellant's case

127. We heard from **Mr Sebastian Ukegheson**. In giving his evidence, Mr Ukegheson touched upon his relationship with Ofsted, the London office, and

also referred to litigation that he had brought against Ofsted and others. Although we acknowledged this evidence, we have carefully considered its relevance to our decision and as we did not consider it to be relevant, we have only referred to this evidence in a very limited way.

128. He told us that he was the Director and Secretary of NDRUKL. He told us that the Appellant company was set up in 2007 as a consultancy company. He stated that the company was a vehicle for social care. Mr Ukegheson explained that his wife was a senior social worker who is registered with the HCPC. She worked in the London Borough of Barking and Dagenham. Given this, it was not his intention that she would be part of the Children's Home, in order to avoid a conflict of interest. She was however a shareholder and director of NDRUKL along with their children as the business was set up to be a family business.
129. Mr Ukegheson stated that he personally had been involved in child care since the 2004 when he stated an advance diploma in social care supportive housing and disability. He had started working for Bush Housing Association. He had then worked as a Senior Support Co-ordinator for Waltham Forest, Haringey, Wellingborough and Newham. He was involved in working in and managing care home and supportive facilities involving dual diagnosis. In 2008, he became a deputy manager at Hazelmere children's facility (Haringey) for children who had autism, ADHD and ABD and Asperger's and physical disabilities. He stated that he was head hunted and had started working for Harrow Council in 2010.
130. He started studying for an MBA in 2002 which was awarded in 2006. He holds a level 4 diploma in Children, Young People and Families. He stated that in 2015 he applied to be registered manager of Lily House. Mr Ukegheson referred to the Ofsted report for Lily House, He spend some time explaining his role in helping the home achieve its *Good* rating. He stated that at the time he applied to be the manager, he had the same health conditions that he had declared on the application for registration of the Children's Home, he also had a legal practice, all of which were declared. He stated that neither his health nor responsibilities had affected his effectiveness in setting up and running a children's home. It was recorded in the inspection report, that Mr Ukegheson was praised by staff. The judgement of Ofsted was that the home was Good.
131. Mr Ukegheson stated that when he had initially worked at Lily House it had been for children with autism; however, the staff were more familiar with children with emotional and behavioural difficulties (EBD). He encouraged the owners of the home to stick with what they knew and to focus on EBD. He stated that his role had been to review the policies and procedures and to liaise with the safeguarding managers for the Local Authorities.
132. He stated that he had also assessed the home which he stated was not fit for purpose when he took over. He had recruited staff using the Sugarman employment agency under a temporary to permanent arrangement.
133. Mr Ukegheson considered that because of his previous roles he was a proven

manager with a good track record. As a result, he had felt hurt because he considered that his ability to deal with safeguard and meet the needs of children was being called into question by Ofsted.

134. In 2017, he was working at the Laurel Leaf Children's Home. He set out how he had assisted the home to meet the standard for registration as a therapeutic home. Mr Ukegheson's evidence referred to the assistance he had given the home, the Ofsted visit and detailed his application to be registered as a manager. He had revealed details of his health condition, and that he was conducting his own legal case against Haringey Council. None of this had been treated as a barrier to his registration. He had withdrawal his application for registration as registered manager, after his contract was terminated, as he could not be the registered manager when he was no longer responsible for the home.
135. Mr Ukegheson set out what he saw as the context in which his relationship with Ofsted had been affected. He referred to a complaint which had been made about him which had been referred to the LADO for safeguarding and the police and Ofsted. Mr Ukegheson stated that although the LA was satisfied that there was no case to answer, Mr Nick Price of Ofsted (London Region) had refused to close his investigation. Mr Ukegheson stated that a white manager would not have been treated in that way.
136. Mr Ukegheson stated that Ofsted had informed him that they had not been provided with a reference from Mr Mohammed and this had been untrue. He also considered Mr Cass had not been truthful in his evidence concerning his understanding of Mr Ukegheson's disability. He also considered that he had been unfairly treated by Ofsted and this had impacted on his relationship with Ofsted.
137. He referred to the changes to his application form which Mr Cass had dealt with in his evidence. He stated that he had sent a copy of the application as a PDF document. Despite this, he stated that he had been asked to send a paper copy of the form at least 5 times, although Stuart Cosgrove stated that the PDF version could be accepted. He stated that he had found Mr Cass to be arrogant and patronising rather than helpful.
138. He did not accept that his conduct towards officers at Ofsted meant that he could not maintain a professional relationship with Ofsted. He referred to the fact that he had been involved in what he described as a 16 ½ year battle with Haringey Council; this had not prevented Haringey placing children with him. He stated that he had also set out examples and expressed a willingness to work with Ofsted in his fit person interview, and that he had always co-operated with Ofsted and had never refused to provide information when requested. He did not accept that his current negative relationship with Ofsted would prevent him carrying out his role.
139. In cross examination, Mr Toole asked why he had highlighted the words "... person considers appropriate..." in regulation 5 in reference to developing personal relationships. He was asked whether he considered Ofsted to be a

body with whom it was appropriate to develop relationships.

140. Mr Ukegheson stated that he had done all that was required of him. He referred to his correspondence in which he had asked Ofsted to participate in alternative dispute resolution.
141. He accepted that he had not brought forward a witness or evidence of his working relations with others; however, he did not consider this necessary as he referred to the Ofsted inspections which related to homes that he managed. He felt that this more than demonstrated his ability to comply with regulation 5 as did the letters that he had written to local authorities introducing himself and the Children's Home.
142. Mr Ukegheson was asked whether he regretted the manner of his communication by Ofsted. Mr Ukegheson stated that he did not, as he did not consider any of the correspondence to be inappropriate. He also stated that he would rely on Cheryl Carter, who had been a former Ofsted inspector to deal with Ofsted and to help him improve his relationship with Ofsted.
143. He set out the background about how and why he had decided to set up a children's home. He stated that in 2017, he sold a property and had a profit of £170K; he said that at that point he started to seriously consider setting up his own children's home. Mr Ukegheson stated that once he had found the home which was being used as a House in Multiple Occupation, he had drawn up a project plan, obtained planning permission and had also undertaken building work. Planning Permission had also been obtained. He stated that he had used consultants throughout. He stated that additional work had been undertaken in the house, for example the fire doors were not compliant and he had obtained a full London Fire Service Risk Assessment. He had carried out the work using loans from Barclays of £15,000 and Tesco's of £25,000.
144. In terms of the premises at 100 St Georges Road, Dagenham, Essex, he set out that he had a lease with an option to purchase. Mr Ukegheson planned to eventually buy the property as it was more economical than renting. However, he was finding it difficult to obtain a mortgage whilst the home remained unregistered. Mr Ukegheson accepted that he had accrued rent arrears at the leased property. He stated that as a result, the landlord had removed his office furniture. However, Mr Ukegheson had gone to the High Court and obtained an injunction to prevent the landlord repossessing. He had also instructed solicitors to act on his behalf in his claim against the landlord.
145. He had also written to the solicitors of the landlord to ask for a deferment of the rent, due to the Coronavirus as he stated that he was entitled to a payment break. He discussed the loans that he had obtained including a "bounce back" loan from *Capital on Top*. He had also eventually obtained a bounce back loan from Barclays in the sum of £50,000, and had used this to pay off the Capital on Top loan and his credit card. He had £30,000 in the bank. The loan was not repayable until March 2021, the interest rate was 2.5% per annum payable over 6 years. The repayments were £833.33 per month which he considered to be manageable.

146. Mr Ukegheson detailed his other financial arrangements. He stated that he also had made arrangements for income factoring. This meant that he could obtain an advance on his invoices; the company would pay up to 90% of the invoice. This was available for up to £50,000 per month; however, he would only use this short term, until his business was up and running.
147. Mr Ukegheson stated that it was his intention that the home would be occupied by children who had EBD. He stated that such children would not need 24 hours a day support as they were in his experience largely self-motivated, and did not usually spend a lot of time at the children's home.
148. In respect of the cash flow forecast, he did not accept the criticism that it was inaccurate. He stated that a forecast was not necessary or expected to be accurate as it was at best an estimate. Although his cash flow forecast had provided for 4 children, he stated that this would not happen unless or until agreed by the LA. He stated that he would consider safeguarding, and would be consulting with the local authorities before he admitted children.
149. He expressed confidence that he would be able to achieve his goals of occupancy as he had approached Local Authorities such as Barking and Dagenham, Southwark and Havering who were interested in placing children once the home was operational.
150. Mr Ukegheson was asked about the finances, in particular, what had happened with the money that he had after the sale of his previous property. He stated that this money had been used for other things over time. In answer to questions from Mr Toole he set out that he would at the end of the month have approximately £23,000 of the bounce back loan. He considered that once the home was operational he would be able to manage the on the income generated by the placements, which would generate an income of approximately £2500 to £3000 per child per week.
151. He accepted that he was in rent arrears and that this was from March 2020, however he was not overly concerned about this, as there was currently a moratorium. He was also confident in the outcome of his case against the landlord as he had an option to purchase the property and had spent money on the home; and was also represented by Solicitors.
152. During the adjournment of this hearing on 22 September and prior to the resumed hearing on 27 October 2020, Mr Ukegheson provided us with additional evidence. As there was no objection, we accepted this evidence, which included a letter dated 1.08.2020 from Mr Ukegheson to Mr Steve Higgins (the landlords' son), concerning the premises 100 St Georges Road, He also included a Building Risk Assessment carried out by Ms Rainsford Butler This was undated.
153. Mr Ukegheson was asked by Mr Toole about these documents, which revealed that the premises were defective. The report from Ms Rainsford Butler referred to the fact that Mr Ukegheson had tried to change the

arrangements for the supply of gas and electricity from a key/card payment meter to a metered supply, however, he had been unable to do this as the wiring of the property was defective. Mr Ukegheson had, in his letter to the landlord alleged that the premises were in breach of the Defective Premises Act. He described the condition of the property as currently being unfit to live in. However, he considered that the actual problems were minor and that the property could be quickly brought up to standard.

154. Mr Ukegheson considered that he would have additional funding. He referred to a claim that he had for legal fees which was in the process of being adjudicated on. We understood that he had undertaken legal work on his own behalf and had been successful. He stated that he was entitled to be reimbursed for this work. The issue appeared to be the rate which should be applied as he considered that the hourly rate should be that of a lawyer rather than a litigant in person.
155. Mr Ukegheson stated that once he had this money, it would contribute to his income. He was asked about the lease for the Children's Home and the possibility of possession proceedings being brought. He repeated the arrangements that he had discussed with Mr Cass. He stated that the arrangements for any child would be made in consultation with the LA, however, he had back-up plans such as a good relationship with a fellow children's home provider who could place these children, or if necessary, the use of his own four bedroom home.
156. Mr Ukegheson considered that the failure to register his home had a detrimental impact on his health, his home and family life, and his finances which in his view was the fault of Ofsted. However, he considered that once the home was registered the business was financially viable.
157. We heard from Mr Ukegheson about the staffing and management structure at the home. He informed us that the information was set out in the Statement of Purpose. The staffing structure was that there was a director, and then the nominated individual which was Cheryl Carter, Jacqueline Rainsford Butler would be the practice manager/deputy manager who would assist, Mr Ukegheson as the registered manager. He stated that he had intended that eventually, after a period of probation, Ms Rainsford Butler would apply to be the registered manager. However, until then she would have day to day management responsibility although he would provide her with supervision.
158. Mr Linus Itoya would act as her deputy. He also referred to Samuel Ajoba and Wendy Hickson who would be senior carers and Wendy Brown and Adam Tremelo. Mr Ukegheson considered that the staffing level was adequate. He did not have actual contracts of employment or starting dates as he could not confirm these until the premises were registered. However, he was confident that he would have sufficient staff, as they were mainly employed had other jobs under zero hours contracts where the notice period was less than a week. Mr Ukegheson was asked about the changing names of staff, and was referred to an attachment to an email which he had received from Karen Fleming of The Sugarman agency.

159. He stated that he had discussions with the agency that had provided him with details of the staff that were available, however he did not know if those same staff were still available. He stated that it had been his intention to delegate the finding of suitable staff to the agency. He stated that all of the staff had previously worked with young people, had relevant qualifications and had employment histories, and criminal records which were checked by the agency. The only thing outstanding was up to date references. He stated that these files had been available at Ofsted's visit.
160. Mr Ukegheson was asked about his intentions, and why, he wished to eventually appoint Ms Rainsford Butler as manager. He referred to his medical conditions which were set out in a letter from Dr Kalkat and also the on-going Coronavirus situation he asserted that because of his medical conditions he was entitled to work flexibly.
161. Mr Ukegheson stated that he would supervise Ms Rainsford Butler by checking the records of the home and looking at weekly reports. He stated that no email would go out without him being copied into it. He stated that he did not need to be at the home 24/7; he would look at the logs and would check the office.
162. He was asked by Mr Toole about his correspondence with the agency on 7 July 2020, in which he set out that he was looking for someone who would be able to manage the property from the outset. Mr Toole queried how this fitted in with the plans that Mr Ukegheson had put forward. Mr Ukegheson stated that the regulations did not require him to be full time and pointed out that the regulation provided for more than one manager.
163. Mr Ukegheson dealt with the CCTV. He stated that the starting point was that the law does not forbid the use of CCTV in children's homes. It was a big building inside and outside. He stated that the use of CCTV would be kept under constant review. He referred to how he had used CCTV at a previous home. A child had gone missing during handover, and as a result of reviewing the CCTV, Mr Ukegheson had been able to establish what had happened and who was at fault.
164. He also stated that CCTV protected the staff from potentially false allegations and protected the children by ensuring that they were not getting into fights. However, the use of CCTV would be reviewed in consultation with the LA. Mr Ukegheson denied that this would be used in place of sufficient staffing; as there would always be two staff available with the children during hand over.
165. Mr Ukegheson denied that he had stated at the Fit Persons Interview "I am not like those other Nigerians I don't tell lies..." He stated that this remark had not been stated at the Fit Person Interview. He had actually made this remark in an email. However, he did not deny the sentiment behind it.
166. He stated that as a Nigerian, the issue of corruption was discussed extensively in his county and that he had always spoken out against corruption. He stated that it was not a matter over which he could bury his head in the sand. He

referred to recent events which had happened in Nigeria. He denied that his comments affected his ability to deal fairly with children from diverse backgrounds or affect his ability to respect their diversity. He referred to his previous experience managing children's homes and working for local authorities.

167. We hear from **Cheryl Carter**, who had provided a witness statement on the Appellant's behalf. Ms Carter had qualified as a social worker in 1987; she had worked in the London Borough of Lambeth and had worked with children who run away from home. She had also worked as the Registered Manager for a Shaftesbury Children's Home. She had been an inspector for the National Care Standards Commission for Social Care Inspections, and had then been an Ofsted inspector between 2007 -2014, after which she had retired.
168. Since her retirement she had worked as a Regulation 44 Independent Visitor, and since 2019 she had also held an appointment as a Responsible Individual for a children's home in Lewisham. She had also been present at the Ofsted Registration visit and her evidence dealt with what she stated were inaccuracies within the notes of interview.
169. She stated that under the heading; *Leadership and Management of the Home* the notes were inaccurate. She stated that under the Key Lines of Enquiry (KLOE) she was asked about Jacqueline Rainsford Butler and whether she was aware of the issues surrounding her application at a previous home to be registered as the manager. Ms Carter stated that she had said that she was fully aware of the situation. However, to her surprise this was not explored by the inspectors who chose not to take this any further with her.
170. Ms Carter was also concerned that the issue with CCTV had been overstated; she agreed that CCTV would not operate in such a way as to replace a member of staff; she agreed that it should never be used instead of a full staffing complement. However, she drew a distinction between CCTV in the perimeter, and the hallway and other areas such as the kitchen. She stated that the CCTV in the kitchen had been disabled. She said that the nature of the children who were likely to be placed in the home were not the type of children who would wander around in their night clothes.
171. She referred to the home for which she was the Responsible Person which also had CCTV. She stated that the home had got its first child in March and when the second child arrived, the second child was unhappy with CCTV, as a result this home had responded by blocking CCTV in the communal area. She stated that this information was omitted from her interview. Ms Carter stated that in her experience black people/managers were more likely to be the subject of allegations and needed to be more careful, CCTV was an important safeguard for them against unfounded allegations.
172. She stated that her interview did not deal with Regulation 5; however, she stated that she had no problem with colleagues and would have no difficulty working with them.

173. She stated that inspectors should be aware that Ofsted were in a position of privilege and power. Ms Carter stated that she had said that Ofsted needed to be more consistent with its judgements. She had seen cases where homes were described as 'Inadequate' and the same set of circumstances would be rated 'Requires Improvement'. She was also aware that some homes would be rated as 'Good', which in her view should have been rated 'Requires Improvement'. She stated that professionally she had always maintained good professional relationships with all.
174. She provided evidence about her knowledge of Mr Ukegheson, and his plans to manage the Children's Home. She had known both Mr Ukegheson and Ms Rainsford Butler professionally from carrying out her role as an inspector. She had met Mr Ukegheson when she was carrying out an emergency inspection, he had been the manager at Holly brook and she had considered his practice to be sound, He had also assisted her when she was studying for her MBA.
175. She had also come across Ms Rainsford Butler, professionally and had recommended her to Mr Ukegheson.
176. Ms Carter had assisted Mr Ukegheson when he started looking for property in 2017. Both herself and Ms Rainsford Butler had invested time in helping Mr Ukegheson with furnishing the home, and had also discussed the Statement of Purpose and the Cash flow forecast. They were invested in the success of the home. Although she did not have a detailed knowledge of the financial arrangements Mr Ukegheson had made for the home, she had no concerns about Mr Ukegheson's abilities to manage the home or its eventual viability.
177. She stated that she had been devastated when registration was refused as she felt this reflected on her professionally as did Ms Rainsford Butler who had been made to feel like she was a disqualified person although this was not the case.
178. Ms Carter noted that a very similar staffing structure to the one Mr Ukegheson had used as a proforma had operated in the home, where she was the Nominated Individual, which had been registered by Ofsted.
179. She did not consider the occupancy set out by Mr Ukegheson was unrealistically high. Ms Carter stated that in practice her experience was that a home which was registered in late autumn/ or the beginning of the year was unlikely to have its first occupant until late March/early April, as this was when LA budgets meant that children were more likely to be placed in new accommodation. Given this she considered that the Children's Home would also have a slow steady start.
180. She was not concerned by the management arrangements, as Ms Rainsford Butler would act as a practice manager, in her experience this was not unusual. This would occur over a 5 to 6 months period, after which she would take over management of the home. However she had been unaware that Mr Ukegheson was looking for a potential registered manager via the agency.

181. Ms Carter was asked how she would look to improve the relationship with Ofsted. Ms Carter stated that she would look to have a professional relationship with Ofsted and that this had never been an issue for her before as she was used to working within the requirements of the regulations and quality standards.
182. She saw Mr Ukegheson as at times becoming carried away, being passionate about what he was doing. She saw her role as being an older, cooler head and felt that she could curb some of Mr Ukegheson's passion. She saw her role as being initially hands on which meant that she would attend placement meetings and would look to put her stamp on the home.

Closing Submissions

Mr Toole on behalf of Ofsted

183. Mr Toole set out the powers open to the Tribunal under section 21, of the CSA. He stated that we could grant the appeal, dismiss the appeal, or grant the appeal with conditions. However, he stated that we could not impose conditions which were in effect requirements to meet the standards for registration, if the Appellant was not meeting those standards at the date of hearing.
184. In his submissions any condition imposed by us could not duplicate the requirements, however we could impose conditions such as the category of children or the numbers of children to be admitted to a home.
185. He stated that the burden of proof was on NDRUKL to satisfy the Tribunal that the standards for registration were met. Mr Toole submitted that NDRUKL failed to meet the standards for registration.
186. Mr Toole referred to the evidence of Mr Ukegheson as demonstrating that the requirements for registration were not met. He reminded us that Mr Ukegheson had stated that the premises were not fit for purpose and that he had stated that he did not currently work at the premises because they were not safe, because of the fire doors.
187. Mr Toole stated that NDRUKL had a lease for the premises, which had an option to purchase. Nothing in the lease demonstrated that Mr Ukegheson had the ability to occupy the premises after 12 November 2020, if he failed to purchase the premises. He noted that Mr Ukegheson had not paid any rent for over 8 months and that there were on-going proceedings. Mr Toole asked the rhetorical question of how such a living arrangement could be in the best interest of the child?
188. Mr Toole referred to Mr Ukegheson's role as registered manager under regulation 32. He stated that if was up to the registered manager to demonstrate suitability, commitment and passion for the role. However, Mr Ukegheson was saying that he did not want to be at the home on a day to day basis. He stated that Mr Ukegheson was wrongly relying on Regulation 30 as

permitting more than one person to manage the premises. This was where there was more than one registered manager for example, were there was a job share. He stated that the role of Registered Manager could not be delegated.

189. He stated that there was a requirement that the registered manager was visible and was in day to day charge. Mr Toole referred to the Statement of Purpose, Mr Ukegheson had set out that his role was to have general management oversight with Jacqueline Rainsford Butler having day to day management. He stated that it was a criminal offence to manage a home on a day to day basis without being the registered manager, under section 11 of the C S A.
190. Mr Toole referred to regulation 32, he reminded the Tribunal that Mr Ukegheson had stated that there was appropriate staffing and that all of the necessary employment checks were in place. Mr Ukegheson had provided training certificates however no documents which included relevant employment checks had been included in the bundle.
191. In respect of financial viability of the home, Mr Toole stated that the Appellant's approach could be characterised as chaotic. He stated that it was vital to ensure that any children's home that was registered was financially viable. He stated that a dangerous situation would be created if the home collapsed, as this would cause instability and disruption for the children placed at the home. Mr Toole referred to the difference between the two cash flow forecasts provided by Mr Ukegheson. He noted that Mr Ukegheson had stated that cash flow forecast mean nothing and that they did not have to be accurate. However, Mr Toole submitted that the cash flow forecast should represent your best estimate, not something that you made up.
192. He reminded us, that Mr Ukegheson stated that he had never run a home at full occupancy, and yet in his January 2020 cash flow, he had changed his mind and had a cash flow which required four children by month four. Mr Toole referred to the lease and the rent arrears; he stated that Mr Ukegheson was currently in arrears of rent of some £20,000. He stated that Mr Ukegheson had failed to demonstrate that the home was financially viable.
193. Mr Toole referred to CCTV. He noted that Cheryl Carter's view of CCTV was very different to that of Mr Ukegheson. He also referred to the remarks made by Mr Ukegheson concerning race and his manner of categorising people.
194. In respect of regulation 5, Mr Toole noted that Mr Ukegheson may have complaints about Ofsted, however the manner in which he dealt with them was unprofessional. He pointed to Mr Ukegheson's personal and work history. He stated that there was a history of dispute after dispute; he referred to current disputes with Mr Ukegheson's current landlords and Barclays Bank. He referred to the fact that when there was a delay with the Bounce Back Loan, Mr Ukegheson had written to the bank referring to being subjected to "humiliating and degrading conduct".
195. Mr Toole noted that although Mr Ukegheson had stated that he had built good

relationships with others, he brought no evidence from a Local Authority or LADO to confirm this. He noted that Mr Ukegheson in his dealings with people, demonstrated that he did not respond well to advice. He referred to when Philip Cass had asked him about reasonable adjustment and he had immediately castigated him. Mr Toole stated that we are all human beings and deserve to be treated with dignity and respect. He stated that Mr Ukegheson had, in his view crossed this line many times.

196. He submitted that the Application for appeal should be refused.

Mr Ukegheson on behalf of NDRUKL Limited

197. Mr Ukegheson agreed with Mr Toole about the powers open to the Tribunal, however his submission was that the appeal should be allowed as to do otherwise would be unfair and unjust.

198. He reminded us that the Tribunal were not bound by the NOD. He stated that the registration should be unconditional. He stated that the registered person must recruit staff, however they could do it themselves or delegate this to someone else.

199. Mr Ukegheson submitted that he had recruited highly skilled and qualified staff. He stated that staff files were available at the interview and said that Mr Cass was lying about this.

200. He referred to regulation 7 of the Children's Home Regulations which he submitted permitted the registered person to permit a person to start work if the requirements are met. He stated that all reasonable steps needed to be taken, Regulation 32(6) meant that you did not have to complete all enquiries as long as reasonable steps had been taken. He stated that in respect of staffing there was himself, Cheryl Carter and Jacqueline Rainsford Butler, and Mr Itoya. He had also recruited staff that held level 5 qualifications.

201. Mr Ukegheson referred to his role as registered manager. He stated that it was not necessary for him to be within the home 24/7. Mr Ukegheson stated that his arrangements were practical; Jacqueline Rainsford Butler was experienced, and he was a person with a disability and needed to work flexibly. He stated that he would still be going to the Children's Home on a daily basis and, would be looking at the records. He would also have Linus Itoya as another senior member of staff.

202. He reminded us of his previous history with Ofsted, yet he considered that he was now being made to look like an incompetent manager. He denied being unprofessional. He stated instead that he had been victimised by Ofsted. Mr Ukegheson stated that he had demonstrated that he had worked with others and managed a team within Barking and Dagenham. He had also worked with other professionals for the welfare of children he had liaised with schools, GPs and dentists effectively on behalf of children. He had worked well with Stuart Cogsgrove, although he had questioned why it was necessary to complete a paper version of the form.

203. In respect of CCTV, he stated that this was not against the regulations. He referred to Regulation 24 and stated that it could be used for monitoring and surveillance as long as consent had been given by the LA. He stated that the CCTV had not been activated in the kitchen.
204. In respect of Section 47, he had now instructed a financial advisor. He stated that he was not drawing a salary and had the bounce back loan which was payable next year. He also had credit cards and arrangements with creditors. He had gone to the High Court and applied for an injunction in respect of the potential forfeiture of the lease. He had a lease to buy agreement and would be able to get a bridging loan to purchase the property until he could obtain a mortgage.
205. He reminded us of Cheryl Carter's evidence that she was aware of children's homes which had been started with less money. He also had an invoice factoring arrangements. In respect of the repairs at the home he stated that this could be undertaken for less than £500.00.
206. He stated that it was wrong that Ofsted was seeking to punish him because he had called Ofsted out as being a racist organisation.
207. At the conclusion of the hearing, we asked the parties whether they were satisfied with the means by which the hearing had been conducted. Both acknowledged that there had been technical issues; however, both stated that there were satisfied with the means by which the hearing had been conducted.

The Tribunal's conclusions with reasons

208. We assessed the evidence that we had heard from witnesses and the witness statement we had read, which had been accepted as evidence.

Jacqueline Rainsford Butler and Linus Itoya

209. We noted that the witness statements of Ms Jacqueline Rainsford Butler and Mr Linus Itoya were agreed by Mr Toole on behalf of Ofsted, and that they had been willing and available to give evidence. Given this we did not consider that we needed to adjust the weight to be attached to their evidence. We accepted their evidence in its entirety. We accepted that they had the necessary skills qualifications and experience to carry out their roles within the Children's Home.
210. We were satisfied that there were no issues concerning Ms Rainsford Butler's employment which would have prevented her from being deployed as a deputy. We noted however, that although Mr Ukegheson had expressed his intention to hand over the registered manager's role to her at some point, she was never formally put forward for this role to Ofsted. We heard no evidence concerning any barrier to her carrying out this role, neither was it necessary for us to consider her fitness to do this role. Accordingly, we make no findings concerning this, save that any proposal for her to be registered manager would

have been assessed at a Fit Person interview by Ofsted.

Mr Phillip Cass

211. Mr Cass gave his evidence over more than 2 days. We noted that he accepted that there was a gap in his knowledge concerning the protected characteristics under the Equalities Act. He accepted that the registration process had been slow. He readily acknowledged the delays that were caused by the application systems used by Ofsted. He was also willing to acknowledge Mr Ukegheson's concern that there was a lack of diversity within the management structure of Ofsted. We found that as an inspector, he demonstrated a good all round knowledge of managing a children's home and also had experience working within children's services of a local authority. We found his written evidence to be detailed. We found him to be credible, consistent and balanced in his oral evidence.

Ms Corrine Barker

212. Ms Barker's role had been largely to document the meeting, however she was also an inspector and her judgement concurred with that of Mr Cass. We accepted that there may have been discrepancies in her notes, as pointed out by Mr Ukegheson; however, we do not consider that these discrepancies were so material that they make her contemporaneous interview records unreliable. We found her to be helpful; however, we considered that at times she did not appear to be as objective in the giving of her evidence.

213. We noted that although Ms Barker had recorded that Mr Ukegheson made a remark about the integrity of his fellow Nigerians, Ms Barker in her evidence stated that she felt that this remark might be repeated to children. However, neither she or Mr Cass explored this remark further with Mr Ukegheson. As Mr Ukegheson accepted that he had expressed those views, we have not found it necessary to decide whether this remark was stated by Mr Ukegheson or within an email that was available at the interview. However, we accepted Ms Barker's evidence as being given in good faith and that she gave her evidence to the best of her recollection.

Mr Nicholas Mc Mullen

214. We accepted that as reviewing officer he followed a fair process and gave detailed evidence as to how and why he had arrived at his conclusions. We found him to be a reliable witness.

Ms Rachel Holden

215. We also accepted the evidence of Ms Holden. We noted that although she set out clear concerns that led her to uphold the decision, in her oral evidence she came across at times as less objective in her responses. We accepted that she had carried out a fair review of the NOP and the Mr Ukegheson's submissions.

Ms Cheryl Carter

216. We found Cheryl Carter to be a good witness, she had a detailed knowledge of the registration process and had noted discrepancies between the notes made by Ofsted and her recollection of what had occurred. She was also concerned that Ofsted was not always consistent in its decision making. Although Ms Carter acknowledged what she described as Mr Ukegheson's passion and stated that her role would be to keep this in check, she did not appear to accept how this would be detrimental to the business and how it would come across to others. We noted her involvement with the Children's Home from the outset and we find that at times she lacked objectivity. We bore this in mind when considering her evidence.

Mr Ukegheson

217. We noted that in giving his oral evidence there was very little dispute about the factual evidence in this case, and that most of the dispute centred on how the evidence should be interpreted.

218. On the facts, we found Mr Ukegheson to be a truthful witness; he came across as someone who had not tried to conceal evidence, even when it was potentially detrimental to his case. We found that although he came across as truthful, he was not always consistent. We found that he displayed a willingness to overlook, or minimise evidence when it was inconvenient or contradicted his assertions.

219. He told us that the repairs at the property were very minor and insignificant which could be attended to for £500.00. However, his letter to the landlord set out that the premises were defective and dangerous. He told us that the Mr Sugarman Employment Agency would find staff and would pay their salary under a credit arrangement; however, this did not accord with the letter from the agency. Mr Ukegheson also came across as lacking objectivity when considering the business.

220. We were also very concerned that Mr Ukegheson, at times came across as someone who was intemperate during the hearing, both in giving evidence, and in his cross-examination. He described himself as being "passionate". However the manner in which he unfortunately projected this came across as intemperate.

221. Mr Ukegheson is legally qualified, and had decided to represent himself, even though he had qualified colleagues who attended the hearing. In making this decision, he had a duty to the Tribunal in the manner in which he conducted himself. He made a very serious unsubstantiated allegation throughout the hearing referring to Mr Cass as a "White Supremacist." We were presented with no evidence to support this assertion.

222. We noted that Mr Ukegheson was very involved in the set-up and resourcing of the Children's Home he had financially invested a significant sum of money and had incurred debts to obtain registration and operate the Children's

Home. As such he viewed any questions raised by Ofsted and any delays as an attempt to block him in this goal.

223. We took into account our findings in respect of the witnesses when making our decision. We noted that the Applicant bore the burden of proof and the standard was on the balance of probabilities.

224. We considered each of the regulations set out in the grounds for refusal, in turn; we asked ourselves whether at the date of the hearing the Appellant had demonstrated that he was able to comply with the requirements of the Children's Home Regulation 2015.

Regulation 5 (d)

225. In reaching our decision on this standard we considered all of the evidence we heard and the written evidence. Mr Toole in his skeleton argument referred to the need for Ofsted to trust the provider to be cooperative, open and to be able to work professionally alongside Ofsted as the regulator in the best interest of the child.

226. We were referred to a schedule which set out examples of correspondence which the Respondent considered demonstrated Mr Ukegheson had failed to meet this standard. We noted the overall tone of the correspondence. We consider that Mr Ukegheson in his correspondence with Ofsted vented his frustration and a belief that Ofsted was deliberately trying to prevent him registering the Children's Home in a manner in which we considered to be inappropriate.

227. We noted that in the correspondence Mr Ukegheson accused Ofsted of victimisation for returning his application form. Mr Ukegheson indicated that he would be making an official complaint, however no complaint was made by Mr Ukegheson.

228. On the SC2 form, he was asked how he would develop and maintain good working relationships he stated "...I am able to hold other professionals accountable when necessary and required..."

229. We consider that accountability is mutual and only one part of developing a good relationship. We find that Mr Ukegheson failed to *own* his part which included the manner in which he communicated with others.

230. In particular, he was unable to see any reason for the delay apart from a desire to frustrate his registration. In an email dated 24 October 2019, Mr Ukegheson stated that *"...Ofsted will drag me into it just to cause me stress and distress with the hope to break me down psychologically... This is totally unfair, unreasonable and less favourable treatment due to my colour, nationality, race and disability."* We noted that Mr Ukegheson provided no evidence for this assertion.

231. We heard throughout the hearing that Mr Ukegheson found Mr Cass's query

about whether he required reasonable adjustments offensive.

232. On 17 December 2019 he wrote *“I just want you to STOP being patronising to me, accept facts that I send to you and stop trying to frustrate me...Please I am sick and tired of being harassed and humiliated by you or other Ofsted official. Treat like (sic) a human being an not an imbecile...”*
233. We heard a detailed explanation from Mr Cass concerning the reason that he had raised this query.
234. Mr Ukegheson refused to accept this. He was unable to consider the possibility that he may have misjudged Mr Cass in this regard. Mr Ukegheson saw the relationship with Ofsted in a way which was entirely one sided. He did not appear to accept that when problems arose, even if he considered the fault to be with Ofsted, he had an obligation to continue to resolve the situation, This, in our view, is wider than merely offering to mediate.
235. Mr Ukegheson sought in his evidence to demonstrate to us that he had in the past had a good relationship with Ofsted and that he was able to work constructively with the local authorities and others, on behalf of children. He referred us to letters that he had written to the London Borough of Barking and Dagenham placement manager introducing himself and the Children’s Home. (7 November 2018)
236. In his application to become the registered manager, Mr Ukegheson stated: *“... the previous Ofsted reports which are public documents shows my competences, knowledge and experience of managing children’s homes and ensuring good outcomes especially in safeguarding. My greatest strength is the joint working relationship that I develop with other relevant person's in carrying out my functions as a registered manager...”*
237. We considered the Ofsted reports for the previous homes that Mr Ukegheson had managed. It was clear that Mr Ukegheson was considered to be a good manager and that he had achieved some success, of which he was rightly proud.
238. We also heard from Mr Ukegheson, and saw evidence that he was able to work constructively with others in order to benefit children in his care. However, on the evidence before us, this appeared to be entirely based on situations where there was a lack of challenge, or disagreement from others towards Mr Ukegheson. We noted that Mr Ukegheson was not able to demonstrate to us that he could deal with situations in which parties disagreed with him or challenged him in a manner in which we consider to be constructive.
239. We found that in his evidence, Mr Ukegheson appeared to express a belief that a professional relationship with Ofsted outside of regulatory inspections, was optional. He did not appear to accept that this requirement was a continuous one, which applied in every interaction, even when in dispute with Ofsted, including at the outset when dealing with registration, even if he had concerns about the way in which his registration was handled.

240. Mr Ukegheson did not accept that although the system was cumbersome and slow, he may have contributed to the delays by the changes that he had made. If he did not accept this, then he had the option of availing himself of the complaints procedure to set out what he saw as his legitimate grievances so that they could be resolved.
241. We saw in the Scott Schedule that Mr Ukegheson had underlined the words “as appropriate” to indicate that it was only necessary to develop a relationship with Ofsted or other bodies *as he thought appropriate*.
242. We reject Mr Ukegheson’s approach; we find that there is a duty which is not suspended when a dispute arises. We find that there is a duty to deal with disputes and disagreements constructively and professionally; we find that this includes the choice of language and the words that are used. On the evidence before us, we find that Mr Ukegheson failed to meet this requirement, and did not demonstrate to us at the hearing that he would be able to meet this requirement.
243. We noted that there were concerns about Mr Ukegheson’s use of what was considered to be racial stereotyping of Nigerians. This allegation was considered both in the context of Mr Ukegheson’s ability to comply with regulation 5 and regulation 13 (1) (a) and (b). We find that although Mr Ukegheson expression was unfortunate, culturally Mr Ukegheson may have lived with a racial stereotype which although unspoken, existed, concerning Nigerians being dishonest. Although this was unspoken this does influence the way in which many organisations deal with and interact with Nigerians (of which Mr Ukegheson is one) who seek to do business. He may have found himself having to counter this negative assumption. The fact that he spoke of this directly, means that this is a view he may have felt he had to counter.
244. We consider that as Ofsted inspectors, either Mr Cass or Ms Barker could have dealt with this negative stereotype directly by pointing out that this was negative stereotyping contrary to the ethos of Ofsted and that such stereotypes would form no part of their judgement. Accordingly, we do not find that Mr Ukegheson saying this means that he is unable to have regard to the range of needs of children
245. We were concerned that Mr Ukegheson repeatedly in correspondence referred to Mr Cass and others as “White Supremacists”. We considered this to be highly inappropriate. We consider that his use of this phrase should also have been challenged by Ofsted; his persistent use of this term without evidence satisfies us that he is unable to set aside his feelings and deal with Ofsted in a way which would foster a professional relationship. Mr Ukegheson has not demonstrated that he is at this time able to meet the requirements in regulation 5.
246. We noted in answer to a question from Mr Toole, that Mr Ukegheson stood by the language and expressions that he had used. We find that Mr Ukegheson in failing to recognise the inappropriateness of his language demonstrated to us that at the date of the hearing he did not meet the standard necessary so

as to comply with Regulation 5.

Leadership and Management Regulation 13

247. The leadership standard requires the manager to inspire and lead the culture of the organisation. We heard that Mr Ukegheson although applying to be the registered manager had no plans to manage the Children's Home in the medium term. He saw his role as having an overview whilst the day to day management would be carried out by Jacqueline Rainsford Butler.
248. At his fit person interview, he was asked: "Will you be in day to day charge?". Mr Ukegheson stated that the practice manager will be "responsible for the daily operations of the home under the supervision and direction of the Director/registered manager and Responsible Individual".
249. Ofsted Inspectors asked during the fit person interview "*...Are we registering the person in day to day charge?*" In answer to this it was established that Mr Ukegheson would be delegating his responsibilities to the practice manager once she completed her probationary period. Mr Ukegheson was asked how he would balance his work as a legal consultant, and his university studies, and his role as owner of the Children's Home.
250. Mr Ukegheson responded that Ms Rainsford Butler would be the manager and "*...in time I will take a step back I will give notice to Jackie about my availability each week. ...Jackie must copy Mr Ukegheson into emails he will be in charge of the home. Mr Ukegheson will not be in court every day...*" In his email dated 30 January 2020, entitled "*Very Important Update*", Mr Ukegheson set out that he would work on shift if "*....absolutely necessary and required in the early days of the home*". The same document set out his intention to pass over the responsibility of the management of the home to Ms Rainsford Butler after she had passed her probationary period.
251. We accepted the evidence of Mr Nick McMullen and the submissions of Mr Toole that it is an offence to manage the premises without being registered. Given this Ms Rainsford Butler could not act as the manager, and the arrangements set out by Mr Ukegheson failed to comply with Regulation 13.
252. Mr Ukegheson in his evidence insisted that it is not necessary for him to be physically at the home on a day to day basis and referred to his entitlement as a person with a disability to work flexibly. We do not accept that this complies with the Leadership and Management requirements.
253. We refer in particular to Paragraph 10.7 *Guide to the Children's Homes Regulations*, "... Those with leadership or management should be visible and accessible to staff and able to deliver their leadership/management responsibilities." 10.20 "The registered person is reasonable present for ensuring that all staff consistently follow the homes policies and procedures for the benefit of children..." including the quality standards April 2015.
254. We find that at the date of the hearing Mr Ukegheson was unable to satisfy us

that the requirements in respect of leadership and management were met.

255. We also noted that in the NoD, Ofsted found that the premises was unsuitable for six children, and determined that this would not create a nurturing environment.
256. In his evidence, Mr Ukegheson in answer to a question from Mr Toole confirmed that it was his intention to admit six children to the home (one on an emergency basis, as required). This was also set out in Mr Ukegheson's email dated 25 September 2019. However, during his fit person interview Mr Ukegheson referred to an email in which he had agreed that the registered number of children would be five. We heard that both Mr Cass and Ms Barker considered that the communal space at the home was insufficient for five children. Mr Cass in his witness statement stated that when he inspected the property, although the home contained five good sized bedrooms, one of the rooms was not suitable.
257. We accepted Mr Cass's evidence that this was likely to reduce the number of children the home could accommodate. It was further noted that although there was a bedroom on the ground floor, Mr Cass considered the size and layout of the lounge and dinner room to be too small. We heard that this was discussed with Jacqueline Rainsford Butler and Mr Ukegheson who agreed that they would come up with alternative plans.
258. We noted that following the Ofsted interview on 23 January, Mr Ukegheson stated that he would provide an updated business plan. The configuration of the home as observed by Mr Cass and Ms Barker was not challenged by Mr Ukegheson at the hearing, neither did he provide information as to how he would improve the communal space. Further we have not seen any document confirming that this issue has been considered and resolved by the Appellant at the date of hearing.
259. We noted that Mr Ukegheson in his email following the fit person interview, agreed to change the downstairs bedroom into another lounge with a long-term plan to convert the annexe into a lounge and develop another room for multi-purpose room. However, the budget forecast for January 2020, provided for an income of £40,000. an income projection of £60 000 from month four. On the basis of the forecast this would mean that four children were resident in the home from the outset, and by month four this would have increased to six children. We were not provided with any plans or cost of conversion works which would provide additional space.
260. Further we heard no evidence that plans had been put in place to change the layout of the home, neither did he provide, prior to the hearing, an updated forecast to demonstrate that the cost of this work had been provided for. On the evidence before us, at the date of the hearing, we noted that Mr Ukegheson has failed to take Ofsted's findings into account in the plans which were before us. We were not satisfied that the home could provide a nurturing environment for five or six children.

261. We also heard that Mr Cass and Ms Barker were concerned about the use of CCTV and that its use would not provide a nurturing environment for the children within the home. We heard evidence from both Mr Ukegheson and Ms Carter that the plan for the use of CCTV was limited to communal area. They both accepted that the plans would be dependent on consultation with the placing authorities and that the needs of the child within the home would take priority over and above any incoming child. We considered that this demonstrated a degree of flexibility in the planned use of CCTV. Given this, we did not consider that the use of CCTV meant that the standard in relation to regulation 13 would not be met.

Regulation 13 (2) Arrangements for staffing

262. We heard that the proposed staffing for the Children's Home were, Mr Ukegheson, (who had told us that he would be working flexible), and Jacqueline Rainsford Butler and Linus Itoya. We saw evidence of the qualifications and relevant experience of Mr Itoya and Ms Rainsford Butler. We have borne in mind that Ms Rainsford Butler was described as the practice manager, we have accordingly assessed her in this role.

263. We were told that as the registered person Ms Carter would be within the home twice a month, she did however state in her evidence that she would be involved at the outset with placement. We accepted that her role would be important for the safe and effective management of the home. However, she would not be part of the staffing complement.

264. We found that at the date of the hearing this meant that there would be only two full time staff. Regulation 13 (d) requires the home to have sufficient staff to provide care for *each* child. We noted that although Mr Ukegheson's cash flow forecast was based on four children being within the Children's Home. Mr Ukegheson in his evidence dismissed this forecast, on the basis that placing authorities would not place four children from day one.

265. We find that Mr Ukegheson placed too much reliance on the placing authority to regulate the flow of children within the Children's Home. We find that this is Mr Ukegheson responsibility, and that the cash flow should be reflective of the arrangements that he intended to put in place for the Children's Home. As this was the only information before us, we have assessed the sufficiency of the arrangements for four children.

266. We heard that it was his intention to use 4 agency staff, and that he had access to staff from two agencies. We heard that due to the passage of time, he could not confirm that the four staff named at his fit person interview were still available.

267. Mr Cass and Ms Barker stated that they were not provided with any staffing details save for a draft rota. We heard from Ms Carter that a similar rota operated at the home in which she was the registered individual. However, we heard that this home had opened with one child.

268. We are not satisfied on the information before us that appropriate

arrangements were in place to provide for sufficient staffing. We find that although the Children's Home would have a practice manager and deputy, there was a lack of senior and other staff identified for cover or for shifts.

269. We were provided with a letter from Springfield Employment Agency dated 29 January 2020. It was clear that this agency considered that they could provide suitable staff at short notice, however they could not guarantee that the staff would be able to work the 37 hours required although they expressed confidence that between them they could provide cover. We find that this would not provide the required continuity of care as required by Regulation 13(2) c.
270. Although Mr Ukegheson provided the names of some people who would fulfil this role and also provided CVs the information provided of named persons at the date of the hearing and the CVs we were provided with did not tally. We noted the email from The Sugarman Agency which stated that they would have difficulty in placing staff on the terms put forward by Mr Ukegheson. We also had no information of temp to permanent arrangement which would provide for continuity of care.
271. At the date of the hearing there was no information before us of the employment checks which had been undertaken other than Mr Ukegheson's, Ms Rainsford Butler's and Mr Itoya's. We heard that the staffing proposed would necessitate the use of agency workers. We had no information of any individual who would be engaged on a temp to permanent contract.
272. We accepted Mr Cass's evidence that he had not been provided with evidence of employment checks. We were not provided with any evidence that there were staff who had undertaken employment checks who would be employed by the Children's Home, whether directly or via an agency. We had no evidence of an agreement to undertake such checks on behalf of the Appellant. We were not satisfied that the Appellant was able to comply with this requirement at the date of the hearing.
273. Accordingly, we were not satisfied that the arrangements presented to us by Mr Ukegheson would provide continuity of care so as to meet the requirements of Regulation 13(2) e. We find that at the date of the hearing, the requirement in respect of Regulation 13(2) was not met.

Financial Viability

274. We heard evidence from Mr Cass, Mr McMullen and Ms Holden of Ofsted that one of the grounds of refusal had been that Mr Ukegheson was unable to satisfy Ofsted that the business was financially viable. We heard that at that time the cash reserves which were made up of loans in the sum of £35,000 which was considered to be insufficient.
275. The NOD stated, amongst the reasons given was that the projected income was unrealistically high, with a high occupancy projection which was also unrealistic, with unrealistically low financial outgoings.

276. We remind ourselves that in making our decision we should consider the financial position that existed at the date of the hearing.
277. We heard from Mr Ukegheson that part of the financial arrangements was an invoice factoring agreement with Bibby Financial Services. This agreement dated 29 August 2018 was confirmed in an email chain of 20 September 2020. He also provided evidence of the efforts that he had made to obtain a Bounce Back Loan from Barclays Bank, which had been granted in the sum of £50,000.
278. In his evidence, Mr Ukegheson informed us that he had used this loan to repay a loan from *Capital on Top*, as Mr Ukegheson was not able to have two Bounce Back Loans for the same company. Mr Ukegheson informed us that he had repaid Capital on Top and had also settled his credit card debit and currently had a balance of approximately £23,000 in the business account.
279. We heard from Mr Ukegheson that his intention was to use this money as his cash reserves for the Children's Home. In his application for the Bounce Back Loan, Mr Ukegheson had stated that this money was to pay staff salaries; he had also projected an income of £430,000 per annum.
280. We heard from Ms Carter, that it was unlikely that the placing authorities would make any decision to place before the end of the financial year (March 2021). Mr Ukegheson had based his income projection on his having four children from month one. This was the case although Mr Ukegheson stated that he was aware that the LA was unlikely to place four children in this way. However, it was apparent from the evidence that Mr Ukegheson *needed* to have four children in order for the business to be viable as there were no cash reserves outside of the £23,000 left from the Bounce Back Loan.
281. We also noted the email correspondence from the agencies, Springfield Recruitment dated 29.1.2020. There was no information provided to us to confirm that there was a credit agreement with Springfield.
282. We also saw email correspondence from the Sugarman Agency dated 27 February 2020 with indicated that they would be able to provide staff, however the offer of credit was for only 30 days.
283. Mr Ukegheson, in his late evidence provided an email dated 22 July 2020 from Sue Bowman from the agency she indicated that they would be unable to provide a manager or commit to the recruitment campaign which would be needed to secure staff as their situation had changed due to the pandemic.
284. We were not provided with details of a 3 month credit arrangement or a temporary to permanent agreement. We had no evidence that this facility would be available to the Children's Home.
285. We also considered the position concerning the lease of the premises. We noted that the parties had included a Statutory Declaration Prior to Agreement Excluding Security of Tenure on 12.11.19. Mr Ukegheson had written on the agreement that it had been signed in error.

286. We have seen the lease which is also dated 12.11 2019, and the Appellant has an option to purchase which must be exercised in November 2020, however we are also aware from the evidence of Mr Ukegheson that there are almost nine months' rent arrears. We noted that both the gas and the electricity are currently paid on a card system because the utility suppliers were unable to install meters as repairs were needed at the premises. We noted that this is the current circumstances at the premises. There is also an on-going dispute with the landlord and little evidence of any willingness to co-operate with Mr Ukegheson to undertake repairs at the premises.
287. We have considered all of the individual factors which in our view would provide a degree of confidence in the financial viability of a business, such as assets, cash reserves, or appropriate borrowing. We find that there was no evidence of a proper, well thought out financial plan, neither was there a realistic and workable financial forecast with evidence that appropriate advice has been provided by accountants or other financial experts.
288. We heard insufficient evidence that there were appropriate arrangements to pay staffing salaries or that there were sufficient financial reserves. We were also concerned about the lack of security of tenure for the building.
289. Mr Ukegheson referred to the possibility of a bridging loan in order to buy the premises. We make no finding concerning Mr Ukegheson's ability to obtain a mortgage; however, even if he was able to buy the premises, we find notwithstanding this, that the arrangements were so unsatisfactory that the current financial arrangements do not satisfy the requirements of Regulation 47.
290. We made our findings on our consideration of the circumstances which existed at the hearing, on the evidence of the parties. We have found that NDRUKL had not satisfied us on a balance of probabilities that the standards for registration are met. NDRUKL was unable to meet the requirements in regulations, 5, 13, 31, 32 and 47 of the Children's Home Regulations 2015 for registration.
291. We then considered whether the Appellant would be able to do so if conditions were put in place. We accept the submissions of Mr Toole that any conditions put in place should not duplicate or require the Appellant to meet the requirements of the registration in circumstances where the regulatory requirements are not already being met. Further, we were unable to consider any conditions which would meet the requirements. Accordingly, we have decided to dismiss the Appellant's appeal.

Decision:

The Tribunal ORDERS THAT:

- (i) The appeal dated 2 May 2020 is dismissed.
- (ii) The decision of Ofsted to refuse registration in the decision dated 9

April 2020 is upheld.

Judge M Daley

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

Date Issued: 10 December 2020