

## **First-tier Tribunal Care Standards**

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

**NCN: [2021] UKFTT 57 (HESC)  
[2020] 3957.INS VKinly**

Hearing held by video link  
on 16,17 and 18 February 2021

#### **BEFORE**

**Ms S Brownlee (Tribunal Judge)  
Ms Rachael Smith (Specialist Member)  
Dr Elizabeth Walsh-Heggie (Specialist Member)**

#### **BETWEEN:-**

**Marie-Shirley Coote  
(on behalf of the Proprietor of Promised Land Academy)**

**Appellant**

**-v-**

**The Secretary of State for Education**

**Respondent**

#### **DECISION**

**The Tribunal has made an order pursuant to Rule 14(1)(d) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care) Rules 2008 preventing the disclosure of any matter likely to lead members of the public to identify the children referred to in this decision. As such, the Tribunal has not used the full names of witnesses who referred to their children's education in the hearing.**

#### **The Appeal**

1. Mrs Marie-Shirley Coote, on behalf of the proprietors of Promised Land Academy ('the Appellant') ('the school'), in her role as headteacher, appeals pursuant to section 125(1)(c) of the Education and Skills Act 2008 ('the 2008 Act'). The appeal relates to a decision of the Secretary of State for Education

('the Respondent') dated 10 December 2019 to impose a restriction on the school pursuant to section 116(1)(a) of the 2008 Act. The restriction takes the form of a requirement to cease to admit any new students to the school.

### **The Hearing**

2. The hearing took place on 16,17 and 18 February 2021. This was a remote hearing which was not objected to by the parties. The form of remote hearing was by Kinly CVP video. A face to face hearing was not held because it was not practicable in light of the current restrictions due to the Coronavirus pandemic and no-one requested the same. We considered that the issues in this appeal could be determined in a remote hearing. The documents that we were referred to are in the electronic main hearing bundle and the supplementary hearing bundle provided in advance of the hearing.
3. There were no significant connectivity issues during the hearing. All participants were able to connect their video and audio throughout. At times, there was some reverberation or brief connectivity issues. With some adjustments, the issues did not appear to impact the hearing and certainly did not inhibit the participants' ability to hear the relevant participants. At the end of the hearing, the Tribunal confirmed with the parties if they considered they had been able to engage effectively with the hearing. Both parties confirmed that they had.

### **Attendance**

4. Mrs Coote represented the Appellant. She called three live witnesses: Mrs Deimante Rezgiene, learning centre supervisor at the school, Mrs A and Mrs B, parents of pupils at the school. The Secretary of State for Education, the Respondent, was represented by Miss Sasha Blackmore of counsel, instructed by Mr Alexander Sussman, solicitor at the Department for Education. The Respondent called two witnesses: Mr Brian Oppenheim, Her Majesty's Inspector at Ofsted and Mrs Sue Whitehouse, Deputy Director in the Department for Education and joint head of the Independent Education Division.
5. There were a number of observers at various points over the course of the public hearing.

### **Background**

6. Promised Land Academy first registered as an independent school in November 2005. It is a Christian day school for girls and boys aged 4 to 16. At the time of the last inspection (July 2019), it had seven pupils on roll. Throughout the time of its registration, Mrs Coote has been in the post of headteacher.
7. The school was inspected on 17 to 19 January 2018. At that time, breaches of all parts of the Independent School Standards ('ISS') were found and the

Secretary of State required an action plan, which was submitted on 24 April 2018. It was evaluated and rejected on 19 July 2018.

8. On 3 October 2018, Ofsted was commissioned to conduct a progress monitoring inspection which found that some of the previous breaches had been remediated, but several of the ISS remained in breach. A second action plan was required and submitted on 21 January 2019. On 11 April 2019, the Appellant was notified that the action plan had been evaluated and rejected.
9. On 10 July 2019, Ofsted conducted a second progress monitoring inspection and found that the ISS were still not being met. On 4 September 2019, the Appellant submitted feedback on the draft inspection report and on 10 December 2019, the Secretary of State issued his decision to impose a relevant restriction, based on the conclusion that the Appellant failed to meet the requirements of part 1 (quality of education), part 3 (welfare, health and safety of pupils), part 5 (premises of and accommodation at schools) and part 8 (quality of leadership in and management of schools) of the ISS.
10. On 30 December 2019, the Appellant submitted an appeal application to the First-tier Tribunal.
11. Since the commencement of the appeal, the Respondent commissioned Ofsted to conduct a progress monitoring inspection, subject to the requirements of the Handbook for Additional Inspections of Independent Schools. Mr Oppenheim conducted an unannounced inspection on 6 October 2020, focusing on the previous failings identified in the inspection report of 10 December 2019. Following the inspection, Ofsted issued a draft inspection report to the Appellant. In response to the Appellant's representations as part of the factual accuracy check, the Respondent requested that Mr Oppenheim conduct a further inspection visit to the school, which took place on 4 November 2020. Some of the details in the final inspection report were modified as a result. The final inspection report was issued on 26 November 2020, concluding that there remained failings in respect of parts 1, 5 and 8 of the ISS.

### **Legal Framework**

12. As an independent school, Promised Land Academy must meet the standards set out in the Education (Independent School Standards) Regulations 2014. The standards are enforced under section 114 of the 2008 Act. If the Secretary of State is satisfied that one or more of the standards are not being met, having considered the evidence from the chief inspector of Ofsted, he may require the proprietor of the school to submit an action plan for evaluation and approval. If it is rejected and the Secretary of State is satisfied that one or more standards are still not being met and there has been at least one further inspection by Ofsted, then pursuant to section 116, he may impose a restriction on the proprietor. One of the available restrictions, pursuant to section 117, is the requirement to cease to admit new pupils. It is important to note that the proprietor can, at any point, apply to the Secretary of State to have the restriction varied or revoked.

13. Pursuant to section 125 of the 2008 Act, the Tribunal may confirm the decision, direct that the restriction ceases to have effect, or direct that the restriction ceases to have effect and impose a different relevant restriction. It is for the Appellant to demonstrate that it meets the relevant standards, at the date of the hearing. The standard of proof is the civil standard (the balance of probabilities).
14. The Tribunal is required to determine the matter afresh and make its own decision on the merits and evidence as of the date of hearing and thus will take into account relevant evidence which post-dates the notice of decision.

### **Issues**

15. The key question for the Tribunal is whether the Appellant is able to demonstrate, on the balance of probabilities, that the decision to impose a relevant restriction remains a proportionate and reasonable one when considered alongside the requirement of the ISS and the question of the Appellant's compliance with them as of the date of the hearing.

### **The Appellant's position**

16. The Appellant denies all of the breaches found during the inspections of October and November 2020, as well as the inspection of July 2019. The Appellant contends that it has worked responsively to address concerns and has managed to put in place considerable improvements to such an extent that it is no longer in breach of any parts of the ISS. The Appellant considers that the Respondent has failed to give any or sufficient weight to the improvements made to the service and has failed to acknowledge the improvements and as a result, the decision to impose a relevant restriction is a disproportionate one, particularly considering the impact on its pupils (prospective and present). The Appellant also challenged the methodology of the inspections, on the basis that the inspection in July 2019 took place on the last day of term and the inspections in October and November 2020 were carried out by an inspector who was not appropriately trained in the ACE ('Accelerated Christian Education') curriculum. The consistency of approach to inspections has also been called into question. The Appellant requests that the Tribunal should direct that the decision of 10 December 2019 ceases to have effect.

### **The Respondent's position**

17. The Respondent submits that the decision to impose a relevant restriction remains justified, reasonable and proportionate in light of the nature of the failings at the inspections of July 2019 and October and November 2020, as well as the Appellant's poor history of compliance with the requirements of the ISS.

### **Evidence**

18. We considered all the evidence that was presented in the main hearing bundle, the supplementary hearing bundle and at the hearing in oral evidence given

under oath or affirmation. We have summarised the evidence insofar as it relates to the relevant issues for the Tribunal. What is set out below is not a reflection of everything that was said or presented at the hearing or in the hearing bundles.

19. We heard oral evidence from Mr Oppenheim, Mrs Whitehouse, Mrs Coote, Mrs Rezgiene, Mrs A and Mrs B. We also carefully considered the witness statements of Mr Oppenheim, Mrs Whitehouse, Mr Sussman, Mrs Coote and Mrs Rezgiene.
20. Mr Oppenheim made the overarching point that inspectors can only look at the evidence they are given, which is then reviewed, with professional judgment applied and findings made by the inspector, having regard to the requirements of the ISS, supplemented by the Inspector's Handbooks. He has conducted over 500 inspections of schools.
21. Mr Oppenheim had concerns about the schemes of work he reviewed during the first inspection in October 2020. From his experience as an inspector, he considered that there should be absolute clarity about what knowledge and skill are being taught or intended to be taught and in what order, so that pupils can build on their knowledge over time. That process requires clarity about the teachers' understanding of the subject and an idea about the criteria for having reached that standard. A scheme of work should take account of the different abilities and aptitudes of the cohort of pupils. At Promised Land Academy, the pupils of different ages and key stages were being taught together in one class and Mr Oppenheim expected to see how the schemes were differentiated and delivered to meet the differing needs of the pupils. He did not see sufficient evidence of this in the schemes of work provided to him.
22. He acknowledged that the second inspection gave him points for reflection. As an example, he referred to the room which was used for pupils to change for PE. The room was above the main hall which was used for lessons. There was a window which overlooked the hall and Mr Oppenheim had a concern about a lack of privacy for the pupils over the age of 11. He provided feedback to Mrs Coote after the inspection in October and recommended a small curtain to ensure that pupils are not able to see out of it. He took a photograph, noting that the room was used for other purposes, such as furniture storage. When writing his report, he reflected that the room itself was satisfactory for pupils to use it as a changing room once the window was appropriately obscured to ensure dignity and privacy.
23. He confirmed that he had received training from Ofsted on the ACE curriculum - training from the senior inspector responsible for independent school inspections. Mr Oppenheim observed that he was there to assess the afternoon curriculum. The ongoing concerns did not relate to the ACE curriculum, which the school delivered in the morning period. He considered that he had been provided with sufficient evidence to make the judgments which formed his report. As an example of this, he referred to the sample of pupils' essays provided to him for review. He referred to one essay about electronic

music, which, in his professional opinion, was derivative and similar in style and language to the sort of writing a person might see in a publication. In his professional judgment, it was not the original thought and writing from the pupil. Mr Oppenheim did not accept that he should have taken a pupil and assessed their progress as a timeline, observing that the methodology of inspection for independent schools does not use that approach any longer. Mr Oppenheim was clear that the schemes of work he reviewed did not sufficiently identify a profession model and show how the teacher intended the pupils to progress over time. There was no evidence provided to him as to how the school would build pupils' knowledge and skills over time in the afternoon curriculum. Mr Oppenheim confirmed that he asked for evidence on a number of occasions during his two inspections, noting that it is incumbent on the school being inspected to ensure that the documentation it wants considered by the inspector is made available. The individual learning plans ('ILPs') which were submitted by the Appellant in preparation for the appeal were not available to Mr Oppenheim at either of the inspections he conducted. Having reviewed them, he noted that they are not of a standard that would be acceptable. For him, the sample of ILPs submitted in the supplementary hearing bundle just added to a bigger picture that the school's assessment of its pupils is not rigorous and deep enough.

24. Mrs Whitehouse stated that over a really long period of time the ISS had still not been met, noting that quality of education had remained a consistently failed standard since the first full inspection in January 2018. She considered that it was an awfully long time for a school not to be able to demonstrate it can meet the standards. In questioning from Mrs Coote, Mrs Whitehouse stressed that the Department for Education commissions Ofsted to conduct inspections of independent schools and Ofsted have a set process which they follow. She could not comment as to 'complaints' lodged by the school in relation to past inspections.
25. Mrs Whitehouse confirmed that the Department for Education looks at the sum of all the parts. The July 2019 inspection was instrumental in taking the decision on the imposition of a relevant restriction and a relevant factor in that decision making was the duration over which there had been failures to meet the standards. She stressed that the Department cannot just let pupils' education be negatively affected over failures to meet standards. She observed that the 2020 inspection was hugely relevant to the Department as it was about ascertaining the extent to which the school was meeting the standards. It was hoped that the time would allow the school to demonstrate that it was meeting all or most of the standards. Mrs Whitehouse explained that if some of all of the standards had been met, following Mr Oppenheim's inspection, the Department would have considered revocation of the restriction, noting the case by case basis upon which such a decision is made, as well as the extent of any failures.
26. Mrs Coote explained that the school does not use ILPs to assess pupils' progress. She pointed to samples of diagnostic tests, in the supplementary hearing bundle, an extract from the front page of a 'math diagnostic test' and an 'English diagnostic test' and a coordination development test, a book

handling skills test and a hop and skip test used when a five-year-old pupil begins at the school. As to the hop and skip test, she explained that this was an example of the school taking into account the age, aptitude and ability of a pupil. Mrs Coote explained that in the core curriculum, which follows the ACE principles, including the five laws of learning, and is delivered in the morning period, there is a lot of one to one support and finding out of information about the pupils. She stressed that the parent is the primary person who knows the child and the school finds out a lot of information about the pupils from their parents. Mrs Coote confirmed that the school has eight pupils, including one who is 18 years old. The age range is six/seven years old to 18 years old.

27. Mrs Coote explained that the schemes of work, submitted in the supplementary hearing bundle, do not look at everything that the individual pupil is undergoing at the school – there is also a need to see how the pupils are engaging, citing the example of a pupil demonstrating proficiency in IT skills by preparing a PowerPoint presentation. She stated that the curriculum needs to be viewed holistically and the inspections should look at the timeline of a pupil from the time they started to the time they finished at the school. Mrs Coote questioned the approach used by Ofsted, explaining that we are looking at three points over a vast amount of the inspection which had gone perfectly fine.
28. Mrs Coote explained that the pupils cannot attend the local leisure centre to receive their PE lesson at the moment due to the pandemic. She clarified that the leisure centre had showering facilities for the pupils and PE was always at the end of the day. At the moment, the school has shortened its day to give the pupils more time to complete physical activity away from school. She accepted that there is a requirement for showers and she confirmed that there was no formal agreement in place with the leisure centre.
29. Mrs Coote explained that her key focus, in preparing for the appeal, was to evidence that the school now meets all standards. She did not appreciate that she could apply at any point to have the relevant restriction lifted, even though that had been communicated to her in the Respondent's notification letter of 10 December 2019. She stated that even knowing that, she still considered that the restriction was disproportionate as the school is meeting all standards and there are no complaints or safeguarding concerns. However, she also explained that she ensures that the school is progressing and making improvements and that it why Mrs Coote chose to work with private inspectors to ensure improvements.
30. Mrs Coote accepted that she had produced three schemes of work for three subjects for half a term of the Autumn 2020 term and two ILPs from one term. She explained that she did not produce more documents as she did not have time and it is not her responsibility. She explained that she had omitted to set out her position on leadership and management responsibilities in her witness statement.
31. As to the pupil who is over the age of 16, Mrs Coote explained that the pupil was not on the roll, but she was being helped by the school. She also confirmed that no DBS check has been completed for the young person (who is 18 years

old). At a later point in questioning, Mrs Coote accepted that the 18-year-old young person is enrolled with the school.

32. As to Mrs A's son, Mrs Coote stated that in the afternoon lessons, he sits beside Mrs Coote or with an older pupil who provides one to one support. He is currently not part of the afternoon curriculum at all times.
33. Mrs Coote clarified that education progress comes from parents and assessments of the pupils are ongoing and looked at constantly throughout the school week, assessing the pupils' work on an ongoing basis.
34. Mrs Rezgiene confirmed that she has been a learning centre supervisor at the school since September 2020, conducting three afternoon sessions each week. Her son is ten years old and started attending the school in 2015. She explained that she has a diploma in business and management and previously had experience in running her own business. The school uses different methods of engagement, such as worksheets and videos about the subject as well as group discussions and debates. Mrs Rezgiene stated that she uses those different types of engagement to assess the pupils, in teaching them nutrition, business and ethics and law. She explained that she did not make any changes to the ethics and law handouts – they were provided by Newham London Borough Council. She wrote the schemes of work and ILPs for business and nutrition, noting that as soon as she read Mr Oppenheim's inspection report in November 2020, she started about making changes to the schemes of work and the ILPs. When challenged as to the schemes of work not showing how Mrs Rezgiene was designing the lessons to deliver the work for the wide range of pupils and how she was planning to assess the pupils' learning outcomes to that teaching, Mrs Rezgiene explained that after each lesson, she carries out a reflection to understand what she needs to change or improve.
35. As to the video on the Human Rights Act 1998 (page 326 of the supplementary hearing bundle), Mrs Rezgiene explained that she has watched the video and noted that it tells the audience about the Human Rights Act and the European Convention on Human Rights. She explained that the Local Authority provided the video and materials.
36. Mrs B confirmed that her son attends the school and she considers that he focuses much better since attending and seems to enjoy school, which is because he is getting a personalised education which meets his wellbeing. He started in September 2020 and she explained that she reviewed the school's inspection reports before he started. She had no concerns as she noted that the inspections did not relate to the quality of education.
37. Mrs A explained that her son has learning needs and even though he had attended a nursery school which Ofsted had rated as 'outstanding', his needs were not met there. She stated that there has been a vast improvement in his learning and the ACE programme had helped him. She explained that he had previously been referred to LIFT, as a pre-cursor to seeking an Education, Health and Care needs assessment but she had ceased this process on his



transfer to Promised Land Academy. She explained that she is not aware of any different teaching methods being used for him.

### **The Tribunal's conclusions with reasons**

38. We found Mr Oppenheim and Mrs Whitehouse's oral evidence to be credible and found that their evidence was supported throughout by the documentation. We had some concerns with the credibility of Mrs Coote, based on her oral evidence. At various points, she changed her responses to the questions being asked. This was demonstrated in the lack of clarity over the status of the pupil who is now 18 years old and, as we have found, as a matter of fact, attending the school as a pupil in contravention of the registration requirements of the school and after the school had a previous application to extend its age registration range rejected by the Department for Education. A further example of a lack of clarity was in relation to the educational arrangements for Mrs A's son. It was not clear at all to the Tribunal as to what educational provision is in place for him, bearing in mind that he had particular educational needs which appear, on the evidence available, to require additional support. Furthermore, the ILP which related to him contained no information about his educational needs. He must have additional needs, as if we have followed Mrs A's and Mrs Coote's evidence correctly, during his afternoon education, he spends most of his time with Mrs Coote or an older pupil for one to one support. None of the documentation supplied gave the Tribunal confidence that the delivery of education to this particular pupil was planned to take into account his age, aptitude and ability. At one point, Mrs Coote asserted that there was no need to alter the curriculum to meet the differing needs of the pupils at the school – she also asserted that comprehension does not differ across subjects. Both of these assertions, in the view of the Tribunal, are plainly wrong. It is fundamental to effective education that a curriculum requires differentiation to meet the needs of pupils – this practice is undertaken by schools across the UK every day. It simply cannot be correct to conclude that comprehension, given its ordinary dictionary definition of 'the ability to understand things', does not differ for pupils depending on the subject. We found these assertions relevant to our assessment of Mrs Coote's credibility as a witness. They demonstrate a lack of insight about the importance of the scheme of assurance operated by the Department for Education and help to explain why it is that Mrs Coote does not seem to accept the framework for inspection of independent schools.
39. On a number of occasions, Mrs Coote referred to the Scott Schedule and explained that the reason she provided limited documentary evidence to the Tribunal was because she was responding directly to the allegations in the Scott Schedule. The Tribunal took time to review the previous orders made in this appeal, as well as the summary of the legal position (which has not been challenged) in the Secretary of State's detailed response to the appeal grounds (dated 30 January 2020). The Tribunal concluded that there was clear information provided to the Appellant to make her aware that this appeal, much like the inspection process followed by Ofsted, requires the Appellant to demonstrate that the school is now meeting the ISS and no longer in breach.

We reminded Mrs Coote on a number of occasions that she carries the burden in this appeal and it was incumbent on her to demonstrate how and why the school is now meeting parts 1, 5 and 8 of the ISS. It is not for the Tribunal, in much the same way as it was not for Mr Oppenheim, to request certain documents; it is for the Appellant to review the entirety of the documents held at the school and to ensure that any documents which are relevant to the assessment of the school's compliance with parts 1, 5 and 8 of the ISS are before the Tribunal.

40. Mr Oppenheim emphasised that it is not the responsibility of an Ofsted inspector to seek out documents – it is for the senior staff at any school to ensure that relevant information and documents are available and placed before the inspector. We accept that – Mr Oppenheim is a very experienced inspector of schools and we noted that this approach is set out unambiguously in the following publicly available documents: the education inspection framework, the non-association independent school inspection handbook and the handbook for additional inspections of independent schools. During her oral evidence, Mrs Coote assured the Tribunal that she was aware of the requirements of the ISS and the inspection process, having completed three yearly training since she started in her post. We considered this evidence alongside developments in the hearing, including Mrs Coote asking to adduce a copy of guidance which does not relate to the inspection of independent schools and her acceptance, during oral evidence, that prior to the hearing, she did not appear to be aware of the option to apply to the Department for Education to request the removal of a relevant restriction (as set out in detail in the notification letter of 10 December 2019).

41. We had significant concerns with the limited nature of the documentary evidence which was presented in support of this appeal. It consisted of:

- Three schemes of work for 2020-21: the first half term, relating to nutrition, the first term relating to British values and a module for term 2 relating to CPR;
- A photograph of CPR equipment;
- Two ILPs for two pupils covering the second half of the Autumn 2020-21 term;
- A photograph of the room used for changing;
- A series of questions answered by a pupil on the subject of 'Becoming an Entrepreneur' with feedback from the tutor. Undated;
- A series of questions answered by a pupil on the subject 'Ethics, Innovation and the Law' with feedback from the tutor. Undated;
- Two undated tutor reflections on 'Parliament. Session 5' and 'Nutrition Session 3';
- The front page of graphics from a document entitled 'Math Diagnostic Test';
- The front page of graphics from a document entitled 'English Diagnostic Test';
- The front page of graphics from a document entitled 'Coordination Development Tests';
- Book handling skills and hop and skip tick boxes;

- The front page of graphics from a document entitled ‘Reading Programs’; and
- The front page of graphics from a document entitled ‘Learning Center [sic] Essentials: Five Laws of Learning’.

Part 1: quality of education provided

42. We carefully considered Mr Oppenheim’s assessments of the documents above, assessments which were largely unchallenged. We considered his views valuable, particularly as he was not shown all of the documents during the inspection process in October and November 2020 and they may have been capable of changing his conclusions on compliance with the ISS. Mr Oppenheim noted a number of concerns about the documents listed above. All of the documents, other than the photograph of the room, were directly relevant to the Appellant’s case for demonstrating that it is meeting the requirements of part 1 of the ISS (quality of education provided). The three schemes of work submitted are not sufficiently detailed to be a satisfactory tool for tutors to be clear on what knowledge and skills are being taught, what the learning objectives are and, in turn, how that information will inform the assessment criteria for the pupils. There is no information in the schemes of work which demonstrates that they take into account the range of ages, abilities and aptitudes of the seven or eight (depending on the attendance of Mrs A’s son) pupils who will be engaging in the subject. This is particularly important in a school such as Promised Land Academy, where the number of pupils is small and they are being taught in one class group – planning for differentiation was not evidenced in the schemes of work.
43. We considered the two ILPs, noting that it would have been helpful for the Tribunal to see a full suite of ILPs for all of the eight pupils enrolled at the school. We had concerns with the ILPs, which were not specific or detailed enough as to the learning objectives, the actions to be taken to achieve the objective and the criteria for success. All of those aspects of the plans should have clearly demonstrated the particular needs of the pupil, taking into account age, aptitude and ability. We are not satisfied that the ILPs acknowledge those essential factors. We also noted that the criteria for success appear unambitious and not specific to the pupil. As an example, looking at the second ILP (at page 323 of the supplementary hearing bundle), it is not clear what is meant by the term ‘academic balance’ or the phrase ‘student will achieve the desired outcome of completing her general level by the end of second term’. We are not reassured that the school has completed the work required to demonstrate that it is meeting the requirements of part 1 of the ISS on the basis of the ILPs or the schemes of work.
44. Additionally, the front sheets of documents are not sufficient at all to demonstrate that the school is delivering the quality of education required by part 1 of the ISS. We have no idea as to the content of the various documents which were shared to demonstrate that the school engages in appropriate assessments of its pupils and have not been able to engage in any meaningful evaluation of them. Mrs Coote explained, more than once, that the school relies on feedback from parents to demonstrate that progress is being made, as well as observations from the teachers throughout the day. We do not consider that

this is satisfactory to meet the requirements of the ISS. We appreciate that two parents took time away from other commitments to provide their views of the school, specially relating to their children. This evidence was of some assistance and of course, it is positive to hear that both parents appear happy about the school, but the evidence is not definitive in any way when it comes to an objective assessment of whether or not the school meets the requirements of the ISS. Perhaps the clearest example of why it is not definitive was borne out by the oral evidence from Mrs B, who advised that she had read the school's inspection reports before sending her child to the school in September 2020 and noted that there were no concerns about the quality of education. In fact, by that point, the school had failed to meet the requirements of quality of education in inspection reports since 2018, as confirmed by the evidence of Mrs Whitehouse.

45. We noted that on at least two previous occasions, the school drafted an action plan. We also had an assurance from Mrs Coote that an action plan is still in place, but a copy was not before the Tribunal at the hearing. The previous action plans recognised the need to review and improve the quality of the ILPs and the schemes of work and on at least two occasions, the Department for Education provided practical feedback about the problem areas with the action plans. We would have found a clear and detailed action plan, setting out the steps already taken, those planned and the level of priority, along with examples of documentation and templates to be helpful in this appeal, particularly in light of the burden which the Appellant bears.
46. We reviewed the tutor reflections and two worksheets demonstrating pupils' work and tutor feedback. We recalled the evidence of Mrs Rezgiene in relation to the video referenced at page 329 of the supplementary hearing bundle and noted the summary on the worksheet, which refers to the Human Rights Act 1998. We watched the video and noted that it did not refer at any point to the Human Rights Act or what the rights and freedoms actually are. We agreed with the observations noted by Mr Oppenheim in his second witness statement.
47. Other than assertions, we were provided with no evidence to demonstrate how the planning and assessments for the ACE curriculum were transferred effectively over to the afternoon curriculum.
48. Taking all of the above into account, we have concluded that insufficient evidence has been provided to demonstrate that paragraphs 2(1) and 2(1)(b)(i) and paragraphs 3, 3(a), 3(c), 3(d) and 3(g) are being met.

#### Part 8: quality of leadership in and management of schools

49. We noted that the evidence from Mrs Coote was that she did not agree with the findings in the inspection reports of July 2019 and November 2020. As a result, she explained that she read the reports, noting that a sheet of paper does not show that the school provides quality education. This links back to Mrs Coote's point, that she made on a number of occasions, that the views of the parents are important to the school in showing that it provides quality in education.

Furthermore, Mrs Coote referred to the fact that she liaised with 'private inspectors' about the areas for improvement at the school. We had no evidence of this, for example, witness statements or reports from external consultants. Mrs Coote also explained, as set out in earlier action plans dated up until January 2019 that the school continued to ensure the trustees of the school were kept updated of proposed actions to ensure regulatory compliance. Again, on this point, we had no evidence to demonstrate this. Such evidence would have been extremely helpful, as it would have been relevant in demonstrating accountability and transparency in the governance structures in place at the school.

50. We found Mrs Coote's oral evidence as to the afternoon curriculum to be limited – it was not clear that Mrs Coote understood what was being taught in the afternoon sessions and the form the lessons took. We had concerns about the evidence Mrs Coote gave on two areas, in particular, we concluded were of direct relevance to demonstrating compliance with the requirements of part 8 of the ISS. The first area was the provision in place for Mrs A's son. It was not at all clear as to what provision was being made for his needs. Mrs Coote explained that he was not 'statemented', by this, we inferred that she meant that he does not have an Education, Health and Care plan in place, but this was not the point – he clearly has educational needs which need to be considered. We were not clear and it is not evidenced in the two hearing bundles that planning has been undertaken and arrangements made to meet his needs. We consider this was relevant to our assessment of effective leadership and management of the school, as it demonstrated a lack of knowledge and did not give us confidence that his needs were being met appropriately. It was also not clear to us that the child's parent knows the provision that is being put in place in the afternoon. In a school of this size (with eight pupils on roll), we would consider it appropriate for the leadership to have awareness of this issue and to be able to explain clearly how the child's needs were being met in differentiating the curriculum for him in the afternoon period.
51. As a second example, we refer to the lack of clarity over a young person who appears to be enrolled at the school, despite being 18 years old. If this is the case, it would appear that the school is in contravention of its registration requirements. At one point in her oral evidence, Mrs Coote explained that the pupil is not enrolled with the school, but attends the school premises. She also confirmed that the 18-year-old has not been subject to a DBS check, if not attending the school as an enrolled pupil. At a later stage in her oral evidence, she explained that the pupil is enrolled. We have not made a finding of fact on this point, noting that Mrs Coote has agreed to provide the school's roll to the Department for Education. However, we consider this evidence of key relevance to our assessment of part 8 of the ISS – the lack of clarity of the status of the young person is concerning – it is even more concerning when the lack of clarity comes from the headteacher of the school. This does not assure the Tribunal, on a balance of probabilities, that the school has effective and consistent leadership and management in place at this time.
52. We also took into account the Appellant's approach to the regulatory and appeal process. We noted that she did not have the benefit of legal

representation, but did have the benefit of a significant period of time to prepare – the passage of five school terms. There was a key omission from her witness statement – the section relating to ‘leadership and management responsibilities’ was missing. Mrs Coote explained that she must have overlooked it. The Tribunal did not receive an adequate explanation as to why there was no updated action plan for it to consider. The Appellant continued to assert, even at the appeal hearing, that the Ofsted inspector was not qualified and did not know enough about the ACE curriculum (which was not the subject of the inspection in 2019 or 2020) to be able to conduct a proper and fair inspection. Furthermore, the Appellant continued to dwell on the fact that the 2019 inspection took place on the last day of the Summer term, rather than actively engaging with the concerns set out in the report and seeking to demonstrate how they were no longer an issue for the purposes of the appeal hearing. We have concluded that the Appellant’s responses on these points were not sufficient to lead us to conclude that it is more likely than not that the school now meets the requirements of part 8 of the ISS.

53. Accordingly, we have concluded that paragraphs 34(1), 34(1)(a), 34(1)(b) and 34(1)(c) of the ISS are not met.

#### Part 5: premises of and accommodation at schools

54. Paragraphs 23(1) and 23(1)(c) of the ISS require independent schools to ensure that suitable changing accommodation and showers are provided for pupils aged 11 years or over at the start of the school year who receive physical education. We understand the point from Mrs Coote that during the restrictions imposed due to the Covid-19 pandemic, the pupils are not receiving physical education at school. We have concluded, based on the improvement made by the school after the inspections of 2020, that the changing accommodation is now appropriate. A point with which Mr Oppenheim agreed. However, there is still a requirement to ensure showers are provided. Furthermore, we received no evidence about formal arrangements with the local leisure centre, including how long the arrangement is to remain in place. We are satisfied that this requirement is unmet.

#### The school’s register

55. Pursuant to Rule 5(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, we direct Promised Land Academy to provide its register to the Department for Education within 14 days from the date of this decision.

### **Proportionality**

56. We have considered our findings in relation to the ISS. We have paid regard to the positive evidence from two parents and Mrs Rezgiene, the regulatory history of Promised Land Academy, as well as the clear commitment from Mrs Coote

to the pupils, the school and its ethos. We have concluded that the relevant restriction, namely a restriction to admitting any new pupils to the school, is a proportionate and necessary response at this time. We bear in mind that the school can apply, at any point and as many times as it needs until successful, for the restriction to be lifted. We noted that Mrs Cote explained that the school has more documents which it can present to demonstrate that it meets the ISS, having provided limited extracts to the Tribunal. If that is the case, the Appellant should consider compiling all of the documents, along with an updated action plan, for submission to the Department for Education.

57. If the school takes the necessary steps to come into compliance with the requirements of the ISS, then the effect of this restriction will have been positive and wide ranging, in reassuring prospective and current pupils and their parents as to the work undertaken by the school to ensure it meets the standards.

### **Decision**

The appeal is dismissed.

The Secretary of State for Education's decision of 10 December 2019 to impose a relevant restriction pursuant to section 117(1)(c) of the Education and Skills Act 2008 is confirmed.

**Judge S Brownlee**

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

**Date issued: 10 March 2021**