



Neutral Citation Number: [2020] EWHC 2031 (Admin)

Case No: CO/2373/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/07/2020

Before :

MR JUSTICE JULIAN KNOWLES

Between :

**THE QUEEN ON THE APPLICATION OF
CORNERSTONE (NORTH EAST) ADOPTION
AND FOSTERING SERVICE LIMITED (trading
as CORNERSTONE)**

Claimant

- and -

**THE OFFICE FOR EDUCATION, CHILDREN'S
SERVICES AND SKILLS**

Defendant

Aidan O'Neill QC and Ben Silverstone (instructed by Ai Law) for the Claimant
Sir James Eadie QC and Sarah Hannett (instructed by Ofsted Legal) for the Defendant

Hearing dates: 6 May 2020

**DECISION ON APPLICATION FOR
PERMISSION TO APPEAL**

Mr Justice Julian Knowles:

1. By an application dated 9 July 2020 Cornerstone applies for permission to appeal to the Court of Appeal against my judgment of 7 July 2020. Paragraph 1.6 of its application says that my judgment is vitiated by errors of law, and goes on to list no less than 11 suggested grounds of appeal. It is no exaggeration to say that virtually every aspect of my judgment is challenged. Paragraph 1.7 of the application also argues that I was wrong not to quash the Ofsted report *in toto*, as opposed to applying a ‘blue pencil’ to the part of the report which I found to be unlawful. Further, in [1.8] Cornerstone applies for a stay of the order pursuant to CPR r 52.16(a) pending the determination of this application. It argues that there would be irreparable consequences in the absence of a stay: cf *Hammond Suddard Solicitors v Agrichem International Holdings* [2001] EWCA Civ 2065.
2. In a response dated 13 July 2020 Ofsted argued that permission should be refused and a stay should be refused. It argues ([1]) that none of the twelve grounds of appeal advanced by Cornerstone has a realistic prospect of success. It says that I dealt correctly with the matters Cornerstone now raises.
3. I have taken time to carefully consider the competing arguments advanced by the parties. It seems to me that my conclusions that Cornerstone’s recruitment policy discriminates directly and/or indirectly against gay men and lesbians, and that such treatment is not justifiable as being a proportionate way of achieving a legitimate aim, and that this conclusion does not breach Cornerstone’s Convention rights (ie, subparagraphs (3), (4), (9) and (10) of [1.6] of Cornerstone’s application) raise issues that are of sufficiently general importance to warrant consideration by the Court of Appeal. I am not persuaded that I am necessarily arguably wrong, but it seems to me there is good reason for these significant issues to be considered by the Court of Appeal. I therefore grant permission in relation to these grounds of appeal under CPR r 52.6(1)(b) (some other compelling reason for an appeal to be heard). I refuse permission on all the other grounds of appeal.
4. In relation to the application for a stay, I refuse it essentially for the reasons advanced by Ofsted at [16] onwards of its response.
5. The case law (summarised in the White Book) makes clear that the general rule is that a stay will not be granted, and that it is for the applicant to show irreparable harm. Temporary inconvenience will not suffice. I agree with Ofsted’s submission that Cornerstone has been found to be operating a discriminatory recruitment policy. That is a serious matter and should not be left unremedied. It is open to Cornerstone to revise the Code of Practice to make clear that married same-sex couples will be accepted as foster carers. If the appeal is successful, the current version can be reinstated.
6. I make no order as to costs of the application for permission.