

THE PROPRIETORS OF AB SCHOOL

and

OFSTED

GROUNDS OF CLAIM

1. By this claim, the Claimant, the proprietors of a school, challenge the legality of a report recently prepared by the Defendant, Ofsted, following an inspection conducted in November 2017. The Claimant claims that the report is unlawful, amongst other reasons, on the grounds of absence of power to conduct the type of inspection carried out, irrationality, failure to take into account relevant matters or taking into account irrelevant ones, reaching decisions for which there was no evidence, making manifest error of fact, pre-determination and actual or apparent bias.
2. The Claimant therefore seeks first permission to bring this claim and thereafter orders quashing the report and a permanent injunction to restrain its publication.
3. By an Order of Master Cook made on Friday 16th February 2018, the Claimant uses initials and the address of its solicitor rather than giving its true name and address. The Claimant applied for that Order for fear that, if it were to come into the public domain that it was suing Ofsted it would become immediately apparent that the Claimant had been the subject of a critical Ofsted report.
4. These grounds are supported by a witness statement which has been prepared in connection with the Claimant's application for interim injunctive relief. That statement also confirms the accuracy of the facts set out in these

Grounds. Appended to that statement is the draft report which is the subject of this claim.

Background

5. The Claimant is a small, private, fee paying school. It was established in 1983. It teaches infant, junior and early years children between the years of 3 months and 11. It is a popular school and, as the report in issue in this case observes, is well-liked by children and parents. Until recently, it was highly successful and well-regarded, having achieved a rating of outstanding both overall and in every individual category in its Ofsted inspection in 2014.
6. An Ofsted report contains an overall grading, which may be Outstanding, Good, Requires Improvement or Inadequate and grading under each of a number of headings. In October 2014, there were 5 headings – leadership and management, behaviour and safety of pupils, quality of teaching, achievement of pupils and early years provision. In October 2014, the school was rated as Outstanding under each of those individual headings and given the same overall rating.
7. Ofsted attended to conduct a further inspection in November 2017. At that time, many of the same people were in place in that the proprietor and many of the teachers are the same as were there in 2014. Even some of the same children were still at school.
8. Ofsted sent a draft report to the school on 22nd January 2018. Its conclusion is that the school is rated overall as ‘Inadequate’. Ofsted used slightly different headings in 2017 – effectiveness of leadership and management; quality of teaching; learning and assessment; personal development, behaviour and welfare; outcome for pupils and early years provision. Under all but one heading, effectiveness of leadership and management, the school was rated as Good. But its rating under that heading and its overall rating was the lowest possible, Inadequate.

9. The school would have been disappointed by a rating of ‘good’ but even though it would have disagreed, it would not have sought to bring a claim in relation to such a conclusion.
10. However, the school’s case is that Ofsted’s conclusions and its rating of Inadequate are so seriously wrong and the way it approached the report so objectionable that the report is wrong in law.

Grounds of Challenge

(i) Power to conduct the inspection

11. Under the Education (Exemption from School Inspection) (England) Regulations 2012, schools are exempt from inspections under s 5 of the Education Act 2005 (‘the Act’) if they were awarded the highest grade in their most recent inspection: reg 4.
12. Since the school had been awarded a grade of outstanding, it was exempt from an inspection under s 5. It could only have been inspected under s 8 of the Act. This inspection was made under s 5. It was a 3 day inspection, as s 5 inspections are. Section 8 inspections last one day. As such, it was an inspection of a type which Ofsted did not have the power to carry out.

(i) Pre-determination and actual or apparent bias

13. When the chief inspector arrived, she told the proprietor that as an independent school, even though it had been judged as outstanding in previous reports, the Claimant would now be judged inadequate or at best good.
14. That was unlawful because it involved a pre-determination – a decision prior even to the commencement of the inspection that the Claimant would not achieve the same grade which it had formerly but that it would, by definition, be downgraded.

15. In the light of the lead inspector's comments, a fair minded observer would think that there was a real possibility that the decision maker had pre-determined the matter.
16. Further, these comments indicated a view about either the Claimant or the class of school to which it belonged, independent schools, which indicate actual or apparent bias against either the Claimant or independent schools.

(ii) Rationality, relevant and irrelevant matters, reaching findings for which there was no evidence and manifest error of fact

17. Under this and subsequent headings, the Claimant complains of various findings which it says are irrational or which involve taking into account irrelevant matters or ignoring relevant ones or which involve manifest errors of fact or reaching findings for which there was no evidence. Several of these allegations could fall under more than one of the headings. So, for example, a case in which a decision was made for which there was no evidence might also be advanced as a manifest error of fact or as an irrational decision. For the purpose of exposition, the Claimant seeks to identify separate errors, but without prejudice to the contention that the same error is capable of having more than one legal consequence or giving rise to more than one argument.

(a) Irrationality

18. The Claimant submits that several decisions were irrational in the sense that the reasoning is internally contradictory or that the conclusion defies reason and so is Wednesbury unreasonable.
19. Looking at the report overall, in all but one category, the school was rated 'Good', yet the overall rating was Inadequate. It was only leadership and management that was regarded as inadequate, despite the fact that the school's leadership and management must logically have contributed to the findings of good under other headings.

20. Within the one element in which the school was rated as Inadequate, Effectiveness of Leadership and Management, there are internal contradictions which render that conclusion irrational.

21. The Claimant agrees that safeguarding is a prime concern. As to that, the report that safeguarding is not effective because the proprietor has not remained up-to-date with safeguarding practice. But it then refers to the school's published safeguarding policy, which, of course, contains the school's understanding of safeguarding requirements and says that, 'the policy is appropriate and meets current requirements'. The school cannot at the same time meet current requirements and yet not be up to date. The conclusions are internally inconsistent and thus irrational.

22. The report alleges that

'The proprietor has not ensured that staff and leaders are sufficiently well trained to spot the signs of both abuse and neglect. The schools processes for reporting such concerns and ensuring appropriate action is taken are not sufficiently well developed.'

This omits to refer to a discussion between the proprietor and inspector concerning children about whom the proprietor had concerns about. The proprietor told the inspector about 2 cases and confirmed that there are clear and on-going examples of the school working with social services and raising concerns where needed. One case [REDACTED]

[REDACTED]

[REDACTED] It is difficult to see and is not explained how, on that basis, it can be said that processes are insufficiently developed.

23. The report alleges that

'The proprietor has not ensured that suitable accommodation is provided for the short term care of sick and injured pupils. Although

the school has a medical room this does not meet requirements as it does not include a washing facility and is not near a toilet.’

The medical Room was next to the secretaries’ office with access to their washing facilities and toilet. This arrangement was the same as existed at the time of the previous inspection and did not call for any adverse comment. No reason is given why that which was not formerly a cause for concern was now so treated. No reasoned basis is given for this change of view and the lack of any reasons, in the light of what had been said in 2014, renders this irrational. Since the last report, the school had converted another room to provide a medical room with its own WC and washing facilities.

24. The report gives a specific example of safeguarding as a tap which it said gave rise to a risk of scalding. What it omitted to say is that the sink in question is behind a locked door which one must use a code to access such that the tap cannot be reached by children. It is irrational in those circumstances to refer, in the context of safeguarding of children, to that tap. It is also just wrong to say that the sink is used to provide first aid to pupils.
25. The report suggests that the school did not have an appropriate system of assessment in place. But at the inspection, inspectors were showed the school’s ‘pupil tracker’ system which it uses to assess pupils. The assessment system was praised in the 2014 report which said that the inspectors’ work ‘confirms the accuracy of the school’s tracking and assessment’. That was part of the provision then rated as outstanding. There was simply no basis to say that an assessment system was not in place. This comment was contradicted by evidence presented on the day. It was incumbent on the inspectors to engage with the question why, if there had been a good assessment system in 2014, the same school, under the same proprietor and with many of the same teachers had abandoned that in 2017. The inspectors did not engage with that. They said that the assessment system needed to be developed, but this was the same assessment system which had been in place and which had been praised in 2014. This conclusion lacked evidence and was wholly unreasonable.

26. Under the heading quality of teaching, learning and assessment, the report records that ‘teachers’ expectations of what pupils can achieve are not high enough’. But the same report also says, two paragraphs above, that:

‘Teachers have high expectations of pupils in terms of their behaviour and how pupils should present their work. Pupils respond well to these high expectations and this is reflected both in their work and how they conduct themselves around the school.’

The criticism referred to is irreconcilable with the praise in the paragraph quoted with the consequence that the criticism lacks a rational foundation.

27. The school therefore challenges certain of the key findings, in particular under the heading of leadership and management which appears to have led to the overall conclusion.

28. In addition, it notes that the report observed under the heading of the effectiveness of leadership and management that:

- the proprietor had created a welcoming and friendly school which pupils enjoyed attending; that respect for others had a high priority; children were taught well how to behave and were polite, friendly and confident
- pupils were prepared well for life in modern Britain and had ‘excellent attitudes’ towards those with protected characteristics
- the school had an appropriately wide curriculum
- almost all information was provided to parents on request; and
- parents were very positive about the school

29. In those circumstances, even if other criticisms were well-founded, it would be internally inconsistent and irrational to categorise effectiveness of leadership and management as Inadequate. At worst, it would be a very good school with some features that required improvement. But if all or even some of the challenges to the negative findings are right, to describe leadership and management and the school as Inadequate is irrational in the sense of not being a judgment open to Ofsted.

30. Moreover, in circumstances where all the other headings were ‘Good’, it must logically follow that the or a major reason why they were good was the leadership in the school. Thus to describe leadership and the school as Inadequate was Wednesbury unreasonable.

(b) Decisions based on no evidence or manifestly wrong

31. Under the heading of leadership and management, the report says that no two or three year olds currently attend the school. This is just factually wrong and indeed at the inspection, the school provided its database of all pupils which included children of that age. There was no evidence for this conclusion.
32. The report contains criticisms of the nursery. But the inspectors had no basis to criticise the nursery because they declined to inspect it. Ofsted had previously treated the nursery and the rest of the school as separate entities; the nursery was inspected separately in 2015, for example. On this occasion, the inspectors said that they would not inspect the nursery as it was registered separately. It follows that there could be no evidential basis on which to criticise the nursery.
33. For example, the report says that there is no place for children to take a nap nor any place for changing nappies in the nursery. This is just wrong as a matter of fact, but in circumstances where the inspectors did not inspect the nursery, there could be no basis for that conclusion.

(iii) Failure to take into account relevant matters

34. The Ofsted Inspection Handbook requires Ofsted to take into account a number of matters in coming to its conclusions. In the case of its report into the school, Ofsted omitted to take into account the following matters:
- (i) It failed to request or consider the school improvement plan as required by paragraph 39 of the Handbook.
 - (ii) It failed to make arrangements for a meeting to discuss the school’s self evaluation as required by paragraph 60 of the Handbook.

- (iii) It did not observe pupils conducting extra curricular activities nor in a range of activities outside normal lessons as required by paragraphs 65 and 77.
- (iv) It did not offer feedback to teachers as required by paragraph 68. Had it done so, teachers would have been able to correct the errors identified in the report.

Remedies

- 35. The Claimant's case is that each of the above allegations are well-founded but that it does not need to establish all of them to succeed in its claim. If even some of these allegations are well-founded they so undermine the report that its publication would be unlawful on public law grounds.
- 36. Accordingly, the Claimant seeks an order quashing the report and a permanent injunction to restrain publication of the report.

Dated this 19th day of February 2018

Statement of truth:

The Claimant believes that the facts stated in these Grounds of Claim are true:

Signed:

Claimant's solicitor.

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