

## Care Standards

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

[2019] 3857.INS

Hearing via Video Link on 23, 24, 25 & 26 June and 14 July 2020

#### BEFORE

Tribunal Judge - Timothy Thorne  
Specialist Member – Libhin Bromley  
Specialist Member- Maxine Harris

#### BETWEEN

Proprietor of Homeschool (A)

Appellant

-v-

The Secretary of State for Education (R)

Respondent

#### DECISION

##### The Appeal

1. A appeals to the Tribunal against R's decision of 26 September 2019 to impose a "relevant restriction" under s. 117(1)(c) of the Education and Skills Act 2008 ("the 2008 Act"), to the effect that no new pupils be admitted to the School.

##### Restricted Reporting Order

2. The Tribunal makes a restricted reporting order under Rule 14(1) (a) and (b) of the 2008 Rules, prohibiting the disclosure or publication of any documents or matter likely to lead members of the public to identify the users of the service in this case so as to protect their private lives.

##### Background

3. The School is registered as an independent school, and provides day education for up to five pupils aged between 5 and 11 years old. The School's proprietor, Mr Colin Rankine, is also the School's Headteacher. His wife, Mrs Mawuena

Rankine, is variously described as a teacher at the School, and also the School's business manager. As at January 2020, the School had two pupils on the school roll. It is part of the Homeschool Social Enterprise, a registered charity.

4. There are no other staff employed by the School, and the School does not have a governing body. It has one trustee. The School is situated on the ground and first floors of a town house in a residential area and has a Christian religious ethos.

### **Late Evidence**

5. At various stages during the hearing Mr. Rankine submitted as new evidence various emails which dealt variously with, the Department of Education's policy of registering independent schools, the Early Years Framework, documents from parents expressing their desire to have Homeschool named on their child's EHCP and a news report about a local councillor accused of anti-Semitism who accused colleagues of racism.
6. In relation to all of this new material, the Tribunal applied rule 15 of the Tribunal Procedure (First Tier Tribunal) (Health Education and Social Care Chamber) Rules 2008 and took into account the overriding objective as set out in rule 2 and admitted the late evidence (as and when such applications were made) as it had some relevance to the issues in dispute.

### **Evidence (Summary & Analysis)**

7. Ms. Katherine Eddy represented R. A was represented by Mr. Colin Rankine. The hearing was conducted via video link. The panel took into account all the written and oral evidence that was presented. It also read and took into account the skeleton argument submitted by R and the documentation submitted by A.

### **Evidence called on behalf of the Respondent**

8. The evidence that gave rise to R's decision was given by the following 4 witnesses:
  - a. Deborah Jenkins - Ofsted's Lead Inspector for the Inspection on 20 and 21 November 2018.
  - b. Tim Hill - Ofsted's Lead Inspector for the Progress Monitoring Inspection on 21 May 2019.
  - c. Catherine Crooks - Ofsted's Lead Inspector for the Progress Monitoring Inspection on 9 January 2020.
  - d. Peter Swift - Deputy Director and Head of the Department for Education's Independent Education Division.
9. The following is a summary of R's evidence and the panel's analysis thereof. Peter Swift outlined the following **brief chronology** of the School's inspection history which was not disputed by A and which the panel is satisfied is accurate:

- a. 3 October 2014: The School is first registered with the Department for Education to provide day education for up to five boys and girls aged between five and 11 years;
- b. 20 – 21 April 2016: First full inspection carried out. Ofsted assesses the School as “inadequate”; the independent school standards (“ISS”) are not met
- c. 7 July 2016: The School is required by Statutory Notice to submit an Action Plan by 7 September 2016, in view of the non-compliance with the ISS identified at the April 2016 inspection
- d. August 2016: The Appellant submits an Action Plan in response to the 7 July 2016 Notice
- e. 14 September 2016: Emergency inspection carried out. Ofsted assesses the School as not having met all the ISS that were checked during the inspection
- f. 9 November 2016: The School is required by Statutory Notice to submit an Action Plan by 14 December 2016, in view of the non-compliance with the ISS identified at the September 2016 inspection
- g. 26 November 2016: The Appellant submits an Action Plan in response to the 9 November 2016 Notice
- h. 24 November 2016: Ofsted evaluates the School’s August 2016 Action Plan as “not acceptable”
- i. 20 December 2016: Ofsted evaluates the School’s November 2016 Action Plan as “acceptable with modifications”
- j. 10 February 2017: The Appellant’s Action Plans of August 2016 and November 2016 are rejected by the Secretary of State
- k. 8 March 2017: Progress Monitoring Inspection (PMI) carried out; Ofsted assesses the School as having met the ISS
- l. 20 – 21 November 2018: Full inspection carried out; Ofsted assesses the School as “inadequate”; the ISS are not met
- m. 21 January 2019: The Appellant is required by Statutory Notice to submit an Action Plan by 21 February 2019, in view of the non-compliance with the ISS identified at the November 2018 inspection
- n. 20 February 2019: The Appellant submits an Action Plan in response to the 21 January 2019 Notice
- o. 25 March 2019: Ofsted evaluates the School’s 21 February 2019 Action Plan as not acceptable
- p. 2 May 2019: The Appellant’s 21 February 2019 Action Plan is rejected by the Secretary of State
- q. 21 May 2019: PMI carried out; Ofsted assesses the School as not having met the ISS checked during the inspection
- r. 26 Sept 2019: Secretary of State decides to take enforcement action, and imposes a relevant restriction to the effect that no new pupils may be admitted to the School
- s. 9 Jan 2020: PMI carried out; Ofsted assesses the School as not having met the ISS checked during the inspection.

10. **Deborah Jenkins** gave evidence about her role as Ofsted’s Lead Inspector for the Inspection on 20 and 21 November 2018. The panel also read the resultant report for the November 2018 inspection. The witness adopted her witness

statement in which she explained that during the inspection she found that the standards the School was judged not to have met were as follows:

- a. Part 1. Quality of education provided [Standards 2(1), 2(1)(a), 2(1)(b), 2(1)(b)(i), 2(1)(b)(ii), 2(2), 2(2)(a), 2(2)(b),2(2)(d), 2(2)(d)(i), 2(2)(h), 2(2)(i) and 3]
  - i. The School did not have appropriate schemes of work which took into account progression of different pupils' learning, abilities and special educational needs.
  - ii. Schemes of work did not promote mutual respect and tolerance of those with different faiths and beliefs.
  - iii. Pupils did not have sufficient opportunities to develop their physical, scientific and creative skills because PE, music and science curricula were not suitable for pupils' needs and abilities.
  - iv. Literacy and numeracy work was not matched to the pupils' abilities and showed little progression in learning. Primary-aged pupils were copying work from GCSE textbooks but showed no understanding of their work.
  - v. Personal, Social, Health and Economic Education (PSHEE) curriculum was not relevant to the needs of the children and did not have regard for the protected characteristics of the Equality Act 2010, nor did it reflect the School's aims.
  - vi. Pupils' work did not demonstrate effective preparation for life in British society.
  - vii. Pupils were not making sufficient progress in their learning because most of their time was spent copying text from books, worksheets or the Bible. Pupils were given work with little guidance on how to complete it or how it linked to other pieces of work.
  - viii. Learning resources were poor and did not foster self-motivation because pupils had few opportunities to discuss their learning as they were expected to work in silence.
  
- b. Part 2. Spiritual, moral, social and cultural development of pupils [Standards 5, 5(a), 5(b)(v),5(b)(vi), 5(c), 5(d), 5(d)(i), 5(d)(ii), 5(d)(iii)]
  - i. The School had no policy for, or plans to show how pupils will learn to appreciate and respect other cultures, or those with protected characteristics under the Equality Act 2010.
  - ii. There was evidence within pupils' work that they were engaging in activities relevant to the headteacher's other work, for example his aspirations to become an MP/Prime Minister. Pupils' work appeared to promote the proprietor headteacher's interests, which he frequently expressed to inspectors. Pupils' work made reference to the funding of 'black private schools' which noted that "DfE and Ofsted should fund black private schools". Pupils had been misled by the proprietor into believing that the School exists for black children. This is in breach of the Equality Act 2010 as the School cannot (and did not in its admissions policy) discriminate against admitting groups of pupils on the basis of their skin colour. The School is registered only as a faith school, with a Christian ethos. In

addition, the proprietor was promoting his own political views to the pupils, with no evidence of consideration of other views.

- c. Part 3. Welfare, health and safety of pupils [Standards 7, 7(a), 7(b), 11, 12, 13, 14, 15, 16, 16(a), 16(b)]
- i. ii. The School's safeguarding policy did not adequately reflect Secretary of State's guidance at the time.
  - ii. The policy did not include reference to local risks and mitigation measures.
  - iii. There was lack of evidence of follow up to a safeguarding concern which had been raised by inspectors.
  - iv. Records indicated that cream had been applied to a pupil by the proprietor, however, no records of parental consent for application of creams could be found.
  - v. There was inadequate record keeping and sharing of information with the local authority when pupils left the School.
  - vi. Hot water provided a scalding risk.
  - vii. The proprietor did not engage with any external agencies to ensure pupils' medical needs were met.
  - viii. The local authority designated officer had expressed concerns about the proprietor's professional conduct.
  - ix. The proprietor had not implemented the health and safety policy effectively. There was no fire risk assessment of the premises. Fire doors were kept locked with a key which was kept on the person of the proprietor and the business manager.
  - x. Contents of the first aid kit had expired.
  - xi. Electrical checks had not been carried out on some portable appliances.
  - xii. Pupils were left unsupervised on a number of occasions during the inspection.
  - xiii. The admissions register was formed of two separate documents and made no provision for information on leavers' destination.
  - xiv. Completed risk assessments were generic and did not identify specific risks. They did not, therefore, adequately reduce risk.
  - xv. Sharp knives in the School kitchen, to which the pupils had access, were not kept safely.
- d. Part 5. Premises of and accommodation at Schools [Standards 23(1), 23(1)(a), 25, 27, 27(a), 28(1), 2(1)(d), 29(1), 29(1)(a) and 29(1)(b)]
- i. The toilet was not provided for the exclusive use of pupils. The witness was directed to use the pupils' toilet and the team inspector also witnessed a visitor to the School using the same facilities.
  - ii. The temperature of the handwashing facilities in the toilet posed a scalding risk to pupils.
  - iii. Pupils spent most of the school day in a small, windowless room, with no ventilation. There was one bulb to light the entire room and this was insufficient for the activities carried out in there over an entire school day.

- iv. The pupils were not permitted to play in the garden as the proprietor claimed that building work had commenced. There was a discrepancy of accounts between the pupils and the proprietor about how often they were taken to the park. The proprietor maintained that they went to the park at breaktimes, whereas the pupils reported that it was more like once a week.
  - e. Part 6. Provision of information [Standards 32(3), 32(3)(b) and 32(3)(f)]
    - i. The proprietor did not provide any meaningful information regarding the provision for pupils who had English as an additional language.
    - ii. The proprietor had not published the number of complaints registered at the School during the previous year.
  - f. Part 8. Quality of Leadership in and management of schools
    - i. The proprietor did not ensure that all the standards were met consistently. As a result the pupils' health, welfare, safety and well-being were compromised.
    - ii. School improvement planning was weak. There was no external scrutiny of the School. No evidence could be provided of meetings having been held with the trustee.
    - iii. The proprietor was distracted from effective leadership of the School by other external interests and pursuits. He was observed to be on his mobile phone and social media with matters unconnected to the running of the School during lessons.
11. Mr. Rankine cross examined the witness at length and ascertained her experience as an inspector and teacher in the past, as well as her understanding of the Equality Act. Ms. Jenkins also answered questions about (inter alia) knife crime, the funding of schools, the efficacy of exams and racial discrimination in society and the educational system.
12. She reiterated that Ofsted inspectors apply the same approach to the regulations as outlined in the inspectors' handbook irrespective of the racial makeup or religious complexion of a school. She did not know if the building had undergone structural alterations and explained that after the school was originally registered, Ofsted had an ongoing obligation to ensure that the standards set out in the regulations were maintained.
13. She said that during her inspection Mr. Rankine had told her that he kept the fire exits locked and that he had the keys. In addition he was unable to provide her with copies of the fire risk assessment. She denied that she had been told to "crack down on home schools".
14. She agreed that the behaviour of the pupils was judged to be very good as was their attendance records. During her inspection she observed 4 children undergoing tuition. All the teaching took place in the ground floor room which was a converted garage. She was aware of rooms upstairs (including a games room and medical room) but they were not used for teaching.

15. The panel found that Ms. Jenkins was an honest and dependable witness who had the necessary knowledge, expertise, training and experience to give evidence that was relevant, unbiased and reliable. The panel gave her evidence substantial weight and where it contradicted that of Mr. Rankine the panel preferred her account. The panel do not accept that the allegation made by Mr. Rankine that this witness was a racist who lied in her report and to the Tribunal has any foundation in truth.
16. The panel then heard from **Tim Hill** who gave evidence about his role as Ofsted's Lead Inspector for the Progress Monitoring Inspection on 21 May 2019. The panel also read the resultant report for the inspection. The witness adopted his witness statement in which he explained that during the inspection he found that, while some of the standards unmet at the previous November 2018 inspection were now met, a significant number of standards remained unmet. Additionally, one standard that was met in November 2018 was now unmet. This related to Part 1 paragraph 3(g) of the independent school standards – the use of an assessment framework to plan teaching. He found that the assessment framework did not enable teachers to make accurate assessments.
17. In particular he noted that evidence in pupils' books showed a poor quality of work and mistakes and that the classroom was located in a converted single garage with no natural light or ventilation or windows. The room was cramped and untidy with cleaning materials left on the floor.
18. In addition, the headteacher said that the School 'has a lot of kids' who only do a few hours a day but the School is only registered for five pupils. Also, Mr. Hill observed that the step out of the back door (which was the only other exit out of the house if there was a fire) was very loose and presented a trip hazard.
19. He also noted that a very small bedroom upstairs was used as a game's room/music room and medical room. The windows were not properly secured and the headteacher locked them in his presence. Moreover the fire alarm call point was on the ceiling, which was too high for a child to reach.
20. In addition the witness reviewed a range of pupils' work, in mathematics, English, history, ICT and PSHE. In his professional opinion work was not well matched to needs e.g. Year 5 pupils were studying contract law. Mathematics work was more suited to the age of pupils, but there were pages of incorrect work and he observed evidence of poor progress in learning over time. The witness observed that one boy's reading was poor.
21. There were also concerns about safeguarding arrangements. For example, leaders had not considered how pupils could raise concerns about the proprietor / headteacher. Furthermore, leaders had not planned the curriculum sufficiently well to ensure that pupils were taught how to keep safe.
22. Ms. Mawuena Rankine told the witness that there were no current schemes of work because the School was in the process of moving from old to new

schemes. The witness reported his findings to Mr. Rankine and explained where there were still unmet standards. The witness explained each standard still not met, as well as further standards that were met previously, but were now not met.

23. Mr. Rankine cross examined the witness at length and ascertained his experience as an inspector and teacher in the past, as well as his understanding of the Equality Act. Mr. Hill also answered questions about (inter alia) knife crime, the funding of schools, the efficacy of exams and racial discrimination in society and the educational system. He denied that the Department of Education wanted to stop home schooling.
24. He was shown a letter from the local Fire and Rescue Service but stated that it did not change his assessment. He agreed that there was no evidence that any pupil had been injured or bullied at the School. He was asked about the racial profile of her Majesty's Inspectorate of Schools and said that "I call out racism at every opportunity."
25. He agreed that the behaviour of the pupils was judged to be very good as was their attendance records. No concerns had been raised by parents. During his inspection he observed 3 children undergoing tuition. All the teaching took place in the ground floor room which was a converted garage. Mr. Rankine had never claimed to him that any teaching occurred elsewhere in the house. He was also aware that children had published books.
26. The panel found that Mr. Hill was an honest and reliable witness who had the necessary knowledge, expertise, training and experience to give evidence that was relevant, unbiased and reliable. The panel also gave his evidence substantial weight and where it contradicted that of Mr. Rankine the panel preferred his account. The panel do not accept that the allegation made by Mr. Rankine that this witness was a racist who lied in his report and to the Tribunal has any foundation in truth.
27. **Catherine Crooks** then gave evidence about her role as Ofsted's Lead Inspector for the Progress Monitoring Inspection on 9 January 2020. The panel also read the resultant report for the inspection. The witness adopted her 3 witness statements in which she explained that she had "extensive experience of carrying out inspections in independent schools and small schools. As we would do in other schools, we adapted the inspection process to fit the school's situation. During the inspection we collected a broad range of evidence, focusing on the standards that were judged to be unmet at the previous progress monitoring inspection."
28. Based on the inspection she concluded that, while one of the standards unmet at the May 2019 inspection was now met, a significant number of standards remained unmet.
29. In particular, she recorded that the main classroom was a small windowless room, which was a converted, integral residential single garage. There was no



opportunity for the pupils to leave the room except to go to toilet. When asked if the pupils can get some fresh air at breaktime the headteacher said 'yes' and then said they are just going to the park now for a PE lesson. The witness opined that this was clearly unusual as the pupils were surprised and did not have any PE kit and the only resource they had was one old flat football.

30. Mr Rankine, the headteacher stated that there were two registered pupils and an additional two children who attend every day for tuition, who were not registered. The witness confirmed that because the tutored pupils had been attending Homeschool each school day during normal school hours for over eight months, the tuition they received made up the majority of their education. Therefore they should have been included in the school's admissions and attendance registers.
31. The witness reviewed various documents, including School policies, the School's improvement plan, safeguarding information and risk assessments. The witness spoke to the business manager about safeguarding. There were some questions she could not answer. During the inspection, the pupils worked independently and without any direct teaching, modelling or discussion observed. The headteacher said that pupils must 'find things out for themselves'. He stated clearly that he does not teach, model or demonstrate but gives the boys the 'fishing rod' to do it for themselves.
32. The witness stated that as a result, pupils' progress and development of skills is very slow. Mr. Rankine stated that the pupils will not have deep knowledge until they do things many times. He suggests that the pupils will 'repeat the whole year's work during the summer break if they choose to come to summer school'. Then 'they will know things better.'
33. The witness recorded that due to little teacher input, pupils often repeat the same errors and misconceptions go uncorrected. The witness gave a number of examples which are included in the evidence base.
34. The witness also noted that there was no clear curriculum policy in place. The long-term plans published on the school's website were not consistent with the approach to the curriculum outlined in the school's prospectus. Neither matched what was happening in the classroom on a day-to-day basis. No medium- or short-term planning was available during the inspection. There was no evidence to show how the curriculum is planned to meet the pupils' aptitudes and needs. Pupils worked from a range of revision textbooks often intended for older pupils. There was little opportunity for pupils to build on what they had worked on previously because they jump from one topic to another, often on a daily basis. The textbooks were predominantly designed for revision and therefore pupils developed an overview of topics, but they did not build their skills or understanding effectively. The witness gave a number of examples. Which are included in the evidence base.
35. The witness undertook a tour of the School and the garden with Mr. Rankine. She noted that a number of health and safety hazards identified in previous

inspections, still existed. Although locked during the inspection, upstairs windows could open widely so pupils could potentially fall. Broken paving outside the back door and across the garden (part of the emergency fire exit from the building) continued to present a trip hazard. There was no evidence that electrical appliances were regularly checked to ensure that they were in a safe condition. The button to activate the fire alarm was on the ceiling and too high for pupils and some adults to reach. This meant that A had not ensured compliance with the Regulatory Reform (Fire Safety) Order 2005.

36. She also stated that on a number of occasions during the inspection, Mr. Rankine referred to institutional racism in front of the pupils for example in relation to the curriculum and schemes of work which he said were not fit for purpose, are institutionally racist and are failing children of colour. In front of the children he stated that 'boys like these' end up in jail due to institutional racism. The witness asked Mr. Rankine to explain his curriculum but he was unable or unwilling to do this. He also said that he was not willing to divulge to Ofsted information about the levels children are achieving and "it will be saved to take to the court hearing".
37. He said, "Ofsted is flawed and does not allow our children of colour to excel". The witness asked Mr. Rankine if he accepted the findings of the inspection. The headteacher said, he accepted the findings but stated again the system is flawed. He also stated that 'institutional racism is the elephant in the room. We must acknowledge that they (pupils) have been failed by outstanding schools. We have taught them to read and write.....It is a flawed system and the media know. They will know more when we release our programme on it all. We know that black children are deliberately failed, consistently failing and not doing well enough. They get thrown out of schools.' He added that "we are deliberately starved of funding and pupils are not being given an education. This leads to crime.'
38. In her 2<sup>nd</sup> and 3<sup>rd</sup> witness statements she commented on new evidence submitted by Mr. Rankine. She was shown an email from Dave Marsh (Fire Safety Inspecting Officer, West Midlands Fire Service) to Mr Rankine, dated 8 January 2019, and a letter from Antony Dixon (Fire Safety Inspecting Officer, West Midlands Fire and Rescue Authority) dated 28 March 2019. She did not change her assessment. She noted that this new evidence related to a visit made to the School on 26 March 2019, which was over 8 months prior to her inspection in January 2020. In addition she noted that her findings closely mirror those of Tim Hill when he inspected the school in May 2019.
39. She was also shown the following documents and a summary of her responses thereto are set out below:
  - a. Twenty-five documents covering schemes of work across the curriculum – "I do not recall seeing the documents.....During the inspection the headteacher and the teacher both told me that they did not have any schemes of work, which reflected what was being taught in the school and that it would take 60,000 hours to write such schemes." "In summary, the schemes of work [now

produced] are incomplete and are not fit for purpose. The information presented reflects low expectation, is not appropriate for the age, aptitudes and needs of the pupils and contains no information on the ways in which schemes would be adapted to meet pupils' need.

- b. A sample of two pupil progress trackers produced by the Appellant – “No such information was made available to me during my inspection. The progress trackers do, however, support the information given to me by Mrs Rankine during my inspection.....that she had been assessing and recording pupils' progress during spring and summer terms 2019.” Moreover, the trackers contain “no detail on the actions needed to address any weaknesses identified since September 2019. This is despite the fact that the need for intervention has been identified. There is no evidence that any interventions have taken place, much less the extent of any impact.” “Nothing in the progress trackers.....now provided changes my assessment of the extent to which the school meets the ISS.”
  - c. A document purporting to record baseline test results and follow up testing results of a sample of pupils – “It is not, in my opinion, possible to say whether the pupils have all made significant improvements from the baseline and follow-up tests provided. For example, in mathematics, the tests were for pupils in Year 4 but were taken when the pupils were in Year 5. The pupils appear to be retaking the same test. Both pupils appear to be working below age related expectations. This would reflect what was seen during inspection.” Moreover “the data submitted was 12 months old at time of my inspection.” The English test did show improvements but pupils' “writing and comprehension skills were weaker and below age-related levels. I have therefore concluded that nothing in the.....testing information now provided changes my assessment of the extent to which the school meets the ISS.”
  - d. Photographs of extracts from a hard copy diary – “No diary was shown to me during the inspection, nor was one referred to.” “The diary pages are well over twelve months old and contain very limited detail. It is not clear who wrote the entries and whether or not they relate to the identified needs of a pupil. These exhibits do not alter my assessment of the school's performance against the Independent Schools Standards.”
  - e. Health and Safety policy including a risk assessment template, updated on 14 February 2020 – “I do not know whether the Health and Safety policy is the same or whether it has been updated. But importantly, my concerns at inspection were not with the health and safety policy but rather with its application.”
  - f. The school's improvement plan (SIP) – “The SIP does not record any evidence of impact, and the school has not met its own deadlines. This document does not change anything in relation to my assessment of the unmet ISS.”
40. The witness also explained that when an application to register a school is made to the Department for Education, curriculum documents have to be

provided as part of the registration process. These are not, as was suggested by Mr. Rankine, “approved” by Ofsted. Rather, it is Ofsted’s role to give a judgement at its pre-registration inspection, as to whether the particular standard is likely to be met if the school is registered. In addition, the ISS were significantly revised in January 2015 after the school was registered. Therefore, she stated that the fact that the curriculum documents were viewed as acceptable in 2014 does not mean that they would meet the new standards. She reiterated that schools are required to keep their policy and practice up to date and review in line with revisions to quality standards.

41. Mr. Rankine cross examined the witness at length and ascertained her experience as an inspector and teacher in the past, as well as her understanding of the Equality Act. Ms. Crooks also answered questions about (inter alia) knife crime, the funding of schools, the efficacy of exams and racial discrimination in society and the educational system.
42. She agreed that pupils were encouraged to have high aspirations and be self-confident. She was also aware that they had published books. She was, however, unaware that the school operated a very large foodbank but did not consider it relevant to her inspection. She also stated that during her inspection she observed 4 children undergoing tuition.
43. She denied that Ofsted was institutionally racist and that black teachers were discriminated against. It was put to her by Mr. Rankine that “you targeted my school and your report is just based on pure fiction.” She denied the allegation. It was also put to her by Mr. Rankine that “you are just nit-picking so you can close the school to stop black children being educated.” She again denied the allegation. It was also put to her by Mr. Rankine that “you just wanted an all-white environment and white head teachers.” She again denied the allegation. It was also put to her by Mr. Rankine that “you’re making a judgement on the basis of colour.” She again denied the allegation.
44. The panel found that Ms. Crooks was an honest and consistent witness who had the necessary knowledge, expertise, training and experience to give evidence that was relevant, unbiased and reliable. The panel gave her evidence substantial weight and where it contradicted that of Mr. Rankine the panel preferred her account. The panel do not accept that the allegation made by Mr. Rankine that this witness was a racist who lied in her report and to the Tribunal has any foundation in truth.
45. The panel then heard from **Peter Swift** who gave evidence about his role as Deputy Director and Head of the Department for Education’s Independent Education Division. The witness adopted his witness statement in which he explained the basis of the Secretary of State’s Enforcement Decision which was taken. He explained that the failings set out in the evidence outlined above, taken together with the School’s inspection history, warranted the taking of enforcement action, and that the appropriate and proportionate course would be to impose a relevant restriction under s116(1)(a) ESA 2008 requiring the Proprietor to cease to admit any new pupils.

46. He further explained that the Secretary of State was satisfied that the condition in section 115(4) of the ESA 2008 was met. This was because by a notice dated 21 January 2019 (and so less than 3 years previously) the Secretary of State had required the Proprietor to produce an action plan under s. 114 of the ESA 2008, and the subsequent plan submitted by the Proprietor was rejected by the Secretary of State by notice dated 2 May 2019.
47. In making the decision the Secretary of State had regard to the *Independent Schools: Regulatory and Enforcement Action Policy Statement* (April 2019) (“the Policy Statement”), which states (at paragraph 7) that the Department’s overall policy aim is that in order to safeguard the education and well-being of children, schools that do not meet the ISS must improve rapidly or face enforcement action. The Policy Statement also explains, at paragraph 20, that enforcement action is likely to be taken if a school does not show significant improvement after the first PMI following the submission of an action plan.
48. Paragraphs 26 and 27 of the Policy Statement explain the principles followed by the Department in taking enforcement action, and the main factors pointing towards the taking of enforcement action, which include the seriousness and number of failings against the ISS, the length of time over which the School has not met the ISS and its progress in addressing the failings, a refusal to accept that the standards must all be met, and the impact which enforcement action would have on pupils, parents, staff and the proprietor. The witness stated that each of these four factors was considered before the decision was reached to take enforcement action.
49. The witness stated that the Secretary of State was concerned that the School, despite having received the most recent Ofsted report, did not appear to accept the findings detailed in the report, and hoped that by imposing a relevant restriction in relation to the admission of new pupils, this would provide the Appellant with a strong incentive to ensure that all outstanding failings were remedied as soon as possible.
50. The witness explained why the decision was proportionate because requiring another action plan would not be sufficient to ensure compliance with the ISS, at least not in a timely fashion, given the length of time the School has already been under regulatory action and had failed to meet the ISS consistently. The Secretary of State was also mindful that the Appellant’s previous action plans had been rejected by the Secretary of State.
51. In addition, the Secretary of State concluded that on balance it was not necessary to pursue de-registration at that stage. This was because there were some signs – in particular, the positive outcome of the March 2017 PMI – that the School had been able to improve in the past.
52. The witness also stated that in making the decision to impose the restriction on the School, the Secretary of State gave due regard to his duties under section 149(1) of the Equality Act 2010. In particular, the Secretary of State considered the impact on potential pupils from Christian backgrounds having to find

alternative school places, but despite that impact, enforcement action (falling short of de-registration) was still considered appropriate and proportionate in the circumstances.

53. It was also noted that the Secretary of State arranged for Ofsted to re-inspect the School in advance of the date set for the hearing of this appeal because the Secretary of State considered that it was important that the Tribunal and both parties to proceedings had up-to-date information about the Appellant's compliance with the ISS.
54. The School was, therefore, inspected again on 9 January 2020 and a PMI report was served on the Proprietor on 4 February 2020. The witness stated that "On the basis of this report, the Secretary of State considered that the School is still failing to meet the ISS. The School has made very minimal improvements since the last inspection, in that the lighting is now suitable. Serious failings still remain relating to the quality of education provided, welfare, health and safety of pupils, premises of and accommodation at the School, and the quality of leadership and management."
55. Mr. Rankine cross examined the witness at length and ascertained his qualifications and experience, as well as his understanding of the Equality Act. Mr. Swift also answered questions about (inter alia) knife crime, the funding of schools, as well as and racial discrimination in society and the educational system. He denied that the Department of Education wanted to stop home schooling.
56. The panel found that Mr. Swift was an honest and reliable witness who had the necessary knowledge, expertise, training and experience to give evidence that was relevant, unbiased and reliable. The panel gave his evidence and in particular his explanation of the decision making process substantial weight.

#### **Evidence called on behalf of the Appellant**

57. A called the following witnesses (some of whom have been anonymised) to give evidence:
- a. Mr. Colin Rankine – The proprietor and head teacher of the School
  - b. KS - Parent
  - c. Calvin Warner - Pastor and community leader/youth outreach leader,
  - d. John Michael Harrison - Volunteer teaching assistant/mentor
  - e. AN – Parent
  - f. SD - Parent
  - g. Lionel Muhammad - Community leader, European Region of the Nation of Islam
  - h. Joshua Letford - Supply teacher
  - i. David Simpson - Community leader and Homeschool Social Enterprise outreach volunteer
58. The following is a summary of A's evidence and the panel's analysis thereof. **Colin Rankine** gave evidence and adopted the contents of a document which

was described as his response to the Scott Schedule dated 25/02/2020 and which was dealt with as his witness statement.

59. In it, Mr. Rankine stated (inter alia) that

- j. We teach in a variety of ways including the use of direct teaching
- k. Pupils have all made significant improvement compared to their starting points.
- l. It is not always possible to follow the curriculum to the letter every day
- m. The 'older' books are used to stretch the pupils' knowledge
- n. Windows are kept locked
- o. Pupils are not left unsupervised. The children are not left alone in the classroom. Children go in and out from class to class on their own without supervision. If they need to go to the toilet they are alone, if we are on our way to the park and someone leaves a jacket, they may go back into the classroom as is normal.
- p. The paving was not broken, it is laid in a decorative, ornamental fashion that was passed by the fire department as well as the inspector at the initial registration visit. Mr. Rankine produced a letter from an inspector of the West Midlands Fire Service dated 28/03/19 stating that "a reasonable standard of fire safety was evident in the areas that I saw when I visited your premises on 26 March 2019." The premises were deemed not to be "a high risk."
- q. Pupils are also trained to advise staff in the event of a fire or any other emergency.
- r. The parents of the tutored pupils were going through the process of registering the pupils at the time of the inspection.
- s. Over the years we have been extremely successful in educating and improving the lives of many pupils through our school and tuition services using our current curriculum.
- t. On many occasions the children's work was analysed without any praise for their achievements and refusal to acknowledge their ability to complete work at a GCSE foundation level. This can only be put down to hostile, racial profiling of the children.
- u. We have seen an increase in knife crime and poor mental health. A lack of education also leads to homelessness.
- v. For a school of 5 pupils and 2 teachers, it is not feasible to create a whole new curriculum at once.
- w. The classroom is a sufficient size for a school of 5 pupils. It can fit 4 desks with 8 chairs suitable for primary school aged children as well as a desk for the teacher.
- x. For a school registered for up to 5 pupils, we have a plethora of books, laptops, games and equipment to educate the pupils effectively.
- y. Due to the nature of the inspection, there is no time to teach the children as we have to be available fetch documents and answer questions.
- z. Pupils have been taught to correct errors but as with any learning process, they are bound to make mistakes. The pupils have also produced their own published books.
- aa. We provide age appropriate work as well as advanced work to stretch the pupils. As in conventional classrooms, we discuss topics such as tectonic plates.

- bb. Pupils take part in PE lessons within the classroom. They also have access to several local parks that they use for play and PE purposes.
- cc. The outdoor area is only off limits until building work has been completed.

60. Mr. Rankine was cross examined at length by Ms. Eddy. He said that he only had 2 registered pupils (CN&NN) and neither had Special Educational Needs. He also admitted that other children who were child minded by him joined them to be tutored in the classroom on a regular basis. Only CN&NN were registered as pupils at the school. The other children received the majority of their education at Homeschool but were not registered. Mr. Rankine said that this was because they were registered at other schools. He was asked whether he kept a register of attendees at the School and he said “there are a plethora of registers.” He later said, “we have other children who are not on the register who I teach.”

61. He said that he had reviewed his curriculum in response to Ofsted’s inspections but the documentation he provided to Ofsted was not the document he worked from for the children. He said “I reviewed the curriculum plan and made the adjustments for Ofsted but not the children as they were already on point.” He added, “the changes I made were minimal to meet the administrative requirements of Ofsted.”

62. He explained that “I produced the pupil trackers for Ofsted and not for me.” He later said that the documents he produced to Ofsted were not the real pupil trackers because “I will never disclose such personal documents.” He added, “I use my own methods. I don’t disclose it to Ofsted because they might plagiarise my work. I keep it to myself.” He said the same about the Baseline Assessments provided to Ofsted. These documents were produced by his wife for Ofsted and “I use a completely different system.” He further explained, “all this paperwork and administration gets in the way of teaching. He also said that the only reason he had produced the new curriculum materials was in order to please Ofsted, “but I didn’t implement them because it will be detrimental to the children.”

63. He was asked how it could assist an inspector to “provide them with documents that you don’t intend to use? He replied, “The lunatics have taken over the asylum. People don’t use the Ofsted system to judge the quality of schools.” He later explained that he gave Ofsted documents which contained deliberate mistakes in them so as to be able to catch out Ofsted when they tried to plagiarise his materials.

64. He said that the School had a written curriculum policy and an up to date prospectus but he had failed to submit them in evidence. In relation to the timetable documents he had submitted he stated that he had only produced them for Ofsted’s “administration” and that they did not relate to how he actually carried on the teaching. He also gave similar evidence about the schemes of work he had submitted. These included schemes of work for breaktimes and one which appeared to relate to a different school.



65. He described Homeschool as a “special needs school”. He denied that the documentation he had produced did not meet the regulations and stated, “every child matters and as a Christian I have a right to do what I think is correct.” He emphasised the importance of his pupils copying text by rote and in particular he ensured they copied out word for word the first 3 books of the Bible. He said “you must bring them to the area of subjugation.”
66. He denied that he ever used out of date equipment or materials but also said, “It’s not a crime to use material that’s old. If I deem it should be there, it should be there. End of!” He also re-stated that the Ofsted inspectors were racist and did not like the fact that his pupils were progressing. He stated that Ofsted was institutionally racist and that it was only due to “an accident of birth” that Ofsted were allowed to assess children. In his opinion they were not qualified to undertake the inspections of his school.
67. Mr. Rankine returned to the theme of racism in his closing remarks to the Tribunal when he said, Ofsted “want to exclude me because of my skin colour”, the inspectors’ skin colour clouded their judgement, “we were denied funding by a racist system”, and the “Ofsted inspectors make the Ku Klux Klan and the National Front look like Mother Theresa.”
68. He also alleged that the Prime Minister, Boris Johnson had said that Ofsted was corrupt and the English educational system was institutionally racist. He also said that the inspectors were liars and had filed false reports. There were no problems at Homeschool. He added that the Ofsted inspectors despise the children and try to stop them learning. He ended by saying that nonetheless he forgave the inspectors “for they know not what they do.”
69. In cross examination he also said that the fire doors were not locked with a key but had a self-opening mechanism. He had not told the inspectors this because it was so obvious. He also claimed that the converted garage was not the main classroom which was in fact upstairs in the games room. This was locked during the inspection. It was also used for child minding and had a playpen in it. He later said “I always taught in the room upstairs.”
70. He also denied that the windows were unlocked during the inspection or that children could fall out of them. He accepted that the fire alarm button was too high for children to use but that was not a problem because children were never left unsupervised.
71. He also stated that there was no building works going on in the garden but he chose not to let the children use the area because he had plans for an extension to enable him to take older children.
72. The panel concluded that Mr. Rankine was not a reliable witness. In the opinion of the panel his evidence was evasive, unclear, internally inconsistent and contradicted by the available independent documentary evidence. In particular he gave inconsistent accounts about the following:
- dd. the nature of the windows in his school

- ee. whether the converted garage was used as the main classroom or as a classroom at all. Mr. Rankine's claim that the converted garage was not used as a classroom was also contradicted by his own witnesses as set out below
- ff. whether building work in the garden stopped the children playing in the area
- gg. how many children were tutored in the school, how many were formally registered and why some were not
- hh. The genuineness and reliability of the documentation submitted to Ofsted
- ii. What happened during the inspections and the conversations between him and the inspectors
- jj. Whether the children were left unsupervised at times

73. In addition the panel concluded that there was no basis in fact to the rather wild allegations made by Mr. Rankine that R's witnesses were racist liars who were effectively involved in a conspiracy to close his school down by producing false Ofsted reports and engaging in a conspiracy to pervert the course of justice by committing perjury before the Tribunal. For the reasons given above the panel was entirely satisfied that R's witnesses were truthful, unbiased, and reliable witnesses.

74. Moreover, the panel was concerned that Mr. Rankine had admitted providing Ofsted with false and misleading documents about his school. In the judgement of the panel this further undermines his status as an honest witness who can be relied upon to give a truthful account to Ofsted and the Tribunal. For all of the foregoing reasons the panel was driven to give Mr. Rankine's evidence only very limited weight.

75. The panel then heard evidence from **KS**, the parent of a child at Homeschool. He adopted his witness statement dated 27/02/20 which spoke highly of the school and accused Ofsted of religious discrimination. In cross examination he said that his child was not on the register at Homeschool and was not on the register of any other school either. He thought the child had improved in relation to navigating social space and in his handwriting. He did not believe the Ofsted reports he had read about the school.

76. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.

77. The panel then heard evidence from **Calvin Warner**, a pastor and community leader/youth outreach leader. He adopted his letter dated 25/02/20 which spoke highly of the school, although he had only visited occasionally. He had only ever seen the children being taught in the converted garage.

78. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.

79. The panel then heard evidence from **John Michael Harrison**, a volunteer teaching assistant/mentor. He adopted his letter dated 27/02/20 which spoke highly of the school where he had volunteered to work from January to March 2020 for 2 days a week. He was not a qualified teacher He had only ever seen the children being taught in the converted garage. His opinion about the school was based on his own experiences when volunteered as a teaching assistant for 6 months at primary school some years before and when he was at school himself.
80. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.
81. The panel then heard evidence from **AN**, a parent. He adopted his letter dated 26/02/20 which spoke highly of the school. He said that he thought that his children had enjoyed being at the school and had done well.
82. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.
83. The panel then heard evidence from **SD**, a parent of a child at Homeschool. She adopted her letter dated 04/03/20 which spoke highly of the school. She disagreed with the Ofsted report and thought that her child had done well.
84. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because she was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.
85. The panel then heard evidence from **Lionel Muhammad** a Community leader, European Region of the Nation of Islam. He adopted his letter dated 26/02/20 which spoke highly of the school. He said that he did not think that Ofsted knew about black children.
86. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.
87. The panel then heard evidence from **Joshua Letford** – a supply teacher at Homeschool. He adopted his letter dated 28/02/20 which spoke highly of the school. In oral evidence he said that he worked at the school twice. Once in 2017/18 when he was doing a placement for about two months, as part of his degree in Family, Childhood and Education, and then again earlier this year as a classroom teacher for about one day a week for a month. He confirmed that he does not have a PGCE or Qualified Teacher Status. He said that had briefly

read Ofsted's report on the school but did not agree with it. He said, "the Ofsted reports were not the best, but it's still amazing what they did, running a school out of their home." He saw progress at the school. It had a good "nurturing environment" and "made something out of nothing." He added, "I saw progress and development. Maybe it wasn't as quick as it should have been." He had only ever seen the children being taught in the converted garage. He also said that he had worked at 4 other schools in the past as sports coach, mentor, and teaching assistant. He now worked at a special needs school

88. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because of his limited experience as a teacher and because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.
89. The panel then heard evidence from **David Simpson**, a Community leader, and Homeschool Social Enterprise outreach volunteer. He adopted his letter dated 04/03/20 which spoke highly of the school. In oral evidence he said that he visited the school once a week and noticed that the children had very good behaviour. He explained that all the children "stand to attention" whenever Mr. Rankine spoke. In addition the children were good at praying and could recite the scriptures. His opinion about the school was solely based on his own experiences when he was at school himself.
90. The panel accepted that this witness was honest but nonetheless gave only limited weight to his evidence because he was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.
91. Mr. Rankine had planned to call **Abba Bogale** (a Community leader based in St Martin's Church) to give evidence. However despite numerous attempts to facilitate this witness to attend the virtual hearing via video link and or telephone, the witness was unable or unwilling to log on or phone in. The panel took the view that bearing in mind the time and effort spent in facilitating the input of this witness and the nature and relevance of the evidence this witness could give, that it was not proportionate or in the interests of justice to adjourn the matter again to give further opportunity for this witness to give oral evidence.
92. The panel took into account the content of the email submitted by this witness dated 05/03/20 which stated that Mr. Rankine worked with homeless people as well as running the school. The witness spoke to 2 children at Homeschool and "found them so exemplar in their self-esteem and level of knowledge. It was so mesmerising that we are planning to invite them to come and share their assets with our youth."
93. The panel accepted that this witness was honest but nonetheless gave only limited weight to the evidence because the witness was not qualified to judge the school by reference to the relevant educational standards and had not carried out a full audit of the school and its pupils.

94. The panel also heard closing remarks from Ms. Eddy and Mr. Rankine which we have taken into account.

### **Legal framework**

95. A is an independent school and therefore bound by the standards set out in Schedule 1 to the Education (Independent School Standards) Regulations 2014 (“the ISS”), made pursuant to s. 94 of the Education and Skills Act 2008 (“the 2008 Act”). The ISS are enforced by means of the provisions set out in the 2008 Act at ss 114 – 117.

96. Under Section 114 of the 2008 Act, the Secretary of State may require a proprietor of a registered independent school to submit an action plan for approval, where the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the ISS is or are not being met.

97. Section 115 of the 2008 Act sets out the Secretary of State’s power to take enforcement action. It states:

(1) This section applies to a registered independent educational institution if the Secretary of State is satisfied, taking into account relevant evidence, that one or more of the independent educational institution standards is or are not being met in relation to the institution.

(2) In subsection (1) “*relevant evidence*” means—

(a) the report of an inspection carried out by the Chief Inspector or an independent inspectorate, or

(b) any other evidence in respect of the institution.

(3) The Secretary of State may take enforcement action under section 116 against the proprietor of a registered independent educational institution to which this section applies if either of the following conditions is met.

(4) The first condition is that—

(a) the Secretary of State has, during the period of three years before the enforcement action is taken, required the proprietor of the institution to submit one or more action plans under section 114, and

(b) any action plan required as mentioned in paragraph (a)—

(i) has not been submitted, and the date specified by the Secretary of State under section 114(5)(b) has passed,

(ii) was submitted but was rejected, or

(iii) was approved but was subsequently not complied with.

98. Section 116 sets out the enforcement action as follows:

(1) Where the Secretary of State is entitled under section 115(3) to take enforcement action against the proprietor of an institution, the Secretary of State may—

(a) impose a relevant restriction on the proprietor, or

(b) remove the institution from the register.

(2) The Secretary of State must notify the proprietor of the institution in question of any decision to take enforcement action under subsection (1).

(3) A decision to take enforcement action under subsection (1) does not have effect during the period in which—

- (a) an appeal may be brought under section 124 or 125 against the decision,  
Or
- (b) where such an appeal has been brought, the appeal has not been determined, withdrawn, or otherwise disposed of.

99. Section 117(1) of the 2008 Act lists the relevant restrictions available to the Secretary of State:

(1) In this Chapter a “relevant restriction” imposed on the proprietor of a registered independent educational institution is a requirement that the proprietor take one or more of the following steps by a specified time or by specified times -

- (a) to cease to use any part of the institution's premises for all purposes or specified purposes;
- (b) to close any part of the institution's operation;
- (c) to cease to admit any new students or new students of specified descriptions.

### **The Relevant Standards (the ISS)**

100. The relevant standards said to be unmet are as follows:

#### Curriculum policy, plans and schemes of work

Paragraph 2 (1) The standard in this paragraph is met if—

- (a) the proprietor ensures that a written policy on the curriculum, supported by appropriate plans and schemes of work, which provides for the matters specified in sub-paragraph (2) is drawn up and implemented effectively; and
- (b) the written policy, plans and schemes of work—
  - (i) take into account the ages, aptitudes and needs of all pupils, including those pupils with an EHC plan...

#### Teaching

Paragraph 3: The standard in this paragraph is met if the proprietor ensures that the teaching at the school -

- (a) enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught;
- (b) fosters in pupils self-motivation, the application of intellectual, physical and creative effort, interest in their work and the ability to think and learn for themselves;
- (c) involves well planned lessons and effective teaching methods, activities and management of class time;
- (d) shows a good understanding of the aptitudes, needs and prior attainments of the pupils, and ensures that these are taken into account in the planning of lessons;
- (e) demonstrates good knowledge and understanding of the subject matter being taught;
- (f) utilises effectively classroom resources of a good quality, quantity and range;

(g) demonstrates that a framework is in place to assess pupils' work regularly and thoroughly and use information from that assessment to plan teaching so that pupils can progress.....

#### Welfare, health and safety of pupils

Paragraph 7. The standard in this paragraph is met if the proprietor ensures that -

- (a) arrangements are made to safeguard and promote the welfare of pupils at the school; ...

Paragraph 11. The standard in this paragraph is met if the proprietor ensures that relevant health and safety laws are complied with by the drawing up and effective implementation of a written health and safety policy.

Paragraph 15. The standard in this paragraph is met if the proprietor ensures that an admission and attendance register is maintained in accordance with the Education (Pupil Registration) (England) Regulations 2006

Paragraph 16. The standard in this paragraph is met if the proprietor ensures that –

- (b) the welfare of pupils at the school is safeguarded and promoted by the drawing up and effective implementation of a written risk assessment policy; and
- (b) appropriate action is taken to reduce risks that are identified.

Paragraph 25. The standard in this paragraph is met if the proprietor ensures that the school premises and the accommodation and facilities provided therein are maintained to a standard such that, so far as is reasonably practicable, the health, safety and welfare of pupils are ensured.

Paragraph 29.—(1) The standard in this paragraph is met if the proprietor ensures that suitable outdoor space is provided in order to enable—

- (a) physical education to be provided to pupils in accordance with the school curriculum; and
- (b) pupils to play outside.

#### Provision of information

Paragraph 32(1) - The standard about the provision of information by the school is met if the proprietor ensures that—

- (d) following an inspection under section 108 or 109 of the 2008 Act, a copy of the report of the inspection (if it has been sent to the proprietor) is published and maintained on the school's internet website, and provided to the parents of each registered pupil, by any date specified by the body who conducted the inspection....

#### Leadership and management

Paragraphs 34—(1) The standard about the quality of leadership and management is met if the proprietor ensures that persons with leadership and management responsibilities at the school—

- (a) demonstrate good skills and knowledge appropriate to their role so that the independent school standards are met consistently;
  - (b) fulfil their responsibilities effectively so that the independent school standards are met consistently; and
  - (c) actively promote the well-being of pupils.
- (2) For the purposes of paragraph (1)(c) “well-being” means well-being within the meaning of section 10(2) of the Children Act 2004

### **Right of Appeal to the Tribunal**

101. The right to appeal to the FTT is found under s. 125(1)(c) of the 2008 Act. On such an appeal the FTT has the power under s. 125(6) to:
- (a) confirm the decision,
  - (b) direct that the relevant restriction is to cease to have effect, or
  - (c) direct that the relevant restriction is to cease to have effect and make an order imposing a different relevant restriction on the proprietor.
102. The authorities indicate that it is for A to satisfy the Tribunal that the standards in issue are met as at the date of the hearing. This proposition is supported by the case of *Marshall v Commission for Social Care Inspection* [2009] EWHC 1286 (Admin), which was applied by the FTT in the context of an ISS case in *Beis Aharon Trust v Secretary of State for Education* [2016] UKFTT 0270 (HESC) (at §9), and in *Cityside Primary Trust v Secretary of State for Education* [2016] UKFTT 0587 (HESC) (at §33).

### **Conclusions**

103. For reasons given below the panel concludes that the A has failed to prove on the balance of probabilities that (save in relation to one matter) that any of the standards in issue have been met at the date of the hearing. During submissions, Ms. Eddy accepted that as of now the standard relating to provision of information (Paragraph 32) has been met. However for the reasons given below, the panel agrees with her submissions that no other relevant standard has been met.
104. In relation to each of the unmet standards particularised below the panel concluded that the Appellant had failed to prove they had been met. For the sake of completeness (and in the alternative) the panel also concluded that in relation to each of the unmet standards particularised below the Respondent had proved on the balance of probabilities that they remained unmet. In fact the panel concluded that the evidence was overwhelming that they had not been met.
105. First, in relation to any dispute about whether a standard in issue had been met, for reasons given above the panel accepted the evidence of the witnesses called by the respondent and rejected (or gave limited weight) to the witnesses called by the Appellant. The panel will deal with each standard in issue in turn.



106. Curriculum policy plans and schemes of work (Paragraph 2 (1)): The panel concludes on the evidence that there is no reliable and clear written curriculum policy. Moreover any such policy is not supported by appropriate plans and schemes of work. The long-term plans previously published on the School's website were inconsistent with the approach to the curriculum outlined in the school's prospectus. Moreover the observations of the inspectors about how teaching was actually carried out was otherwise than in accordance with any published document.
107. In addition Mr. Rankine produced only unreliable evidence as to how the curriculum was planned in order to meet the pupils' aptitudes and needs. The diary extracts and other documents (such as the schemes of work) produced by Mr. Rankine are out of date, incomplete and not fit for purpose. The panel agrees with Ms Crooks in her assessment that they reflect low expectations and have not been adapted to meet the needs of the pupils at the school.
108. Moreover, bearing in mind his admission that he submitted false and misleading documents to Ofsted, the panel can give only very limited weight to such documents in any event.
109. Teaching (Paragraph 3): The panel concludes on the evidence that pupils at the school make only limited progress and do not achieve good outcomes. In relation to the documents now submitted by Mr. Rankine the panel notes that there are no entries for NN after July 2019 in English or Science, and no entries for CN since July 2019 in science. In addition there are no references to what actions need to be accomplished to address any weaknesses identified since September 2019. The panel also agrees with the assessment of the Ofsted witnesses that there is a lack of clear, coherent and well-sequenced planning to support pupils' learning. In addition, teachers do not make sufficient use of assessment information to plan and deliver effective sequences of learning for pupils and fail to adequately plan work that is age-appropriate. In the judgement of the panel the evidence establishes that pupils sometimes do not have the prior knowledge necessary to make sense of new learning and therefore do not develop a deep, or secure, understanding of concepts and skills. The panel also notes that these deficiencies in teaching are long lasting and were identified in Ofsted inspections in May 2019 and November 2018 as well as the latest inspection.
110. Welfare, health and safety of pupils (Paragraphs 7, 11, 15 & 16): The panel concludes on the evidence that many relevant safeguards remain ineffective and several health and safety hazards remain. The panel prefers the evidence relied upon by R to that of Mr. Rankine that the upstairs windows open widely and are a risk to pupils who could potentially fall and that there is unsafe paving along the emergency fire exit from the building. The panel also accepts the evidence that electrical appliances are not regularly checked and the fire alarm activation button is too high for pupils and some adults to reach.
111. The panel therefore accepts the finding of the Ofsted inspectors that the School's health and safety policy is not effectively implemented and that A has

not ensured compliance with the Regulatory Reform (Fire Safety) Order 2005. In coming to this conclusion the panel has taken account of the email from Dave Marsh (Fire Safety Inspecting Officer, West Midlands Fire Service) to Mr Rankine, dated 8 January 2019, and a letter from Antony Dixon (Fire Safety Inspecting Officer, West Midlands Fire and Rescue Authority) dated 28 March 2019. The panel gives only limited weight to such documents as they related to a visit made to the School on 26 March 2019, which was over 8 months prior to the inspection in January 2020. Moreover, the extent and nature of the inspections carried out by these individuals is unclear and the makers of these statements were not called to give evidence and be questioned.

112. In addition it follows from the above analysis that the School's risk assessment policy has not been effectively implemented, and appropriate action has not been taken to reduce the risks that have been identified
113. It is also clear to the panel that A has not ensured that an admission and attendance register is maintained in accordance with the Education (Pupil Registration) (England) Regulations 2006. The Ofsted inspectors found and Mr. Rankine admitted that some pupils who attended the School for a period in excess of 8 months, and whose tuition there constituted the majority of their education are not included on either the admissions or attendance registers.
114. The panel notes that these deficiencies are long lasting and were identified in Ofsted inspections in May 2019 and November 2018 as well as the latest inspection.
115. Premises and facilities (Paragraph 25): The panel concludes on the evidence that this standard is not met because of the numerous health and safety concerns set out above. In addition the panel concludes that the standard is not met because of the nature of the main and only classroom in which teaching takes place. The panel accepts the evidence of R's witnesses and indeed most of A's witnesses, that the classroom is located in a small converted garage with no natural light or ventilation. Moreover the panel concludes that the arrangements for outdoor play are deficient as the nearest park is some distance away and there is no accessible space on the premises.
116. Leadership and management (Paragraphs 34): The panel concludes on the evidence that this standard is not met despite the praise given to the school by some parents and others because there is no properly structured curriculum and as the Ofsted inspectors found during each inspection the pupils have gaps in their skills and knowledge. In addition work is not well matched to their needs and abilities, and they make limited progress except in their handwriting and behaviour.
117. In addition the panel agrees with R's assessment that the School's school improvement plan lacks detail, fails to identify how improvements can be made, and lacks measurable criteria as to how such improvements can be judged.

118. The panel notes that these deficiencies are long lasting and were identified in Ofsted inspections in May 2019 and November 2018 as well as the latest inspection.

### **Proportionality**

119. In coming to this decision the panel accepts the explanation given by Peter Swift, the Deputy Director and Head of the Department for Education's Independent Education Division, as to the reasons and methodology of the enforcement action taken by R. In light of all the evidence the panel concludes that R's decision was lawful and proportionate. In coming to this conclusion the panel has balanced a range of factors including the financial and reputational damage to A and the effects on parents who might want to use A's services in the future. Nonetheless the panel concludes that the continued imposition of the "relevant restriction" to the effect that no new pupils be admitted to the School is proportionate and necessary for the reasons given above.

### **Decision**

**The appeal against the continued imposition of the "relevant restriction" under s. 117(1)(c) of the Education and Skills Act 2008 ("the 2008 Act") is dismissed.**

**The continued imposition of the "relevant restriction" in relation to the Appellant, to the effect that no new pupils be admitted to the School, shall continue.**

**Tribunal Judge Timothy Thorne  
Care Standards  
First-tier Tribunal (Health Education and Social Care)**

**Date Issued: 03 August 2020**