Care Standards

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

Heard on 15-24 March 2017
Royal Courts of Justice Strand, London WC2A 2LL

BEFORE
Judge Mr H Khan
Specialist Member Ms H Reid
Specialist Member Ms W Stafford

BETWEEN:

Tahir Alam

Appellant

v

Secretary of State for Education

Respondent

[2015] 2553.INS

Decision

The Appeal

1. This appeal is brought by Mr Tahir Alam ("the Appellant") pursuant to section 129 (1) of the Education and Skills Act 2008 ("2008 Act") and Regulation 7 of the Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 ("2014 Regulations").

2. The Appellant contends that the direction made by the Secretary of State for Education ("the Respondent") by letter dated 3 September 2015 prohibiting the Appellant from taking part in the management of an independent school in England (including free schools and Academies) was not appropriate and, by regulation 7(2) seeks the direction to be revoked.

Attendance

3. The Appellant was represented by Mr Hugo Lodge and Mr Lance Harris (Counsel). Mr Lodge had been recently instructed. The Appellant was previously represented by Ms Kirsty Brimelow QC. The Appellant attended throughout the hearing and gave evidence. There were no other witnesses who gave oral evidence on behalf of the Appellant.

4. The Respondent was represented by Mr Martin Chamberlain QC (Counsel) and Ms Catherine Callaghan (Counsel). The Respondent called the following witnesses which are set out in the order in which they were heard:

Mr Hardip Begol	Director in the Department of Education, Safeguarding in Schools and Counter Extremism Group
Mr Gerrard McAlea	Former Head of the Investigation and Due Diligence Unit of the Department of Education
Ms Angela Corbett	Former HM Inspector of Schools, Ofsted
Ms Ann Connor	Education Adviser for Department of Education
Mr Philip Reed	Area Team Leader (West Midlands) and Senior Caseworker, Education Funding Agency
Witness F	
Ms Gurpreet Dhillon	Former Human Resources Manager, Park View Educational Trust (PVET)
Mr Ian Hodgkinson	Senior HM Inspector of Schools, Ofsted,
Ms Hilary Thompson	Former Assistant Headteacher and Teacher Governor, Nansen Primary School
Witness A	
Witness B	
Witness C	
Witness D	
Witness E	
Mr Michael Hobbs	College Intervention Manager, Interventions and Investigations Core Team, Education Funding Authority

The Hearing

5. The hearing took place on the 15-24 March 2017 at the Royal Courts of Justice, London. Following the hearing, the parties agreed dates for the filing and service of written closing submissions. The last of these was received on 5 May 2017.

Restricted Reporting Order

6. The Tribunal made an order pursuant to Rule 14 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended) (the "Tribunal Procedure Rules 2008") on 29 September 2016 regarding five witnesses, referred to as Witness A, Witness B, Witness C, Witness D, and Witness E in these proceedings. The order was made in response to an application for special measures by the Respondent. The order was made after consideration of detailed written submissions by leading Counsel on behalf of both the Appellant and the Respondent.

7. There was a further application made by the Respondent on the first day of the hearing in respect of Witness F. The Tribunal granted that order for the reasons set out in a separate order.

8. The orders made during the course of the proceedings mean that the disclosure or publication of the names and identities of Witness A, Witness B, Witness C, Witness D, Witness E and Witness F or any information likely to lead to their identification, is prohibited.

Evidence

9. The parties had agreed (which is recorded in the order dated 16 March 2016) that, pursuant to regulation 7(3) of the 2014 Regulations, the Tribunal would not be limited to considering only that information that was before the Respondent at the time the decision subject of this appeal was made.

10. Judge Tudur's order dated 20 February 2017, limited the evidence upon which the Appellant was entitled to rely, to his own witness statement and oral evidence and such documents as had been disclosed by him up to 17 February 2017. The order records that the Appellant did not comply with directions and that the Tribunal had afforded him a number of opportunities to explain his case and to produce evidence to support his appeal.

Preliminary Issues

11. There were a number of matters raised as preliminary issues by Mr Lodge on behalf of the Appellant, both in advance of the hearing and during the hearing. These issues included applications for a direction that the Respondent should particularise its case, the failure by the Respondent to disclose documents, permission to rely on more evidence (including expert evidence) and a number of requests for an adjournment.

12. These applications had been dealt with by Judge Tudur and recorded in a detailed order dated 10 March 2017. The applications had been refused and the reasons are set out in Judge Tudur's order of the same date.

13. Mr Lodge sought to renew a number of those applications before the panel. These included applications for a direction that the Respondent should particularise their case, the failure by the Respondent to disclose documents, permission to rely on more evidence (including expert evidence) and a request for an adjournment. Mr Lodge submitted that he had not had the opportunity to argue the applications at an oral hearing. The applications were set out in detail in Mr Lodge's skeleton argument and had been considered by Judge Tudur on 10 March 2017.

14. We were aware that the applications had been dealt with on the papers, that they had been considered on the last working day preceding the final hearing and that there had been no material change in circumstances save where we have referred to it below.

15. We had sight of the order of Judge Tudur dated 10 March 2017, as well as her reasoning. Although we considered the issues separately, we have adopted Judge Tudur's reasoning where we agreed with her reasons. Any additional reasoning for our decisions is set out below. We have set out our decisions in relation to all the applications made by Mr Lodge together as preliminary issues irrespective of what day of the hearing they were made. In reaching our decisions, we took into account the Tribunal Procedure Rules 2008 (as amended).

Application for a direction that the Secretary of State should particularise her case

16. We refused the application.

17. The Appellant's application referred to the process for considering civil court claims and criminal proceedings, however, as the Respondent submitted, they are not pursuing a civil claim or prosecuting a criminal charge. The Tribunal proceedings fall into neither of those categories.

18. The overriding objective of the Tribunal Procedure Rules 2008 as set out in Rule 2, is to enable the Tribunal to deal with cases fairly and justly, which includes dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties. The purpose includes avoiding unnecessary formality and seeking flexibility in the proceedings and ensuring so far as practicable that the parties are able to participate fully in the proceedings and avoiding delay, so far as compatible with proper consideration of the issues. The Tribunal has very wide general case management powers that allow the Tribunal to regulate its own procedures, subject to the Rules and to the interests of justice.

19. Furthermore, the allegations relied upon were set out: first, in the "minded to bar" letter sent to the Appellant as long ago as 25 March 2015; secondly in the "barring letter" dated 3 September 2015 (which differed from the "minded to bar" letter, in that certain of the allegations previously made were omitted in the light of the representation made by

the Appellant); thirdly, in the Respondent's witness evidence; and fourthly, in the Respondent's skeleton argument.

20. We were also satisfied that the barring letter and Annexe set out with sufficient clarity the direction made and the reasons for making it. The Tribunal does not require formalised pleadings and seeks to avoid unnecessary formality in compliance with the overriding objective.

21. The Appellant has, in our view, had ample opportunity during the period since service of the barring letter dated 3 September 2015 to request further information or clarification of the position. He has had support and guidance from leading counsel, junior counsel and a solicitor and issues have not been raised previously during these proceedings about the clarity of the position.

22. The Appellant had decided with the benefit of legal advice to agree pursuant to Regulation 7(3) of the 2014 Regulations, that the Tribunal would not be limited to considering only that information that was before the Respondent at the time the decision was made.

23. We concluded that the Appellant has had every opportunity to respond by adducing his own or other evidence. We agreed, having considered the history of the matter and for the reasons set out above that the suggestion that any point was raised *"too late for the Appellant to gather evidence to counteract new allegations not previously raised"* was without merit.

Adjournment

24. We refused the applications and our reasons are set out below.

25. This was not the first application of its kind in these proceedings. On the 27 January 2017, 8 February 2017 and 10 March 2017, the Tribunal dealt with the Appellant's previous applications for a stay of the proceedings and a postponement of the final hearing of the appeal. The applications were considered on their merits and refused.

26. Mr Lodge renewed the application for a number of reasons including that leading counsel and a team of juniors had withdrawn from the case; there needed to be further time allowed for the Appellant to prepare his case and the case should be deferred and stayed pending a decision by the National College for Teaching and Leadership (NCTL) in respect of the actions of the senior management team at Park View Educational Trust (PVET) Schools.

27. Mr Lodge submitted that the Appellant had been told by Mr Moz Hussain (previously Acting Headteacher at Park View School) that he would be willing to give evidence in these proceedings *"once the NCTL proceedings had concluded".* The Appellant also anticipated that Ms Lindsay Clark may give evidence.

28. In reaching our decision, we took into account the history of the matter. The appeal was made on 2 December 2015. On the 2 February 2016, the appeal was stayed in order to allow the Appellant time to pursue avenues of funding, including Public Funding, to pursue his appeal. The Appellant had obtained legal representation through the pro bono scheme and has proceeded to be represented thus to the final hearing.

29. We concluded that the Appellant having had the benefit of legal representation by a solicitor from the outset and from leading counsel and junior counsel since at least May 2016, has had both ample time and support to undertake full preparation of the case had he wished to do so.

30. The request that the Tribunal await the outcome of the NCTL proceedings was previously considered and determined and the reasons for that decision provided in the order of the 8 February 2017 & 10 March 2017. We agreed fully with the assessment of Judge Tudur that the Appellant appears to be losing sight of the issue for consideration by the Tribunal in this appeal. This appeal was against a decision of the Secretary of State to direct that he be prohibited from taking part in the management of independent schools on one or more prescribed grounds connected with the suitability of the person to take part in the management of an independent educational institution, pursuant to section 128 of the Education and Skills Act 2008.

31. The Respondent's position is that the Appellant personally has engaged in conduct that makes him unsuitable. The finding is not dependent on another Tribunal's findings in relation to the conduct of others under different legislation. There is no requirement that this Tribunal should await the decision of the NCTL panel. The two jurisdictions are considering different issues, different allegations and the application of different regulations. Neither jurisdiction's decision is binding on the other and consequently, there was no good reason to delay the present proceedings.

32. The Respondent acknowledges this case is not concerned with whether the Appellant conspired with others to impose a narrow faith-based ideology on the schools. The focus of this case is on the Appellant's own conduct and his responses (or lack thereof) to the actions of others. It is, therefore, distinguishable from proceedings brought against PVET teachers by the NCTL.

33. It was not challenged that the NCTL hearings have concluded, the witnesses' evidence has been given and they have been cross-examined, We could not identify what prejudice there could be to the Leadership Team in providing evidence in support of Mr Alam's appeal nor any reason to delay the proceedings in this Tribunal, pending publication of the decisions by the NCTL.

34. In any event, we were only made aware of one member of the leadership team, namely Mr Moz Hussain, whose representative had written (although we were not shown a copy of the correspondence) to confirm that he would be willing to give evidence "*once the NCTL proceedings had concluded*". It was not clear, however, what was meant by *"concluded"* nor was any time scale provided. There was no such confirmation from either Ms Lindsey Clark or anyone on her behalf.

35. We also concluded that had the Appellant wished to pursue a crowdfunding scheme, then that is an option that could have been considered 12 months ago, rather than just before the final hearing. The final hearing of the appeal was originally listed for September 2016. On applications from the parties, that hearing had been delayed. During that time, the Appellant has had a legal team working on his case and undertaking the necessary preparations.

36. We concluded that it was neither in compliance with the overriding objective nor in the interests of justice for the final hearing of the appeal to be further delayed.

Disclosure

37. We rejected the Appellant's submission that there had been a total failure of disclosure due to there being no disclosure regime in place.

38. Mr Lodge's application was for disclosure of the documents compiled in the Peter Clarke enquiry in their entirety. This included transcripts, witness statements and any other documents obtained in the course of that enquiry. He also sought to obtain Ofsted's records. He referred the panel to the case of *Inam Anwar & Akeel Ahmed and (1) National College for Teaching & Leadership (2) the Secretary Of State for Education 2016 EWHC 2507 (Admin).*

39. We agreed with the Respondent's submission that the Appellant was seeking to reopen an application for disclosure, which had already been rejected by the Tribunal.

40. The issue of disclosure of documents in this appeal has been considered at several points during the proceedings. During this period, the Tribunal order records that the Appellant was legally represented, including by Mr Lance Harris, who represented him at this hearing.

41. The parameters for disclosure of documents were agreed by the parties' counsel and incorporated into an order made by consent on the 7 December 2016. The parties agreed to disclosure subject to a "carve out" in respect of evidence from witnesses who were guaranteed anonymity when they made their statements. The "carve out" was subsequently varied to allow the evidence in support of the Appellant's case to be disclosed.

42. The order dated 7 December 2016 sets out that;

> "For the avoidance of doubt this shall include the interview transcripts and other materials referred to in paragraph 4 of the Response but shall not include documents comprising information obtained from persons who were provided with assurances that their evidence would remain confidential and on whose evidence the Respondent is not seeking to rely in these proceedings, unless the documents might undermine the Respondent's case and/or assist the Appellant's case (in which case, for the avoidance of doubt, they shall be provided to the Appellant)."

43. Mr Chamberlain submitted that disclosure had been undertaken not only in compliance with that order, but prior to the order being made and that a multitude of documents had been disclosed. He set out that the Respondent's legal team fully understood their obligations to the Tribunal and set out the process that had been undertaken. The process was overseen by lawyers at the Government Legal Department, who were overseeing the case and advice was taken from junior counsel on certain issues. A team of separate junior counsel was engaged to look through some of the very large number of documents which were discovered on an electronic search. They performed that search having read the proceedings and the papers in the case so that they understood the issues and in Mr Chamberlain's words *"sorted out the relevant from the irrelevant"*. The Government Legal Department personnel who were involved also ordered spot checks of the very large volume of documents to ensure that the process was being completed properly. It was not a case, he submitted, where anybody had been seeking to hide documents.

44. Mr Chamberlain also submitted that the Respondent's legal team had been through the Clarke transcripts to check, in accordance with the Tribunal's order, whether there was anything in them that assisted the Appellant's case or would undermine the Respondent's. If and to the extent that there was material of that kind, it had been disclosed. He made it clear that the Respondent was aware that it was not entitled to withhold any of those transcripts insofar as they undermined the Respondent's case or assisted the Appellant's, even if they were confidential. He submitted that this is what had been done.

45. We took into account that the Respondent undertook this extensive disclosure exercise in relation to paper records and electronic records and the process involved. The search terms were agreed with the Appellant's own solicitor. In our view, therefore, the Appellant cannot at this late stage, complain about a lack of disclosure when his legal representatives have been engaged in determining its parameters, as well as deciding the search terms. There was no persuasive evidence put forward by the Appellant to support his assertion that disclosure has been anything less than robust.

46. In our view, the current application lacked detail and clarity. There was no indication of the amount or the relevance of the documentation to the appeal. We concluded that such a broad and unfocused disclosure request made at this late stage amounts to a fishing expedition and to grant such a wide request would not be proportionate.

47. We did not consider that this case fitted within the Anwar principles. In this case, the parties had agreed that the Respondent would disclose any material which might assist the Appellant's case or damage the Respondent's. The Respondent made it clear that it had done that. The Respondent also made it clear that this case is not concerned with whether the Appellant conspired with others to impose a narrow faith-based ideology in the schools. The focus of this case is on the Appellant's conduct and his responses (or lack thereof) to the actions of others. It is therefore distinguishable from proceedings brought against PVET teachers by the NCTL.

48. We were not clear as to Mr Lodge's reference to Part 31 of the Civil Procedure Rules, or the criminal prosecution service disclosure manual. Neither is applicable to the First-Tier Tribunal. The powers of the Tribunal relating to disclosure are set out in rule 5 (3) (d). This enables the Tribunal to permit or require a party or another person to provide documents, information or submissions to the Tribunal or a party.

Permission to rely on more evidence.

49. We also refused the application for permission to rely on more evidence for the reasons set out below.

50. The Appellant had, to date, submitted very little evidence in support of his appeal, despite having ample opportunity and encouragement, in the form of directions, to do so. We considered the history of the matter. The Tribunal had issued directions over a period of at least 12 months directing the parties to exchange the evidence upon which they intend to rely in the appeal. Indeed, the Appellant was, by the order dated 7 December 2016, directed to send to the Respondent copies of all documents in his possession or power relating to the matters in issue in the proceedings by the 19 December 2016. By that time, he had been aware of the reasons for the decision since September 2015, had disclosure of the Respondent's documents since the summer of 2016 and had ample time to consider what documents he wished to disclose.

51. The parties had also agreed to provide the Tribunal with additional information which post-dated the Secretary of State's decision if they wished to rely on such evidence. This was despite the legislative provision that a decision should be made on the basis of the same evidence as was available to the Secretary of State at the time in the absence of such agreement.

52. The Appellant appears to have been reluctant to engage with the Tribunal process and had to be the subject of a striking out threat to produce his own witness statement in evidence. The Respondent has submitted three requests for the appeal to be struck out on the basis of the Appellant's non-compliance with the Tribunal's directions, and on each occasion, the Appellant has been given another opportunity to produce his evidence.

53. The order of the 17 February 2017 was specific and clear: because the Appellant had complied with the Tribunal's "unless" order by submitting only his own witness statement and such of the exhibits as he had submitted by the 17 February, the order of the 17 February 2017 specified that the evidence upon which he could rely would be limited to that evidence. Despite numerous opportunities to produce his evidence in compliance with the Tribunal's directions, the Appellant had not done so and had failed to comply with the previous orders of the Tribunal. The Tribunal can deal with breaches as it sees fit, whilst in compliance with its Tribunal Procedure Rules 2008. It was for this reason that the evidence was limited.

54. We saw no reason why this restriction should be lifted. The Appellant has been given many opportunities to serve witness statements from those witnesses upon whom he sought to rely.

55. Furthermore, the order made following the telephone case management hearing on 17 February 2017 records that Mr Lodge confirmed that the Appellant would not be relying on any other witness evidence and the hearing length could be reduced to 9 days on that basis. No explanation was offered for the change of position, nor why the Tribunal should now admit the evidence so late in the process.

56. We also refused the request to call expert evidence made halfway through the hearing. This was inconsistent with the Tribunal's directions given on 27 January 2017, 8 February 2017 and 20 February 2017, in which Judge Tudur directed that "the evidence upon which the Appellant is now entitled to rely is limited to his own witness statement and oral evidence and such documents as have been disclosed by him up to 17 February 2017". The report of Professor Felderhoff was not produced for these proceedings. In our view, allowing an expert to give oral evidence after the majority of Respondent's witnesses had given evidence and without the Respondent being given the opportunity to call its own expert evidence would be unfair.

57. We concluded that the restriction on the evidence to be relied upon should not be lifted: the Appellant, under the guidance of his legal team, has had ample opportunity to submit evidence, including witness statements and expert reports and to call witnesses to give oral evidence if he wished to do so and had chosen not to do so.

58. We noted that the Appellant sought to rely on documents including a House Of Commons Select Committee Report "Extremism in Schools: the Trojan Horse Affair", the oral evidence given to that Select Committee and the Committee chair's remarks on publishing the above report. We concluded that even if we had permitted the Appellant to rely on these documents, they were inadmissible and should not be taken into account by the Tribunal. In our view, reliance on these documents would contravene the principle set out by Stanley Burnton J in Office of Government Commerce v Information Commissioner (2010) QB 98 ("OGC decision") and subsequently affirmed by the Court of Appeal in R (Cala Homes (South) Ltd v The Secretary of State for Communities and Local Government (2011) EWCA CA CIV 639, per Sullivan LJ at [29].

59. In particular, we agreed that the OGC decision made it clear that the parties are not entitled to rely, in support of a submission on an issue contested in litigation, on evidence given to, or an opinion expressed by a Parliamentary Select Committee. To do so would place the opposing party, and the Tribunal, at risk of breaching of Article IX of the Bill of Rights and/or the wider principle of Parliamentary privilege.

60. Whilst we recognised that there were certain limited circumstances in which reference to proceedings in Parliament is appropriate, this is usually the case involving simple relevant historical facts and where "no questioning" arises. In this case, the Appellant had not even provided a list of clauses to which they sought to refer.

61. In our view, this case fell squarely within the OGC principles clear and the parties were not entitled to rely, in support of a submission on an issue contested in litigation, on evidence given to, or an opinion expressed by a Parliamentary Select Committee.

62. For the same reasons, we rejected the Appellant's submissions, that this case could be distinguished on various grounds including that it involved a different department i.e. the Department of Education.

Special Measures Order dated 29 September 2016

63. We rejected the contention put forward by Mr Lodge that the special measures order made on 29 September 2016 should not have been made without an oral hearing. This application was made on day four of the final hearing and before one of the witnesses subject to the order was due to give evidence. Mr Lodge submitted that as both parties had requested an oral hearing to determine the issue, the matter should have had an oral hearing before it was determined. However, he made it clear that there had been no change in the circumstances since the making of the order.

64. We rejected Mr Lodge's submission on the grounds that the Tribunal had before it detailed written submissions from the parties who were

both represented by Leading Counsel. There had been no application by either party regarding that order since it was made over 6 months ago. There had been no change of circumstances and there had been a number of subsequent case management hearings where the issue could have been raised but it had not.

65. In our view, the Tribunal was fully entitled, in the exercise of its case management powers, to decide the application for special measures on paper. It was not obliged to hold a hearing, nor was it obliged, as Mr Lodge asserts, to take positive steps to invite submissions from the press on the reporting restrictions. Any members of the press were free to attend the hearing and some did attend the hearing. As the order itself records, whilst the order will prevent the press (or any the person) publishing the witness names and job titles (or any other information that will enable them to be identified), it did not prevent the reporting of the content of their evidence.

66. It was agreed by the Appellant and the Respondent that a transcript of the hearing would be helpful for the parties and we granted permission to enable that.

The Statutory Framework

Education and Skills Act 2008 ("2008 Act")

67. Section 128 of the 2008 Act sets out the Respondent's power to prohibit a person taking part in the management of independent schools. It provides:

128 Prohibition on participation in management

(1) The appropriate authority may direct that a person—

(a) may not take part in the management of an independent educational institution;
(b) may take part in the management of such an institution only in circumstances specified in the direction;
(c) may take part in the management of such an institution only if conditions specified in the direction are satisfied.

(2) A direction under this section may be given in respect of a person only on one or more prescribed grounds connected with the suitability of persons to take part in the management of an independent educational institution.

(3) Regulations may prescribe the procedure for giving a direction under this section (including provision about notification of persons who are subject to directions).

(4) The appropriate authority may vary or revoke a direction under this section in prescribed cases.

(5) Regulations may prescribe the grounds on which a person subject to a direction under this section may seek to have it varied or revoked under subsection (4).

(6) In this section and sections 129 to 131, *"the appropriate authority"* means—
(a) the Secretary of State, or
(b) such other public authority as may be prescribed.

68. An independent educational institution is defined in section 92(1) as an independent school, which includes Academies and free schools.

69. Section 129 provides a right of appeal to the First-tier Tribunal against the direction given under section 128. It provides:

129 Directions under section 128: appeals

(1) A person in respect of whom a direction has been given under section 128 may appeal to the Tribunal—
(a) against the decision to give the direction;
(b) against a decision not to vary or revoke the direction.
(2) Regulations may—
(a) provide that the Tribunal may not entertain an appeal under this section insofar as the appellant's case is inconsistent with the appellant having been convicted of an offence;
(b) prescribe circumstances in which the Tribunal must allow an appeal under this section;
(c) prescribe the powers available to the Tribunal on allowing an appeal under this section.

Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 ("2014 Regulations").

70. Regulation 2 sets out the prescribed grounds on which a section 128 direction may be given. It provides as follows:

Prescribed grounds for a section 128 direction

(1) The prescribed grounds on which a section 128 direction may be given in respect of a person are that—
(a) the person—
(i) has been convicted of a relevant offence;
(ii) has been given a caution in respect of a relevant offence;
(iii) is subject to a relevant finding in respect of a relevant offence; or
(iv) has engaged in relevant conduct; and

(b) because of that conviction, caution, finding or conduct, the appropriate authority considers that the person is unsuitable to take part in the management of an independent school.
…
(5) For the purposes of paragraph (1), conduct will be relevant if it is conduct which —

(a) is aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;
(b) has been found to be in breach of professional standards by a professional body; or
(c) is so inappropriate that, in the opinion of the appropriate authority, it makes a person unsuitable to take part in the management of an independent school.

71. Regulation 3 sets out the procedure for giving a direction under s.128. It provides that before giving a s.128 direction, the appropriate authority must give the person the opportunity to make representations as to why the appropriate authority should not give the direction. The appropriate authority must give the person notice of his right to make representations. Regulation 3(4) provides that the person to whom notice is given may make representations in writing within the period of two months starting on the day on which the notice was sent (although the appropriate authority can extend that period)

72. Regulation 7 sets out the Tribunal's powers on appeal. It provides:

7.— Appeals: Tribunal's powers

(1) This regulation applies where—
(a) an appeal has been made to the Tribunal under section 129(1) of the 2008 Act in respect of a decision to give a section 128 direction, or a decision not to vary or revoke a section 128 direction; and
(b) the Tribunal considers that the decision is not appropriate.
(2) The Tribunal may order the appropriate authority to vary or revoke the direction.
(3) Unless the parties to an appeal agree otherwise, the Tribunal, in exercising its powers under this regulation, must not consider—
(a) any information relevant to the decision to give a direction, or not to vary or revoke a direction, which the appropriate authority did not have at the time the decision was made;
(b) any evidence of a material change of circumstances of the person concerned occurring since the decision to give a direction or not to vary or revoke a direction was made.

The European Convention on Human Rights.

73. The panel was referred to the following provisions by the parties.

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special

circumstances where publicity would prejudice the interests of justice.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 9

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Protocol 1 - Article 2

No person shall be denied the right to education. In the exercise of any

functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religions and philosophical convictions.

Background

Park View School

74. The school at the heart of this case has had a number of different names: Park View Business and Enterprise School, Park View School – Academy of Mathematics and Science and is now known as Rockwood Academy. For convenience, it shall be known as "Park View".

75. Park View is a state funded, non-faith secondary school for pupils aged 11 to 16 years, with approximately 600 pupils. It is located in Alum Rock, Birmingham. Almost all the students are from minority ethnic groups (largely Kashmiri or Pakistani), most speak English as an additional language, and approximately 98% are Muslim. The proportion of students eligible for free meals is well above the national average.

76. In January 2012, Ofsted judged the school to be "outstanding" and the proportion of students gaining five or more GCSEs at grades A*to C, including English and mathematics, was significantly above the national average. In April 2012, it converted to Academy status.

77. The Appellant was chair of governors at Park View from 1997 until July 2014.

Park View Educational Trust

78. The Park View Educational Trust ("PVET") was set up in April 2012 to manage Park View. When PVET was established, the Appellant became Chair of the Board of Trustees of PVET. Ms Lindsey Clark (formerly the Headteacher at Park View) became Executive Principal of PVET. Mr Hardeep Saini (formerly Deputy Headteacher at Park View School) became Principal at Park View. Mr Monzoor (Moz) Hussain became Vice Principal.

79. PVET became a Multi-Academy Trust ("MAT") incorporating Nansen Primary School ("Nansen") from 1 October 2012 and Golden Hillock School ("Golden Hillock") from 1 October 2013.

Nansen

80. Nansen is a state funded, non-faith primary school for pupils aged 4 - 11. It is located directly across the road from Park View and most of its students go on to Park View. Nansen's pupils have the same socio-

economic, cultural, religious and linguistic background as Park View students. In 2010, Ofsted judged Nansen to be "satisfactory".

81. In July 2011, the Appellant became an associate member of Nansen's governing body. Mr Moz Hussain was also a governor at Nansen.

82. Although it became a sponsored Academy within PVET on 1 October 2012, PVET and Park View began providing assistance and staff to Nansen from around April 2012.

83. In April 2012, Mr Razwan Faraz, who previously taught maths at Park View and was a Governor at Golden Hillock, was appointed Deputy Headteacher.

84. Within a few weeks of PVET taking over Nansen, the existing Headteacher was suspended, as a result of an issue concerning fire alarms. Mr Arshad Hussain, a teacher at Park View, was promoted as Acting Headteacher to replace the Head. In September 2013, Ms Razia Ali was appointed Acting Headteacher (and Arshad Hussain moved to Golden Hillock as Acting Deputy Headteacher).

Golden Hillock

85. Golden Hillock is a state, non-faith sports and art specialist secondary school for pupils aged 11 -16. It has since been renamed Ark Boulton Academy. It is located in the Sparkhill area of Birmingham. Golden Hillock's pupils come from a predominantly Muslim background and most speak English as an additional language. In January 2013, Ofsted inspected Golden Hillock and judged it to "*require improvement*". In March 2013, Mr Matthew Scarrott resigned as Headteacher of Golden Hillock.

86. On 20 March 2013, Golden Hillock's governing body (which included Mr Faraz) wanted to convert to a sponsored academy, sponsored by Park View. Park View/PVET ran Golden Hillock as an emergency measure from March 2013. Mr Hardeep Saini became Acting Headteacher at Golden Hillock and Mr Moz Hussain became Acting Headteacher at Park View. Golden Hillock formally became an Academy and joined PVET on 1 October 2013.

The Appellant

87. The Appellant has extensive experience and influence within the Birmingham education community and the wider British Muslim community. He has held a number of influential national and local education roles, including the Chair of the Education Committee of the Muslim Council of Britain ("MCB"), Director of the Muslim Parents Association, Vice-Chair of the Association of Muslim Schools, Member of the Executive of the National Governors Council and Birmingham

Governors Network, Director of Al- Hijrah Trust and Director of the Al-Hijrah Training Academy.

88. He was a part-time paid governor trainer for Birmingham City Council and an OFSTED inspector. He was also a former member of the Local Standing Advisory Council on Religious Education (SACRE)

89. In addition to those roles, the Appellant was, at various times, a governor of five different Birmingham schools, all with majority Muslim student populations. These were as follows;

- Park View (1997 to 2014)
- Nansen(2011 to 2014)
- Washwood Heath Academy (2002-2014)
- Adderley Primary School (2007 to 2009)
- Highfield Junior and Infant School (2009 to 2014)

"Trojan Horse" Letter and Investigations

90. In November 2013, Birmingham City Council received an anonymous letter, which has come to be known as the "Trojan Horse" letter. It described a strategy to take over a number of state schools in Birmingham and run them on strict Islamic principles. The Appellant was named in the letter as a prime mover behind the plan.

91. In January 2014, the Department for Education (DfE) received a number of whistleblowing allegations concerning schools in the Birmingham area. DfE shared the whistleblowing information with OFSTED and the Education Funding Agency ("EFA")

<u>Ofsted Inspections</u>

92. Between March and May 2014, Ofsted carried out inspections of 21 state funded non-faith schools in Birmingham, including Park View, Nansen and Golden Hillock.

93. Ofsted published its inspection reports on 9 June 2014. The main findings included that a culture of fear and intimidation had developed in some of the schools since the previous inspection, that some headteachers had been marginalised or forced out their jobs; followed by a rapid decline in schools overall effectiveness; that some governors had recently exerted inappropriate influence on policy and the day-to-day running of schools and that in several schools, children were being badly prepared for life in modern Britain.

94. Three different teams of OFSTED inspectors judged Park View, Nansen and Golden Hillock to be "inadequate" and all three schools were placed in special measures.

The Education Funding Agency Review

95. The Education Funding Agency ("EFA"), which was responsible for the funding agreement between the Respondent and PVET, commissioned a team to enter PVET and investigate potential breaches of the Funding Agreement, Academies Financial Handbook and Independent School Standards. The EFA review took place between 21-25 March 2014 and the EFA published its report in May 2014 ("the EFA Report").

96. The EFA report concluded that there were a number of breaches of the Funding Agreement, Academies Financial Handbook and Independent School Standards. It found, among other things, that governance arrangements for the Trust were inadequate, that the curriculum at Nansen was not broad and balanced. Some elements of the curriculum, particularly the social, moral, spiritual and cultural provision of the school, were restricted to a conservative Islamic perspective. Recruitment and safeguarding procedures were inadequate and that the Appellant had an inappropriate day-to-day role in the running of the schools.

The Clarke Report

97. On 15 April 2014, the Respondent appointed Peter Clarke as Education Commissioner for Birmingham, to investigate what had happened in the schools of concern and Mr Clarke, with some assistance, carried out interviews with teachers, governors, support staff, officials and others involved with various schools in Birmingham. The Appellant was interviewed twice as part of that process.

98. Mr Clarke published his report on 22 July 2014 ("the Clarke Report"). Mr Clarke made it clear that he neither looked for nor found evidence of terrorism, radicalisation or violent extremism in the schools of concern. He concluded that there were a number of people, associated with each other and in positions of influence in schools and governing bodies, who espouse, endorse or fail to challenge extremist views.

99. The Clarke Report found evidence of a co-ordinated deliberate and sustained action to introduce an intolerant and aggressive Islamic ethos into a few schools in Birmingham, by gaining influence on governing bodies, installing sympathetic headteachers or senior members of staff.

100. The Clarke Report found that the Appellant and Park View/PVET were at the centre of what happened and that the PVET became the "incubator" for much of what happened. The Clarke Report concluded

that the effect had been to limit the life chances of pupils at the schools and render them vulnerable to radicalisation in future.

Governance and Responsibility

The structure of an Academy

101. The following matters were common ground and were accepted by the Appellant. When a school converts to an Academy, it is no longer under the control of the Local Authority. An Academy is an independent school run by an Academy Trust, which is a charitable company. The company is run by Trustees who are the directors of the company. Therefore, the chair of Trustees is the chair of the board of directors of the company.

102. The Trust enters into a Funding Agreement with the Secretary of State, which sets out the Trust's obligations. The Trustees are responsible for ensuring that those obligations are met. If they are not met, that is the responsibility of the Trustees and ultimately the Chair of Trustees. In effect, an Academy Trust is expected by the Secretary of State to run itself. The Trustees take ultimate responsibility for discharging the obligations that the Trust undertakes.

103. The responsibilities of an Academy Trust and the Trustees are set out in a number of documents, including the Funding Agreement, the Governors Handbook and the Academies Financial Handbook.

The PVET Master Funding Agreement

104. The PVET Master Funding Agreement was made between the PVET Trust and the Secretary of State for Education and sets out the obligations of the PVET Trust, which include:

    a. Clause 13(a) – the requirement that the school will be at the heart of its community, promoting community cohesion.

    b. Clause 17 – the obligation to comply with the requirements of the Education (Independent School Standards) (England) Regulations 2010 in relation to carrying out enhanced criminal records checks and making any further checks for members of staff, directors and the chair of the local governing body.

    c. Clauses 23-24 – the requirement that the curriculum provided by each Academy to pupils up to the age of 16 shall be "broad and balanced".

    d. Clause 25 – the requirement to make provision for the teaching of religious education and for a daily act of collective worship.

e. Clause 27(a) – where the Academy has not been designated with a religious character, the company shall ensure that provision is made for religious education to be given to all pupils in accordance with the requirements for agreed syllabuses in s. 375(3) of the Education Act 1996. This is the requirement that every agreed syllabus must reflect the fact that the religious traditions in Great Britain are in the main Christian whilst taking account of the teaching and practices of the other principal religions represented in Great Britain.

f. Clause 27(b) – the company shall ensure that the Academy complies with s. 70(1) of and Schedule 20 to the School Standards and Framework Act 1998. This includes the requirement that the act of worship be "wholly or mainly of a broadly Christian character", unless the Academy applies to the Secretary of State for consent to be relieved of that requirement.

g. Clause 29A – the company is required to act in accordance with ss. 406-407 of the Education Act 1996, concerning political indoctrination and the duty to secure balanced treatment of political issues.

h. Clause 34B – the company shall publish in each financial year information in relation to the amount of pupil premium allocation that it will receive, on what it intends to spend the pupil premium allocation, and on what it spent its pupil premium in the previous financial year.

i. Clause 67 – the company shall abide by the requirements of and have regard to the guidance in the Academies Financial Handbook pushed by DfE and amended from time to time.

The Governors' Handbook

105. The Governors' Handbook, published by the Department for Education in January 2014, provides in section 1.2, that in all types of schools, governing bodies should have a strong focus on three core strategic functions:

    a. Ensuring clarity of vision, ethos and strategic direction
    b. Holding the headteacher to account for the educational performance of the school and its pupils; and
    c. Overseeing the financial performance of the school and making sure its money is well spent.

106. Section 1.4 emphasises that governors are not school managers and should make sure they do not interfere in the day-to-day running of the school.

107. Section 2.1 provides that the primary consideration in the appointment and election of new governors should be the skills and experience the governing body needs to be effective, and that governing bodies should conduct a skills audit to identify any gaps in the skills, knowledge and experience of existing governors.

108. Section 2.2.1 provides that the Equality Act 2010 applies to all schools in their role as employers and providers of education and of a service or public function. The public sector equality duties mean that schools must have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations across all characteristics and publish equality objectives and information demonstrating how they are doing this.

109. Section 2.2.2 provides that headteachers are responsible for the internal organisation, management and control of the school. It is their job to implement the strategic framework established by the governing body. The governing body should not be involved in detail in the day-to-day management of the school.

110. Section 3.1.2 provides that Academies must provide a daily act of collective worship by virtue of their Funding Agreement, and that an Academy wishing to have the "broadly Christian" requirement removed and replaced by collective worship of another faith should apply to the Secretary of State via the EFA.

111. Section 3.1.3 (headed "political bias") provides that "Academy Trusts, governing bodies, headteachers and LAs must not allow the promotion of one-sided political views". This applies to the teaching of any subject and to extra-curricular activities at the school. Where political issues are covered, opposing views must be presented in a balanced way.

112. Section 3.3 provides that governing bodies of Academies should reassure themselves that the school has a written statement of the policy they adopt on sex education and make it available to others. Section 3.3.1 provides that all schools providing sex education at both primary and secondary level, including Academies, must have regard to the Secretary of State's Guidance on Sex and Relationship Education.

113. Section 4.9.1 sets out the general duty on Academy Trusts to have arrangements in place to ensure that they carry out their functions with a view to safeguarding and promoting the welfare of children, and have regard to any statutory guidance issued by the Secretary of State in considering what arrangements they need to make.

The Academies Financial Handbook

114. The Academies Financial Handbook sets out the financial requirements for Academy Trusts. There are two relevant versions: the version dated

September 2012, which had effect for the academic year from 1 September 2012 and the version issued in June 2013, which had effect for the academic year from 1 September 2013.

115. Section 2.1 relates to financial oversight and provides that the Academy Trust's Trustees and managers should have the skills, knowledge and experience to run the trust. In particular, the Accounting Officer, under the guidance of the board, must ensure that there is appropriate oversight of financial transactions. In the 2013 edition, this includes specifically "the maintenance of adequate fixed asset registers".

116. Section 2.5, headed proper and regular use of public funds, provides that Academy Trusts must ensure that no Trustee, governor, employee or related party has benefited personally from the use of funds, and that all Trustees have completed the register of business interests kept by the Trust, and that there are measures in place to manage any conflicts of interest.

117. Part 3 sets out the audit requirements. Both editions of the Handbook provided that all Academy Trusts must establish either a dedicated audit committee or a committee, which fulfils the functions of an Audit Committee. The 2012 edition stated that the EFA's expectations were that all Multi-Academy Trusts must have a dedicated Audit Committee. The 2013 edition stated that the EFA's expectations were that all Academy Trusts with an income over £10 million or capitalised asset value of over £30 million must have a dedicated audit committee.

118. Any breach of the Academies Financial Handbook is also a breach of the Funding Agreement (Clause 67).

Decision to issue section 128 direction against the Appellant

119. The Respondent informed the Appellant by letter dated 25 March 2015 that she was minded to issue a direction against him pursuant to section 128 of the 2008 Act ("minded to bar letter"). The letter set out the grounds on which the Respondent was minded to prohibit the Appellant from taking part in the management of schools, and set out the evidence and reasons upon which she relied.

120. The reasons set out in the annex to the barring letter and in summary include that the Appellant was closely involved in determining the policies, practices and ethos at PVET and had an inappropriate role in the day-to-day running of Park View. They also included that PVET's recruitment practices were inappropriate and lacked transparency and that he dominated and had direct involvement in all recruitment decisions. The Respondent's reasons included that governance arrangements were inadequate as governors failed to ensure that safeguarding requirements and other statutory duties were met. They included that the Appellant espoused an intolerant and narrow faith-

based ideology and that while he was Chair of PVET, he promoted, permitted or failed to challenge practices which included the curriculum and education plans being narrowed and the faith component being increased.

121. The Appellant was notified of his right to make representations in writing. The Appellant sought and obtained various extensions of time, and was eventually given a total of four months in which to respond. This is two months more than the statutory requirement. On 17 June 2015, the Appellant submitted representations in response to the minded to bar letter. His representations included a Youtube video.

122. Having considered the Appellant's representations, the Respondent decided to issue a direction against the Appellant under section 128 of the Act, on the grounds that he had engaged in conduct which was aimed at undermining fundamental British values (FBV) and/or was so inappropriate that it made him unsuitable to take part in the management of an independent school.

123. The decision was notified to the Appellant by letter dated 3 September 2015 ("the barring letter"), setting out the reasons and evidence. The Appellant appealed against the direction on 2 December 2015.

Evidence

124. The Tribunal had in evidence before it 17 lever arch files of documentary evidence, which it had read in advance of the hearing, and which was enlarged upon in oral evidence. The parties made oral and written submissions to the Tribunal.

125. Mr Hardip Begol, Director in the Department of Education, Safeguarding in Schools and Counter Extremism Group, explained the procedure that had been followed in giving the s.128 direction in the Appellant's case. He set out that the Appellant was the first person to have been made the subject of a direction under s.128 of the 2008 Act and the 2014 regulations.

126. Mr Begol's evidence was that DfE officials acting on the Clarke Report's recommendation to consider taking action against individual's managing schools, considered the evidence and recommended to ministers that they issue a barring direction against the Appellant.

127. In cross examination, Mr Begol disagreed with the suggestion put by the Appellant's Counsel that officials were given a *"clear steer"* from the top whilst Mr Michael Gove was the Secretary of State, that a direction should be made. He clarified that the "minded to bar" submission went to Lord Nash in March 2015, around nine months after Mr Michael Gove had left the DfE.

128. Mr Begol confirmed that the Appellant had been given a number of opportunities to make representations after service of the "minded to bar" letter was sent on 25 March 2015. The Appellant had written to Lord Nash on 1 June 2015 seeking an extension of time to consider his case and make representations to the Department. This was then followed up by an email dated 18 June 2015 from the Appellant, enclosing a letter dated 17 June 2015, which set out the Appellant's representations.

129. On 15 July 2015, a letter was received from Kuddus Solicitors dated 9 July 2015 confirming that they were acting for the Appellant and requesting further time to consider the "minded to bar" letter and to make further representations. He confirmed that the Respondent exercised her discretion and gave the Appellant an additional two months in which to submit any representations. The Appellant had four months in total to make his representations.

130. Despite various correspondence being sent to the Appellant's solicitor, no further representations were received other than those sent by the Appellant to Lord Nash on 18 June 2015. The representations were taken into account before the "barring letter" was sent on 3 September 2015.

131. Mr Begol explained that the Respondent had no issue with the Appellant's co-authorship of a publication by the Muslim Council of Britain entitled "Towards Greater Understanding: Meeting the Needs of Muslim Pupils in State Schools" published in 2007. He set out that this was a privately produced document which had no official status. It was the Appellant's implementation of his views in secular state schools that was the issue.

132. Mr Gerrard McAlea, former Head of the Investigation and Due Diligence Unit of the Department of Education, set out the background to the Trojan Horse allegations and the subsequent Ofsted/EFA inspections. He had interviewed a number of individuals as part of the Clarke enquiry. He confirmed that whilst there was some overlap of individuals working on the different reports, the remit was different.

133. He gave evidence that the DfE did not push Ofsted or the EFA into investigating Park View or to look for evidence of extremism. He confirmed that allegations had been made before the widespread media reporting of the "Trojan Horse" letter and confirmed that more individuals had come forward after the widespread publicity.

134. Mr McAlea reiterated the point made by Peter Clarke in his report that he neither specifically looked for nor found evidence of terrorism, radicalisation or violent extremism in the schools of concern in Birmingham.

135. He set out that one of the roles of the Chair of the Governing Body was to ensure that there was a policy in place for the vetting of external speakers. This was part of the overall safeguarding strategy, He referred to the *"impressionable"* young audience at the Academies where such speakers were invited. He confirmed that whilst the drafting of such a policy would normally be done by the Headteacher, the Chair of the Governors needed to ensure it was in place. He set out his concerns in relation to Mr Sheikh Shady Al-Suleiman and Rabbi Cohen of Neturei Karta, who had both been invited to speak at Park View.

136. He confirmed that the duty to ensure that acts of worship are "wholly or mainly of a broadly Christian nature" applied to all schools, unless a determination was sought and granted. It was up to those schools to take the necessary steps to obtain a determination. It was the fault of the school (and directly the governors who should be overseeing the particular process) if they did not apply.

137. He confirmed that in April 2014 allegations came to light that social media groups (on WhatsApp) had been formed which included the Park View Brotherhood. Its members included senior teachers at Park View. These messages had been provided to him and Mr Clarke. There were offensive views expressed on that group. The Appellant was not a member of the Park View Brotherhood Whatsapp group.

138. Mr Phillip Reed, Area Team Leader (West Midlands) and Senior Caseworker, Education Funding Agency, confirmed that the email sent by Mr David McVean, Deputy Director, Academy Operations (Central) dated 25 April 2014 to various individuals asking if there was "*anything in the material collected on SRE that pokes holes in the lines provided (it claims) by the school"* postdated the drafting of the EFA report (which was sent to PVET in draft on 11 April 2014). In his view, that email was sent in order to respond to the media statement issued by PVET.

139. Mr Reed agreed that there was no determination in place either "*technically or practically"* as the Appellant submitted, for any Academies in the PVET at the time of the review by the EFA in March 2014. Academies were required to apply to the Secretary State for a determination, or for an existing determination to be renewed, under the terms of their Funding Agreement (Clause 27).

140. Mr Reed referred to clear advice which been provided to PVET from the EFA on the mechanism for the Trust to apply for the determination on behalf of its Academies in July 2013. This email dated 31 July 2013 was sent to Dave Mallard, Business Manager at PVET. This required the submission of a business case and set out, amongst other matters, that there was an expectation that consultation with stakeholders would be conducted, particularly with parents at the Academy. He confirmed

that PVET did not act upon receipt of this advice at the time nor by the date upon which the EFA report was published.

141. Mr Reed had spoken to Ms Clark but she could not provide an explanation as to why Park View had not pursued an application for a determination in relation to collective worship. She had been aware that it had been discussed amongst the governors but was not clear as to why it had not been taken forward.

142. According to Mr Reed, the Appellant should have been well aware of the requirements of the Funding Agreement because he was a signatory to the latest variation (which clearly sets out the requirements concerning collective worship at clauses 23 to 29A of the Master Funding Agreement). The Appellant was also a former member of Birmingham Local Standing Advisory Council on Religious Education (SACRE) and a governor of a maintained school that had gained a determination previously.

143. Mr Reed also confirmed that the team had reviewed the Single Central Register at Nansen, which was intended to summarise and record the checks and vetting of all staff working with pupils. They found it to be incomplete. In particular, there were no accurate dates for when references for staff had been taken. In his view, the Appellant had ultimate responsibility for safeguarding and the quality of teaching within the school. He would have expected him, as a National Leader of Governance, to ensure that a system was in place to ensure that the Single Central Register was complete and that the safeguarding requirements were adhered to.

144. Ms Ann Connor, Education Adviser for Department of Education, confirmed that she had undertaken many monitoring visits of schools across the country. This included many schools with large numbers of Muslim pupils. She described how she had never experienced a situation where she met so many distressed, frightened and crying members of staff. Neither had she met so many adults who asked for their names to be kept confidential, or had asked to have meetings in rooms where they would not be seen by others.

145. Ms Connor confirmed that that there was no policy in place in respect of individuals invited to speak to pupils. There was confusion as to who was responsible for vetting external speakers. The governors at Golden Hillock thought it was the Appellant. She acknowledged that a number of schools did not have such a policy.

146. Ms Connor also confirmed that she went into the administration office to look at the Single Central Record at Park View. The Single Central Record contains full details of all recruitment and vetting checks conducted by the school. She noted that several Disclosure and Barring Service checks were missing from the Single Central Record. The team found that there were 43 references missing. She would

have expected the Appellant to have had sight of the Register as he was ultimately responsible for the safe recruitment of staff and the safeguarding of pupils within the school.

147. Ms Connor explained that the legislation provides that maintained schools must provide a daily act of collective worship for all registered pupils up to the age of 18. For Academies, the requirement forms part of their Funding Agreement. The Headteacher, the school governors and for maintained schools, the Local Authority, are responsible for arranging this daily act of collective worship. The collective worship should reflect the broad traditions of this country and so the obligation, on maintained schools and Academies, is for collective worship to be of a "wholly or mainly of a broadly Christian nature".

148. Ms Connor submitted that some maintained schools and Academies serve communities where the majority of pupils are of a faith other than Christianity. In this situation, a maintained school can ask the Local SACRE to lift the requirement (seek a disapplication) and replace it with worship based on a non-Christian religion as appropriate. Whilst Academies are not answerable to SACRE, it is open to Academies to rely on the advice of SACRE on the contents of their collective worship. She explained that in situation where the majority of pupils in an Academy are of a faith other than Christianity and the Academy wants to lift the requirement for Christian collective worship, the Academy Trust must apply, through the EFA to the Secretary of State for a "determination". It is not possible to apply to replace Christian collective worship with a non-religious assembly, but they can be replaced by religious assemblies of any religious denomination.

149. She explained that where there was no determination in place at an Academy, or disapplication for a maintained school, a school should provide assemblies of a "wholly or mainly of a broadly Christian nature".

150. She confirmed that in March 2014, Park View, Nansen and Golden Hillock were maintained non-faith schools, which had not applied to the Secretary of State for a determination. Accordingly, each was required to provide a daily act of collective worship which was "wholly or mainly of a broadly Christian nature".

151. Ms Connor referred to a conversation with a distressed Ms Clark. Ms Clark stated that the Appellant had orchestrated everything within the school and Ms Clark felt that her role had been side-lined. Ms Clark was not involved in any decisions such as the recruitment of staff and she informed Ms Connor that the Appellant was more involved in recruitment than she had been. Ms Clark claimed she did not know about new appointments within the schools or even the names of some of the more recent senior appointments. Ms Clark believed that the Appellant wanted her to work in an executive capacity in order to remove her from the day to day running of the schools.

152. Ms Connor also described the conversation she had with a Science Technician at Park View. He had been at the school for years. He explained to her that the Park View had received additional monies for its technology specialist provision. He informed her that half a million pounds had been provided to refurbish the facilities and to buy new equipment such as cookers and heavy machinery. The refurbishment had taken place but as soon as the school obtained Academy status, the equipment had disappeared and no one knew where it had gone.

153. Mr Michael Hobbs, College Intervention Manager, of the Interventions and Investigations Core Team, Education Funding Authority, evidence focused around the financial and governance aspects. Mr Hobbs submitted that the PVET did not have an Audit Committee in place. He was clear that PVET was required to have an Audit Committee under the Academy's Financial Handbook. The failure to have one was in breach of the 2013 Academy's Financial Handbook. He had identified that the Trust had no Finance and Audit Subcommittee and all the work was undertaken by the Trust's full governing body and local governing bodies within the Academy.

154. In his view, the absence of either a Finance or Audit Committee was a breach of the 2013 Academy's Financial Handbook. Paragraph 2.1.10 of the 2013 Academy's Financial Handbook required every Academy Trust to have a Finance Committee (the name of the committee may vary) to which the board may delegate the detailed scrutiny of the Trust finances.

155. Mr Hobbs had raised this with Ms Clark. She explained that they had difficulties getting governors together to make the meetings quorate so had focused on "smaller, sharper" governing bodies. In his view, the essence of what she had told him was that neither the Trust nor the local governing body focused sufficiently on financial management.

156. He referred to his discussions with the Appellant. The Appellant had explained that they had one local governing body that dealt with all the business. It was up to each local governing body to set up additional committees if they required. The Appellant had confirmed that the PVET had made the decision not to create a governance structure with any committees.

157. He submitted that the Trust did not have a Fixed Asset Register for Park View. The 2012 Academy's Financial Handbook, section 2.5 made it clear that the Trust should not dispose of publicly funded assets without the EFA's consent. The 2012 Academy's Financial Handbook states that the Accounting Officer, under the guidance of the Board, must ensure that all Trust property is under the control of the Trustees. The 2013 Academy's Financial Handbook section 2.1.2 further clarified that this control included the maintenance of adequate Fixed Asset Registers.

158. He described how a member of staff had informed his colleague that equipment in the Design and Technology wing of Park View had been stripped out when the school had become an Academy. Ms Clark could not say what had happened to the assets after the rooms were converted back into classrooms and could not recall any disposal process. Mr Hobbs had to ask Birmingham City Council to provide a list of the equipment that had been installed in the Design and Technology wing of Park View.

159. Mr Hobbs also set out how he had made enquiries and discovered that the ovens had been sold to staff for a total of £530 in October 2012. The record of sale, which was produced, did not explain to whom they had been sold, the original value of the equipment, or how they were valued on disposal. This was the only record that existed.

160. Mr Hobbs described the problems with the governors' declaration of interest forms. He had requested a list of all the directors of the Trust as well as governors for each Academy to ascertain whether there was a business interest declaration for each governor. The EFA wanted to establish whether the Trust had the means of knowing whether governors were benefiting financially from the Trust.

161. He concluded that there were no forms for 16 of the governors. Whilst some declaration of interest forms were available, including for the Appellant, they were not always complete. The Appellant and Mr Akmal had failed to make a declaration of three other directorships that could have been included on the declaration of interest form.

162. The Appellant had failed to declare that he was a director of the Association of Muslim Schools, Bordesley, Birmingham Trust Ltd and the Muslim Parents Association. These were Birmingham based organisations so Mr Hobbs would have expected them to be included.

163. Mr Akmal had failed to declare his directorship at Exquisitus Ltd, Al-Hijrah School System for Education Training International Ltd and the Muslim Parents Association. These were also Birmingham-based organisations.

164. Mr Hobbs found evidence of two related party transactions after making some enquiries. The first was between PVET and the Appellant. This was in relation to invoices for two days' compensation for Free School application training and for a Free School application consultancy meeting. However, there was no suggestion of the Appellant benefiting in any inappropriate way.

165. The second related party transaction was between Nansen Primary School and Al-Hijrah school (when Nansen received £17,330 lettings income over a six-month period from October 2012). Mr Shahid Akmal was a director of PVET and also a company connected to Al-Hijrah

school but had not declared his interest in a contract for hire between the two schools.

166. Mr Hobbs set out that there was no skill matrix regarding the governors. It was a mandatory requirement of the Academy's Financial Handbook that governors must ensure they have skills, knowledge and experience to run the Academy Trust (section 2.1). Therefore, it was not possible for the Trust to demonstrate their governing body satisfied these requirements. He recorded Ms Clark as suggesting to the governors that they use an alternative method to the self-assessment questionnaire because some of the governors had rated themselves as possessing certain skills when she questioned whether they actually did.

167. Ms Gurpreet Dhillon, former Human Resources Manager, Park View Educational Trust (PVET), gave evidence that the Appellant along with Dave Hughes (another governor at Park View as well as a Trustee of PVET) had the most influence within the governing body. According to her, the Appellant came into Park View regularly. This was approximately weekly for a day or half a day. She confirmed that he came to attend the headteachers meetings and was present at most of these meetings. She found this surprising as she would not have expected a governor to be present at these meetings because governors ought not to be involved in operational matters.

168. In her view, the Appellant was too involved in operational matters at PVET schools. She had to check with him before she could advertise any role including any teaching assistant roles. For example, she referred to an email regarding the advertising of nine teaching assistant posts whereby she sought approval from him to advertise those posts.

169. Ms Dhillon gave evidence that the Appellant should only have been involved with the recruitment process when they were advertising the role of Headteacher or Deputy Headteacher and even in such circumstances his involvement should have been limited to sitting on the interview panel as Chair of the Governing Body.

170. According to Ms Dhillon, the Appellant was too involved in the recruitment process. He decided which role should be advertised and when. There was no consultation with the Executive Principal, Ms Clark. Ms Dhillon produced emails regarding seconded posts within PVET and the dates that the secondments were to cease. She confirmed that all decisions about seconded posts had to go through the Appellant and he determined the salaries for the Assistant Headteacher, Deputy Headteacher and Executive Principal. She confirmed that no one else was involved in setting the salaries for these roles.

171. Ms Dhillon confirmed that Mr Saini's position as Acting Headteacher at Golden Hillock and Mr Hussain's position as Acting Headteacher at

Park view were not advertised. Ms Razia Ali's post as Acting Headteacher at Nansen was advertised as a permanent post but when the only applicant was Ms Ali, the Appellant instructed her to stop the recruitment process. However, the School had in the past appointed staff into senior roles where there had been only one applicant e.g. Head of English.

172. Ms Dhillon described her own role in the recruitment process as very limited whilst the Appellant was Chair of PVET. She had no involvement in the selection process, no input in devising the questions for interview, nor what assessments should be undertaken or deciding who sat on the recruitment panel. She also confirmed that there was no shortlist and interview scoring sheets whilst the Appellant was the governor in primary control of the recruitment process.

173. She described how in March 2014, the Appellant tried to persuade her to tell the EFA that she had advised him that Ms Clark, Mr Saini, Mr Moz Hussain, Mr Arshad Hussain and Mr Mallard could be put into those permanent posts without undergoing a recruitment process. However, she informed the Appellant that she could not do so as she was not employed by PVET until 1 September 2012 and as far as she was aware, those individuals were already in permanent positions before her arrival.

174. In addition, she had also been asked to provide the candidate information forms to the recruitment panel, which included the ethnicity and diversity information (the monitoring page). In her experience, the page would normally be removed to ensure that it did not impact and/or influence decision-makers. The failure to remove them exposed the decision-makers in the organisations to possible accusations of bias or unfair conduct.

175. Ms Hilary Thomson, former Assistant Headteacher and Teacher Governor at Nansen School, described how in May 2012, there was a particular drive to implement changes to the Nansen school timetable so that it mirrored or reflected the same model applied in secondary education. In practical terms, this meant that the pupils at Nansen had access to specialist teachers, each of whom would stay in the classroom and students would move around the school and attend classes with different teachers. This was a completely different approach from that normally adopted in primary school education. It was her view that this change impacted on the younger children's ability to form positive relationships with other children and teachers.

176. She expressed the view that this was wholly inappropriate for any pupil who had special educational needs and who needed support to develop social skills. Both Ms Thompson and the headteacher at the time considered the change in arrangement to be detrimental to pupil development.

177. Ms Thomson set out that following consultation with the governing body and parents in 2010, it was agreed that Nansen would use Social and Emotional Aspects of Learning (SEAL) materials and approaches, which would allow for multi faith worship. However, the Appellant was particularly keen to secure the implementation of collective Islamic worship as opposed to SEAL based worship. On 24 April 2012, at the Standards and Curriculum Committee, the Appellant refused to move the matter onto the next meeting in June 2012 after being told that the two individuals who led the collective worship programme were on sick leave. The Appellant was not happy with this approach and told the meeting that it needed to reintroduce Islamic worship in the school.

178. Witness D confirmed the position around SEAL based worship and the change to collective Islamic worship after the meeting in April 2012. Witness D confirmed that there was no discussion involving Witness D after the April 2012 meeting. There was no application made to the local SACRE which had approved the SEAL approach to change the nature of the collective worship and nor were parents consulted or informed. There was also no discussion about who would vet the content of the Islamic collective worship. This was in contrast to the approach taken in 2010 when the decision was taken to move from Islamic collective worship to a SEAL based approach. This had followed a process where the parents had been sent a letter informing them of the change and they had been given an opportunity to discuss the matter if they had wished to do so.

179. Witness D also described the Appellant's involvement in the appointment of Mr Razwan Faraz as Deputy Headteacher in 2012. At that time, the Appellant was an Associate Governor. The Appellant was insistent that he wanted to be on the interview panel as an adviser. Witness D had already been in touch with the Local Authority at this point and sourced a senior adviser to assist with interviews, however, Witness D stated that no one dared to challenge the Appellant and believed that even if they challenged him, he would have used his "OFSTED experience" to overrule them.

180. Witness D thought Mr Faraz was *"a bit green"* and lacked key leadership experience, preferring a female candidate who was stronger. Witness D was concerned that the reference for Mr Faraz (from Ms Rizwana Darr) was brief and did not describe him in a full management/leadership role. However, the Appellant spoke resolutely about why he thought Mr Faraz should be appointed. Witness D felt ignored as there was no consideration of the fact that Witness D would be working closely with the appointee.

181. Witness A's evidence focused on the issues at Golden Hillock before it joined PVET and thereafter. Witness A had little direct contact with the Appellant but had been told that the Appellant *"pulls all the strings"* and was "*always at Park View*".

182. Witness B described how the Appellant was regularly at Park View School. He would attend at least once per week on a Friday afternoon. Witness B knew this as Witness B was based in the leadership office and the Appellant would always visit the leadership office. On one occasion, Witness B had been told by the Appellant not to bother applying for the job as manager as he had someone else in mind for that post.

183. Witness C also confirmed seeing the Appellant at Park View on a weekly basis after it became an Academy. Witness C confirmed the impression that the Appellant exercised a lot of control over events at Park View. Witness C did not, however, have a lot of direct contact with the Appellant.

184. Witness E's evidence was based on time working at Park View around 10 years ago. Witness E described some examples of good teaching but was surprised that an unscientific theory was being taught in a science lesson.

185. The evidence of Witness F, Ms Angela Corbett and Mr Ian Hodgkinson related to the Ofsted inspections of each school. They confirmed that the reasons for going in to undertake the section 8 inspections initially was due to the number of complaints received and they all refuted any suggestion that anyone had asked them to reach particular conclusion. They were clear that their conclusions were based on what they observed as part of the inspection.

186. Ms Angela Corbett, former HM Inspector of Schools, Ofsted described the role of Ofsted. Ofsted is the Office of Her Majesty's Chief Inspector of Education, Children's Services and Skills. Ofsted was established under Part 8 of the Education and Inspections Act 2006.

187. Ofsted is independent of the Department for Education and none of the Ofsted inspectors who inspected PVET schools assisted with or were involved in the EFA or Clarke investigations.

188. Under the Education Act 2005 ("2005 Act") section 5 & 8, Ofsted inspects maintained schools, Academies and free schools. Ofsted also inspects other independent schools under sections 108 and 109 of the Education and Skills Act 2008. The Ofsted inspections were initially carried out as a section 8 no formal designation inspection due to the concerns which were received and/or identified by OFSTED.

189. Section 9 of the Education Act 2005 enables Ofsted to deem an inspection undertaken under section 8 of the 2005 Act to be a section 5 inspection during the course of the inspection. All the inspections of PVET Schools were deemed in the course of the inspections to be section 5 inspections. The Ofsted inspection reports in relation to Park View, Golden Hillock and Nansen are publicly available. All three schools were judged to be inadequate and placed in special measures.

190. Ms Corbett, set out that that Ofsted inspections are inspections of the school and no judgements are made about the performance of any individuals involved in the running of the school.

191. Ms Corbett acknowledged in cross-examination that it was not common, as in the case of Park View, for the inspection to have a break of two weeks between inspections but neither was this rare. Furthermore, she acknowledged that whilst at the second inspection of Park View, there were no children as it was a training day, they used the time to sit in on the safeguarding training, meet with the leadership team and the governing body.

192. Ms Corbett set out that Park View was judged to be inadequate overall and requiring special measures due to two key areas: behaviour and safety and leadership and management being judged as inadequate. The quality of teaching and pupil achievements were both judged as good. The inspection report highlighted serious shortcomings in the governance arrangements of the Academy and a full review of governance was recommended, in addition to the other recommendations for improvement.

193. Ofsted concluded that the ultimate responsibility for safeguarding of pupils at Park View rested with the Governing Body, as it does in all schools and Academies in England. The team found that the Academy was not doing enough to keep pupils safe. This was because there were weaknesses in raising pupils awareness of the risks of extremism, teaching them how to stay safe online, covering the full range of types of bullying and teaching pupils how to live a healthy lifestyle. They concluded that the general understanding among staff to spot signs of radicalisation, their awareness of forced marriage issues, and their ability to deal with concerns raised by student's was limited because they had not received sufficient training.

194. Ofsted also concluded that the leadership and management of Park View were inadequate. Their reasons included the lack of confidence in the management shared by a significant number of staff, the failure to ensure safeguarding requirements were met, including in relation to safe recruitment, students limited understanding of the arts, different cultures and other beliefs which meant they were not prepared for life in wider society, the lack of staff training in child protection and failure to ensure equality of opportunity.

195. Ofsted concluded that although the governors were aware of their responsibility for safeguarding in the Academy, they were not doing enough to ensure that the Academy systems were effective, in line with statutory requirements. Ms Corbett concluded that Ofsted were not confident that the school had the capacity to improve with the current leadership and management.

196. Ofsted findings in relation to Nansen included that the Governing Body and senior leaders did not adopt effective strategies that develop pupils' awareness of the risks of extremism or radicalisation. Furthermore, the Governing Body did not give leaders and teachers reasonable scope to exercise fully the day-to-day management responsibilities and leaders did not sufficiently develop pupils understanding of the different customs, traditions or religions that exist in Britain.

197. Ofsted findings in relation to Golden Hillock included that its work to keep students safe was inadequate. Key safeguarding procedures were not followed and too little was done to keep students safe from the risks associated with extremist views. Staff were polarised about the leadership of the school and some staff, including senior leaders were concerned about perceived unfairness and lack of transparency in the recruitment process.

198. The Appellant submitted a statement dated 10 February 2017, which had exhibited to it statements from Ms Clark, Mr Hussain, Mr Hardeep Saini, Mr Lee and Mr Arshad Hussian. His statement also had the experts reports and witness statements of Dr M C Felderhoff, Prof John Holmwood, Dr Chris Allen and Prof Tim Brighouse. His witness statement sets out that these additional witness statements were made in the course of the NCTL proceedings against the PVET leadership team and were disclosed to him by the Respondent.

199. The Appellant stated that there was a *"context"* around the unfavourable judgements reached by OFSTED, EFA and Peter Clark as at the time, there was widespread media reporting of the "Trojan Horse" letter. He submitted that these were not normal or regular inspections. He thought these factors were important and may have had some influence on the inspectors. He accepted under cross-examination that whilst he did not agree with the judgements and there was this *"context",* as professional people they made the judgement that they thought was right. He did not doubt the veracity of the individuals who were involved in the various processes.

200. The Appellant accepted that there was no policy or procedure in place at Park View for vetting external speakers. He argued that this was the case for 80% of other schools. His case was that there is no requirement to have a speaker vetting policy. He stated that Ms Clark or, later, Mr Moz Hussain, in their roles as headteachers had been vetting speakers. In his statement, he set out that no individual teacher alone was allowed to make decisions on the invitation of speakers. He could not point to any instruction or written policy making it clear that it was the headteacher's responsibility to do this.

201. He accepted that Sheikh Shady Al-Suleiman and Rabbi Cohen of Naturei Karta had both been invited to speak at the school. Mr Al-Suleiman had been invited twice. He described their views as

"unacceptable" but set out that as far as he was aware Mr Al-Suleiman did not say anything that was *"objectionable".* He denied knowing their views at the time and stated had he known then what he now knew about their views, he would have done something. He stated that although they were vetted, those issues were not picked up. He accepted that the systems could have been better. He acknowledged that more research should have been done into the speakers before they were invited into school.

202. He accepted that the Trustees and Governing Body are ultimately responsible for such issues but that it would be wholly wrong to fix him with responsibility when the panel had not heard from the headteacher who had operational responsibility and Mr Moz Hussain who invited the speaker.

203. The Appellant confirmed that he was aware of the Academy's obligations not to allow the promotion of one sided political views and that this applied to the teaching of any subject and to extracurricular activities of the school. He was aware that opposing views must be presented in a balanced way. However, he personally was not required to take the operational steps to ensure this was the case.

204. The Appellant accepted that the schools had no determination in place entitling PVET to provide collective Islamic worship. He viewed this as being "*only technically true but not practically true*". He set out that at the time, as the process was not overseen and managed by the local SACRE, it was up to the DfE to provide a mechanism for this process and a mechanism was not put into place at the time. He recalled that they had been in contact with the Local Authority and the DfE to resolve this and at the time of his departure in 2014, the process had not been resolved.

205. He considered that as the schools had part determination for many years previously, it would have been inappropriate and improper to suddenly revert to offering collective worship of a wholly or mainly of a broadly Christian nature while the DfE was resolving its own issues and putting in place a mechanism for determinations in Academy schools. He considered it inappropriate and wrong to compel or otherwise create an environment that pushes a person to participate in worship of a faith other than their own.

206. During cross-examination, he recalled a discussion about the email dated 31 July 2013 from the EFA, referencing collective worship, in around September/October 2013 and stated that he had delegated this to the senior leadership team. He accepted it had not been actioned. He accepted that by March 2014, there had been no consultation with the parents and no application for a determination submitted.

207. He accepts and firmly believed that Nansen should have stopped SEAL based assemblies, which he did not regard as collective worship and that Islamic collective worship should have been introduced.

208. He was surprised that anyone could feel intimidated by him or the PVET leadership. That is not an atmosphere he had tried to engender in the schools. He denied intimidating anyone.

209. The Appellant denied that there was any issue with the finances and governance. He submitted that any issues that existed could not have been laid at the door of volunteer governors, who were ultimately dependent upon professional advice and assistance of others such as the Executive Headteacher, Finance Officer, Auditors and others.

210. Under cross-examination, he accepted that he, as part of the Governing Body, and as a director of PVET, had responsibility for financial management of the Trust. He accepted that the governors were responsible for ensuring that in its conduct and operation PVET (as a charitable company) applied financial and other controls that conform with the requirement of both propriety and good financial management.

211. Further, whilst he was not seeking to absolve the governors from any responsibility for any shortcomings, his position was that PVET had employed credible, reputable auditors Crowe Clark and they had audited the school. In his view, PVET had appropriate people with appropriate skill sets.

212. The Appellant's evidence was that he had been Chair of Governors at Park View for 17 years and ran the school successfully as evidenced by successive Ofsted reports leading to an outstanding inspection in 2012. Park View could not have acquired that status without having sufficient and strong governance. In his view, when PVET was formed and became an Academy, some of the policies required technical adaptation and it was possible that not all those technical adaptations were followed through but that they had no great impact in practice. He submitted that the rapid pace of change meant that some of these tasks were taking longer than otherwise would have taken.

213. He did not dispute that 16 governors at PVET schools had not completed a declaration of interest form at all; or that others had failed to do so accurately. In his view, a declaration of interest should have been declared at every single meeting. He submitted that Mr Shahid Akmal's connection to Al-Hijrah school was incorrect and that this was a different entity. He accepted that the absence of a declaration of interest form meant the Trust would not know of any links between a governor and a third party business. He also accepted that a governor would, therefore, if minded, have been in a position to profit from the Trust without the Trust's knowledge. The Appellant accepted that he

had a personal responsibility to ensure that adequate controls were in place to prevent this and failed in this regard.

214. The Appellant confirmed that he was on the panel for the appointment of Mr Faraz. He accepted it was unusual for him as an Associate Governor to be on the panel. He was not there to provide any legal or HR advice. He was simply on the panel and only spoke when asked. He accepted that he had instructed Ms Dhillon to stop the recruitment process for the Headteacher at Nansen when the only applicant was Ms Ali. This is because he wanted a group of individuals to select from and could not do so as there only one applicant.

215. He agreed that he had a lot of influence at Park View but denied there being anything sinister in that. He had been a pupil at the school and had driven up academic standards.

216. He accepted that there were historic problems at Golden Hillock. He confirmed that after his appointment as Acting Headteacher at Golden Hillock, Mr Saini commissioned an independent report into governance. The report (dated 17 July 2013), carried out by Continuity Governance Ltd reached damning conclusions about the effectiveness of the governing body. Mr Saini described the governing body as "*completely dysfunctional*".

217. The Appellant referred to the interim Ofsted inspection at Golden Hillock in September 2013 as evidence of the fact that the school was making progress. However, Ofsted in 2014 concluded that there were fundamental weaknesses in leadership and management including governance, which were having an adverse impact on students' well-being, their progress and on the quality of provision in school. He did not think this was an accurate and fair judgement given the short passage of time between the two Ofsted reports.

218. In submissions put forward on behalf of the Appellant, he states that his rights under the European Convention on Human Rights ("the Convention") have been breached. He alleges breaches of articles 6, 8, 9, 10 and 14. There were detailed submissions put forward on his behalf. Although we took into account all the submissions made, we will briefly summarise some of the main points he raised.

219. His submissions included that the barring order would prevent him from taking part in the management of any independent school in England. The impact of this is that it would exclude him from a very broad range of activities in the education sector, including a broad range of paid employment. This would prevent him from working in a voluntary capacity. The stigma associated with the barring order is considerable and restricts his ability to gain employment in the education sector more generally.

220. He was of the view that there had been no proper opportunity to challenge the barring order before it was made. The opportunity for representations afforded to him was devoid of any real substance because it was not enough simply to refer to the evidence in the OFSTED, EFA and Clarke Reports because many, if not all, of the conclusions contained in the reports did not reference the evidence base or the specific witnesses upon whose evidence conclusions rested. He could not therefore properly challenge the majority of the allegations against him, other than in a general way.

221. He had devoted substantial part of his life to working in the education sector and developed relationships with colleagues and other education professionals. The barring order, which is made public, has significantly affected these relationships and his ability to forge new ones.

The Tribunal's conclusions with reasons

222. We took into account all the evidence that was included in the hearing bundle and presented at the hearing. We have summarised the evidence insofar as it relates to the issues we determined.

223. In reaching our decision, we applied the civil standard of proof, that is to say, on the balance of probabilities. There is nothing on the face of the 2008 Act or 2014 Regulations that suggests that the criminal standard of proof should be applied. We accepted the Respondent's submissions that it was well-established that the civil standard of proof applied in barring appeals from decisions under the Protection of Children Act, The Protection of Vulnerable Adults Act and List 99 directions, notwithstanding that the allegations involve matters (such as allegations of sexual abuse) that could give rise to criminal liability.

224. Whilst Mr Lodge submits that it is the criminal standard of proof i.e. beyond reasonable doubt that should be applied, there is no authority to support the proposition that this Tribunal, interpreting legislation designed not to punish individuals but to protect the public, should apply anything other than the civil standard of proof.

225. We also considered it appropriate that the Secretary of State should bear the burden of proof given the consequences to the Appellant where such a direction is made.

226. We rejected the Appellant's submissions that the 2008 Act and 2014 Regulations should not be read as applying at all to conduct predating the 2014 Regulations coming into force. In our view, such submissions are misconceived. A reading of s128 of the 2008 Act, under which the powers conferred by that provision applied only to conduct occurring after those powers came into force, would deprive that provision of its most protective effect.

227. We were referred to the case of R v Field [2003] 1 WLR 882, where it was held that the making of a disqualification order preventing the Applicant from working with children did not offend the presumption against retrospectivity, where the offending behaviour occurred before the Act came into force. Furthermore, whilst the Appellant raises in closing submissions that the law may have been passed with the Appellant in mind, we heard no persuasive evidence at the hearing to suggest that this was the case, particularly as the primary legislation had been introduced in 2008 and predated the investigations in Birmingham. The legislation does, however, cover the conduct of the type alleged against the Appellant.

228. We noted that the Respondent did not dispute that under the Appellant's Chairmanship, Park View succeeded in raising student attainment levels and achieved GCSE exam results that exceeded the national average. Furthermore, we also acknowledged that there was no allegation of personal financial impropriety on the part of the Appellant.

229. We preferred the evidence of the Respondent. We found all of the Respondent's witnesses credible, clear and consistent in the evidence that they provided. Their statements were all prepared in connection with these proceedings and addressed the issues before us.

230. We note that at the time of those investigations, there was widespread publicity of the issues around PVET, nevertheless, the evidence we heard did not suggest that there was anything improper or untoward about the process of the inspections and the conclusions that OFSTED, EFA and Mr Clarke reached.

231. We found that each of the OFSTED reports, the EFA report and the Clarke report represented the professional judgements of the many individuals who contributed to them, based on the honest assessment of what they saw and heard. We acknowledge that whilst there was some overlap in personnel between the EFA and Clarke teams, each of the three groups had their own remit and reached their own conclusions. We noted that the Appellant, himself, whilst referring to the "*context*" did not doubt the "*veracity*" of the individuals involved and accepted that as professional people they made the judgement that they thought was right.

232. We did not find that there was any supporting evidence for the Appellant's case that Peter Clarke and his team of assistants from the DfE, three separate teams of experienced OFSTED inspectors and an experienced team from the EFA, had a preconceived agenda. The Appellant's argument that this agenda was orchestrated by the then Secretary of State for Education, Michael Gove, or his special advisers, was somewhat undermined as there had been a change of Education Secretary nine months before the "minded to bar" letter dated 25 March 2015. The suggestion of a conspiracy was put to a number of

Respondent's witnesses (including from Ofsted, the EFA and to those who worked on the Clarke Report) and they were unequivocal in their denials of any impropriety or political interference.

233. We did not agree with the suggestion put forward by the Appellant that we should take the evidence of Ms Corbett with caution. Whilst Ms Corbett recognised that it was not common for one inspection to go part heard over two weeks, it was not an unusual event. We found Ms Corbett credible and very careful in the evidence she gave. The issue of the break during the inspection did not in our view denigrate from the conclusions drawn and the validity of the inspection.

234. We found no reason to doubt the evidence of Mr Begol, who made it clear that the decision to issue the direction under s128 was based on recommendations by DfE officials, rather than as a result of any political interference. The Appellant's case was further undermined by the reference to the email from David McVean of 25 April 2014, which post-dated the drafting of the EFA report, which was sent to PVET on 11 April 2014. We accepted the evidence of Mr Reed that this email was sent in order to respond to the statement issued by PVET.

235. We acknowledged that a small number of witnesses were related but we did not find that this affected the evidence they gave in any way. Those witnesses were very careful in giving their evidence including, very fairly, setting out the limited contact they had with the Appellant. The Respondent's evidence include some evidence which did not relate directly to the Appellant, such as the WhatsApp messages.

236. The Appellant's evidence demonstrated that he was knowledgeable and experienced on matters relating to school governance. He accepted that his evidence, save for his statement, consisted of evidence including statements from the leadership team, put before the NCTL proceedings. That evidence was prepared for a different jurisdiction addressing different issues. Nevertheless, we took it into account insofar as it was relevant to these proceedings.

237. We reminded ourselves that it was common ground that none of the PVET schools were designated faith schools. A faith school is a school designated with a religious character under section 124B of the School Standards and Framework Act 1998 or section 6 (8) of the Academies Act 2010. A faith school, unlike non-faith school, is entitled to have pupil admissions criteria based on religion, to select some staff based on their religion and to teach religious education according to the tenets of a particular religion.

238. We also reminded ourselves that the Respondent's case was pleaded in the alternative. It was therefore not necessary to make findings in relation to the Appellant engaging in conduct which was aimed at undermining fundamental British values, if the Tribunal was satisfied that the Appellant's conduct was *"so inappropriate"* as to make him

unsuitable to manage an independent school. In interpreting "*so inappropriate",* we applied the normal everyday meaning of the words. Although *"conduct"* is not defined in the 2014 Regulations, we have concluded that it must be taken to include both acts and omissions.

239. We concluded that the Appellant had engaged in conduct, which was so inappropriate that it makes him unsuitable to take part in the management of an independent school. Our reasons for doing so are set out below.

240. We made the following findings on the basis of the evidence before us:

Safeguarding Children from Exposure to Extreme Views

241. We concluded that the Appellant in his role as a Chair of the Trustees and Chair of the Governing Body at Park View had failed to ensure that there was an agreed procedure or policy in place which would allow the Trust to identify the process and checks required to select external speakers. The Appellant accepted that this was a matter for which the Trust and therefore the Trustees and Governing Body were ultimately responsible.

242. It was common ground that Sheikh Shady Al-Suleiman and a Rabbi from Naturei Karta were invited to speak at Park View assemblies. The Appellant himself accepted that there was no procedure or policy in place at the time and these were, in his words *"unacceptable"* speakers, who had either extremist or controversial views. In the case Mr Al-Suleiman, this was on more than one occasion. PVET in its early response to the EFA review stated that it would not knowingly invite any extremist speakers, nevertheless, PVET's response illustrated the difficulties created by not having, at the very least, a procedure in place.

243. The evidence presented indicated that despite the Appellant's assertions to the contrary, no vetting actually appeared to have taken place because, according to the Respondent, a simple Google search would have revealed that the speakers had extreme one-sided political views. This is supported by the fact that the Trust in its response to the EFA set out that it was *"important to highlight that he (Mr Al-Suleiman) was not known to the School or Trust as having extremist views*". Furthermore, Mr Moz Hussain sets out in his statement that he would have ruled him *(Mr Al-Suleiman)* out if he had known about his alleged views. At best, this suggests a complete lack of oversight to what is a very serious situation.

244. We concluded that the absence of at least a procedure in this regard contributed to confusion at the schools as to who was responsible for vetting external speakers. For example, the governors at Golden Hillock School informed Ms Connor's that it was the Appellant who was responsible for vetting external speakers. However, the Appellant

thought it was the Headteachers who were responsible for vetting external speakers but could not point to any document which set this out.

245. We considered the Appellant's evidence that he was not aware of the attendance of any inappropriate speakers at the time and had no knowledge of their views. Whilst he may not have been aware of their attendance at the school, it was his responsibility to ensure the Trust had a procedure in place that ensured that only suitable speakers were invited into PVET schools and ideally a written policy addressing the process for ensuring all speakers were suitable.

246. We also considered the explanation that a large number of other schools did not have such a policy and Ms Connor conceded that at the time there was no statutory requirement to have a policy. In our view, common sense would dictate that those responsible for the safety and wellbeing of children should at least have a procedure in place. In any event, the lack of a policy or procedure elsewhere did not absolve him, as part of the Governing Body, of the responsibility to ensure that children were safeguarded. There was no policy, no written instruction, no procedure to ensure that the Academy Trust or Governing Body of Park View complied with those obligations in relation to external speakers invited to the school.

247. We also found that the Appellant, in his capacity as Chair of Governors and Chair of PVET Trust, took no adequate steps to ensure that children were kept safe from extremist views. The findings of Ofsted related to all three schools in the Trust. On Park View, their conclusions included that it's work to raise students awareness of the risks of extremism was inadequate, external speakers had not been vetted properly and governors have failed to ensure that safeguarding requirements and other statutory duties were met.

248. On Nansen, Ofsted concluded that the Governing Body and senior leaders did not adopt effective strategies that develop pupils' awareness of the risks of extremism or radicalisation. Golden Hillock's work to keep students safe was said to be inadequate, key safeguarding procedures were not followed and too little was done to keep students safe from the risks associated with extremist views. We accepted Mr McAlea's evidence that it was important this was done as these were *"impressionable"* young people and we endorse that conclusion.

249. We also found that the Appellant took no adequate steps to ensure that pupils were not exposed to one-sided political views. The Appellant himself accepted that the speakers referred to above had either extremist or controversial views. Whilst the Appellant demonstrated a good knowledge of his responsibilities of the requirement to ensure that opposing views were presented in a balanced way, nevertheless, no steps were taken to ensure this was the case in practice. Whilst the

Appellant states that this was the responsibility of the Headteacher, the Governors Handbook makes it clear (para 3.1.3) that Governing Bodies must not allow the promotion of one-sided political views. The Governors Handbook also makes it clear that this applies both to the teaching of any subject and extracurricular activities at the school.

Single Central Record

250. We found that the Single Central Record at Park View, which held details of all recruitment and vetting checks conducted by Park View, had many staff references missing from the register. Whilst there was some suggestion put forward on behalf of the Appellant that such information was kept on an electronic database elsewhere, we were not presented with any documentary or digital evidence to demonstrate this. Accordingly, we had no reason to doubt the evidence of Ms O'Connor in relation to the number of missing references.

251. We found that this was a serious safeguarding issue and the Appellant was ultimately responsible for ensuring that it was undertaken properly. He had failed to do so. The Governors Handbook made it clear at para 5.2.2 that the Governing Body or Academy Trust should take up references from the applicant's current and former employer. The absence of documentary evidence to prove that recruitment and vetting checks had been properly carried out meant that children and young people could be exposed to a risk of harm.

The Appellant's Role and Influence at PVET Schools

252. We concluded that the Appellant exerted an inappropriate degree of operational control over the management of PVET schools and in particular Park View.

253. We found that the individuals who we would expect to be running Park View regularly deferred to the Appellant. The Appellant's evidence asserts that he was responsible for strategic matters. However, according to Mr Moz Hussain's statement, the Appellant was being consulted by Mr Hussain on the most trivial of operational matters and taking such decisions. For example, in December 2013, Mr Hussain confirms that the Appellant had effectively vetoed the senior staff's proposal to reintroduce a Christmas post box. The Appellant had concluded this would be participating in rather than learning about Christmas and as a Lead Governor, he did not think that was appropriate.

254. Mr Hussain, reflecting on the matter, in his statement, did not think this was an issue for Muslims but as the Appellant felt differently and he was his "boss", he went along with it. Mr Hussain now considers that he should have debated the point more strongly. In our view, the senior leadership team had taken a decision on what appeared to be a routine operational matter, yet the senior leadership views had been

overridden by the Appellant, demonstrating the inappropriate level control he exercised.

255. We found on the evidence we heard and read that the Executive Principal, Ms Clark, whom we would have expected to be running the PVET schools, did not have any real power. This was due to the governance structure devised by the Appellant, which resulted in the Headteacher of each Academy within the Trust reporting to the local Governing Body of each Academy, rather than the Executive Principal. The local Governing Bodies were accountable to the Trust, of which the Appellant was the Chair. Ms Clark herself accepted that her role did not allow for any "*level of intervention directly with the Academy*". Ms Clark was to report back to the Board who would then decide if something was an issue, and then tell her how it should be dealt with. Furthermore, we accepted her evidence when she described her own role as a *"non-job"* leaving her with *"no authority".*

256. We also found that the Appellant was chairing meetings where the Headteachers were held to account. We accepted the evidence of Witness B and Ms Dhillon and found that the Appellant attended the school frequently, after it became an Academy in 2012. We found that he would visit at least once per week.

257. We accepted the conclusions of Mr Philip Reed, in that it was unusual for the Chair of Governors to be heavily involved in the operational management of the school and to be present at these types of meetings. We rejected the suggestion put forward on behalf of the Appellant that these were "*communication meetings*" as it was not clear as to what was being communicated, since there was no agenda and no minutes of the meetings. We would have expected the Headteachers to regularly report to Ms Clark as the Executive Principal, rather than the Appellant.

258. We were also concerned that the Appellant effectively ignored the views of the Acting Headteacher at Nansen, Ms Ali, when she expressed a view that the installation of a washroom where the children could prepare for prayer as being an unnecessary expenditure. She had preferred the money to be spent on a library but despite her views, the school received a quote for the washroom. We accepted the evidence of Mr Reed that this should have been a matter for the Executive Principal, Ms Lindsay Clark and the senior leadership team.

259. We also found that the Appellant dominated and had direct and inappropriate involvement in recruitment decisions across the PVET schools. This was irrespective of whether he sat on recruitment panels or not. We accepted evidence that posts were routinely not advertised, or were advertised and then withdrawn.

260. In this context, we found the evidence of Ms Dhillon, Human Resources Manager for PVET, particularly compelling. For example, she had to check with the Appellant before she could advertise any roles at Nansen, including any Teaching Assistant roles. This was evidenced in the form of an undated email which she sent to the Appellant asking him to confirm whether she was able to advertise a number of Teaching Assistant roles.

261. A further example was that Mr Saini's position as Acting Headteacher at Golden Hillock and Mr Hussain's position as Acting Headteacher at Park view were not advertised. However, Ms Razia Ali's post as Acting Headteacher at Nansen was advertised as a permanent post but when the only applicant was Ms Ali, the Appellant instructed Ms Dhillon to stop the recruitment process. We did not accept the Appellant's explanation that he wanted a group of individuals to select from and could not do so as he had only one applicant. This was inconsistent with the school's previous approach in similar situations. We accepted Ms Dhillon's evidence that Park View had in the past appointed staff into senior roles where there had been only one applicant e.g. Head of English.

262. We also accepted Ms Dhillon's version of events about what occurred just before the EFA investigation in March 2014. We preferred her evidence as her explanation was more credible and was supported by the fact that she was not employed by PVET at the time. She could not therefore have provided the advice that Ms Clark, Mr Saini, Mr Moz Hussain, Mr Arshad Hussain and Mr Mallard could be put into those permanent posts without undergoing a recruitment process as requested by the Appellant. Whilst the Appellant may describe this as a *"misunderstanding",* Ms Dhillon was clear in what she had been asked by the Appellant to tell the EFA investigators that she had provided that advice. We concluded that this was an attempt by the Appellant to mislead and obfuscate the PVET's approach to recruitment.

263. We considered it was inappropriate for the Appellant to have participated in the recruitment process for the post of Deputy Headteacher at Nansen which led to the appointment of Mr Razwan Faraz. At that time he was an Associate Governor at Nansen and he himself could not specify what advice he had given to the Panel. He did not have any formal voting rights and stated that he only spoke when he was asked. However, we preferred the compelling evidence of Witness D who described the Appellant as speaking resolutely as to why Mr Faraz should be appointed. The evidence supported the conclusion that rather than the Appellant having a passive role in that exercise, he played an influential role in determining the outcome. Furthermore, we could not understand why the views of the Witness D, the future line manager of the appointee, were ignored.

264. We also found that this approach was in contravention of the Governors Handbook (July 2014), which makes it clear that it is Headteachers who were responsible for internal organisation, management and control of the school. The Governors Handbook specifies that the Governing Body should not be involved in the detail of the day-to-day management of the school. In our view, the Appellant, whilst maintaining that he was aware that he was responsible for strategic matters, in practice, was involving himself inappropriately in the detail of the day-to-day management of the school.

Atmosphere in PVET Schools

265. We concluded that some staff experienced an atmosphere of fear and intimidation in all of the PVET schools. Our conclusions are based on the fact that each of the teams investigating PVET schools made similar findings about the atmosphere of fear and intimidation present in all of the PVET schools.

266. At Park View, OFSTED found that *"some staff felt intimidated and were fearful about speaking out against changes"* whilst "a *significant number had no confidence in either the senior leaders or the governing body*". At Nansen, staff raised concerns with OFSTED that included the way in which they were treated by members of the Trust and senior leaders. At Golden Hillock, the conclusions were equally concerning. Some female staff complained about being spoken to in a manner they found intimidating. A staff questionnaire produced results that identified that 65% of the staff responding stated that they either disagreed or disagreed strongly that PVET had led the school well.

267. This theme was further supported by the evidence of Ms Connor who reported that she had never experienced a situation in which she met so many distressed, frightened and crying members of staff and so many adults who asked for the names to be kept confidential, or had asked to have meetings in rooms where they would not be seen by others.

268. We recognised that the subject matter of the Clarke report went beyond the three schools under consideration. However, its conclusions based on evidence which included individuals too nervous to come forward, fearing adverse consequences for their jobs and seeking anonymity, were consistent with those recorded by Ofsted and the EFA in relation to these three schools.

269. We noted that whilst the Appellant was somewhat surprised that anyone could feel intimidated by him or the PVET leadership, there was a difference in what the Appellant thought and what was found by the various teams at all three PVET schools under his leadership. Whilst he may consider this to be against the "ethos" of PVET at the time, the evidence presented demonstrated that a significant number of

staff across the PVET schools were presenting a different picture. We should add that although there was reference to the PVET "ethos" by the Appellant, we were not presented with any document or other evidence which reflected what this actually meant in practice.

Collective Determination

270. It was common ground between the parties that under clause 27 (b) of the PVET funding agreement, an obligation was imposed on PVET to ensure that the Academy complied with the requirements of Section 70 (1) of and Schedule 22 the School Standards and Framework Act 1998. This required the daily act of collective worship to be of a broadly Christian character, unless the Academy applied to the Secretary of State for consent to be relieved of that requirement.

271. We noted that Park View had been granted a determination which permitted it to offer Islamic collective worship in April 2008. The determination had expired in April 2013. However, Park View continued to provide collective Islamic worship to all year groups, without an active determination being in place, which would have exempted the school from the requirements set out at clause 27 of the PVET Funding Agreement.

272. We accepted that at the time that PVET requested details of the process for applying for a collective determination in June 2013, there was no established process in place for Academies. PVET enquired about the process on 7 June 2013 and were sent a reply on 31 July 2013 by the DfE. We conclude that whilst the exact position and process was yet to be clarified, a broad outline was given as to what action should be undertaken. This consisted of submitting a business case, to include consultation responses and information about the level of support within the local community. There is no dispute that no such business case was submitted.

273. The Appellant accepted under cross examination that he did see the email dated 31 July 2013, outlining the procedure to be followed, but that he had delegated responsibility for this to the senior leadership team in September/October 2013 but it wasn't followed up.

274. The Appellant may well believe, as he submitted, that the makeup of the school would have made it likely that had any consultation taken place, the parents would have supported Park View in obtaining a further determination. However, the purpose of granting a five-year determination is obvious. After that time, most children in the school will have moved on, and it will be necessary to consult parents about whether a determination is appropriate, and, if so, what form of alternative collective worship should be substituted.

275. The consequences of the failure to consult was that the parents were denied the opportunity to put forward their views. We found that

throughout the period from April 2013 to summer 2014, Park View continued to provide a daily act of Islamic collective worship, in breach of the Funding Agreement.

276. We concluded that the Appellant, as Chair of Governors should have ensured compliance with the terms of the Funding Agreement. We found that he was aware of the requirements under the Funding Agreement because he was a signatory to the latest variation of the funding agreement (which sets out the requirements concerning collective worship –clauses 23 to 29A of the Master Funding Agreement). The Appellant was also a former member of Birmingham SACRE so should have been aware of why it was important to have a determination in place.

277. We concluded that whilst the Appellant may describe it as a "*wholly technical breach"*, it was a breach of what was required both under the PVET funding agreement and the requirement to ensure that the Academy complies with the requirements of Section 70 (1) and Schedule 22 of the School Standards and Framework Act 1998.

278. Furthermore, we accepted the evidence of Witness D that the Appellant was instrumental in the decision to reverse the decision taken by Nansen to provide SEAL based collective worship instead of Islamic assemblies. Whilst the process of change from Islamic collective assemblies to a SEAL based approach had been done in consultation with the parents in 2010, the decision to change from a SEAL based approach to Islamic assemblies did not involve any consultation with the parents. The parents of children at the school were simply never informed of the change to Islamic assemblies. The Appellant failed as part of the Governing Body to ensure that there was adequate consultation with the parents so they were at least given an opportunity to put forward their views.

Audit Committee

279. We concluded that pursuant to the Academy's Financial Handbook, PVET was required to have a dedicated Audit Committee in both 2012/13 and 2013/14. Furthermore, we concluded that even where a Trust is not required to have an Audit Committee, it has to have another committee, such as a Finance Committee, performing the audit function. The Appellant accepted that there was no Audit Committee nor was there a separate committee performing the audit function.

280. We rejected the Appellant's contention that this requirement was somehow being met, as finance was being handled in the directors meeting. In our view, the requirement for an Audit Committee or another committee performing an audit function was clear and was not complied with.

281. As the Chair of the Governing Body and Chair of the Board of Trustees, the Appellant failed to ensure that PVET discharged its obligations under the Academy's Financial Handbook. Whilst we acknowledge that PVET had independent auditors, nevertheless, this does not discharge the requirement to have an Audit Committee.

282. We rejected the Appellant's submission that any issues could not be laid at the door of volunteer governors who are ultimately dependent upon the professional advice and assistance of others such as the Executive Headteacher, Finance Officer Auditors and others. In our view, this suggests a limited understanding of the role of the Governing Body. We accepted and agreed with the Respondent's submission that if there is no committee whose remit includes performance of the audit function, then there is no one internally who can identify the work that needs to be done by the external professionals.

283. We concluded that the Appellant was aware of his responsibility as the Chair of Governors as he signed off the governors' responsibility statement for the year ending 31 August 2013. This clearly sets out that governors are responsible for ensuring that in its conduct and operation, the Trust applies financial and other controls, which conform with the requirements of both propriety and of good financial management. That statement also made it clear that the governors are responsible for ensuring grants received from the EFA/DFE have been applied for the purposes intended.

284. In our view, the role of the Audit Committee was to oversee the external audit process and to keep under review the Trust's financial management, as well as to scrutinise the Trust's financial accounts, statements and reports. The Appellant as Chair of the Governing Body and Chair of the Board of Trustees failed to ensure that PVET discharged its obligations under the Academy's Financial Handbook. The Appellant should have ensured that there was an Audit Committee and/or another committee performing the audit function. The failure to have an Audit Committee meant there was no mechanism for scrutinising the Trust's finances.

Fixed Asset Register

285. We also concluded that the Appellant failed to ensure there was a proper control of assets. The Academies Financial Handbook sets out that the Trust should not dispose of publicly funded assets without the EFA's consent, as per the 2012 Academies Financial Handbook. The 2013 Academies Financial Handbook required maintenance of adequate Fixed Asset Registers. These were clearly not in existence. PVET was made aware of this by the Auditors who, in their report dated 31 August 2013 flagged this as a high priority. However, by March 2014, whilst there was a Fixed Asset Register at both Nansen Primary School and Golden Hillock, there was no Fixed Asset Register in place at Park View.

286. The lack of a fixed asset register meant that issues arose when verifying that all the assets of the Trust were still in existence. It also caused difficulties where an asset was to be disposed because there was no formal record of the cost and accumulated depreciation of the asset to allow for its accurate removal from accounting records.

287. We concluded that although the Appellant had employed auditors, the lack of a Fixed Asset Register at Park View meant that there was no way of checking what had been acquired or disposed. These difficulties were illustrated by the fact that the EFA had to ask the Local Authority to provide a list of the equipment that had been installed in the Design and Technology wing at Park View. Furthermore, it was clear that the Trust's existing processes could not pick up any anomalies because it was left to the Science Technician to alert the EFA to the issues arising from the sale of the ovens from the food and technology classrooms.

288. We accepted the Respondent's submissions that it was not alleging fraud on the part of the Appellant. The issue was that the Appellant and his fellow Trustees had failed to ensure, contrary to their obligations under the funding agreement and the Academies Financial Handbook that proper controls were in place to prevent and detect fraud if it should occur.

Declarations of interest

289. The Appellant did not dispute that there were 16 missing declaration of interest forms from the governors at PVET or that others had failed to complete them accurately.

290. We found that although the Appellant had completed a form, he had failed to make a declaration of three other directorships that should have been included on the declaration of interest form. These were for the Association of Muslim Schools UK, Boredsley Birmingham Trust Ltd and the Muslim Parents Association. Where declaration of interest forms were available for the governors, they were not always complete.

291. The evidence presented indicates this did not seem to be considered important by PVET. There was no follow-up from the governors training day in November 2013, when the governors were all asked to complete the declaration of interest forms, so that PVET could not identify whether the governors were benefiting from the Trust in breach of the Articles of Association and Section 215 of the 2012 Academies Financial Handbook.

292. The Appellant accepted that there was no way of the PVET knowing whether governors were benefiting financially from the Trust. This was highlighted with the related party transaction between Nansen Primary School and Al-Hijrah school (when Nansen received £17,330 lettings

income over a six-month period from October 2012). Mr Shahid Akmal was a director of PVET and of a company connected to Al-Hijrah school but had not declared his interest in a contract for hire between the two schools.

293. We noted the Appellant's assertion that Mr Akmal's association was with a different Al-Hijrah entity, however, no documentary evidence was offered other than the Appellant's assertion that he believed this to be the case. We accepted the evidence of Mr Hobbs as to which entity Mr Akmal was connected to as he had produced documentary evidence to support his assertion. The reference to a different entity strengthened the need for ensuring the declaration of interest forms were accurately completed. The difficulty was created by the fact that there were not accurate declarations of interests from some of the governors. It was therefore not possible for others, including directors of PVET to know whether this or other transactions were related party transactions. This exposed the Trust to the risk of undertaking a business transaction with an organisation that had links to a governor who might profit, directly or indirectly, from the transaction.

294. We accepted the Respondent's submission that Academies should be open and transparent in relation to financial records and transactions. We concluded that the Appellant should have ensured that there were appropriate processes in place so that the Trust was alert to this and could identify any such transactions. The starting point would have been to ensure that the declaration of interests were accurately completed.

295. We concluded that PVET had no systems in place to ensure that governors had the skills, knowledge and experience to run the Academy Trust. There was no skills matrix in existence which would have allowed PVET to establish whether it was meeting this requirement. Whilst we acknowledge that some of the governors, for example, the Appellant had relevant experience (as a National Leader of Governance and an Ofsted inspector), it was clear there was no mechanism for assessing what skills the other governors possessed.

296. These breaches were compounded by the fact that Trustees had not conducted an audit of their own skills (contrary to section 2.1 of the Academies Financial Handbook) with the result that there had been no consideration of whether PVET needed to recruit a Trustee with the accounting/business skills necessary to perform the audit function.

297. We also found non-compliance with Clause 34 of the PVET Master Funding Agreement. This placed an obligation on PVET to publish in each financial year information in relation to the amount of pupil premium allocation that it would receive, on what it intends to spend the pupil premium allocation, and on what it spent its pupil premium in the previous financial year.

298. We based our findings on the report from Price Waterhouse Coopers (PWC) where its conclusions included that Parkview had received nearly £700,000 in pupil premium between April 2012 (when it first became an Academy) and May 2014. PWC found that there was no policy for pupil premium expenditure and it wasn't managed separately or recorded.

299. We took into account the Appellant's professional and personal circumstances, including all the roles he has occupied in the sector. We had no reason to doubt his stated passion for this sector. He has spent the majority of his life in the education sector and according to his evidence, his entire skill set has been fine tuned in this area. We took into account the effect that the direction had on him, in particular on his ability to work in the area. We took into account that he had been the Chair of Governors at Park View for 17 years and that this had resulted in an outstanding OFSTED inspection report for Park View in 2012. We also took into account that the direction was made on 3 September 2015.

300. We concluded that he had engaged in relevant conduct as set out above within the meaning of regulation 2(5) (c) of the 2014 regulations. This was conduct which was so inappropriate that it made the Appellant unsuitable to take part in the management of an independent school. Our findings focused on the key areas of responsibility for those involved in the management of an independent educational institution. Our findings in this case included failure to take adequate steps to ensure that children were kept safe from extremist views, failure to maintain a single central record, inappropriate degree of operational control of the management of PVET, inappropriate involvement in recruitment decisions, failure to comply with the requirements around collective determination and financial and governance issues. We concluded that the conduct set out above, taken together makes the Appellant unsuitable to take part in the management of an independent school.

301. In our view, it is reasonable to expect someone such as the Chair of the Governing Body, an OFSTED Inspector, a National Governance Lead and a Governor Trainer, to be aware of the requirements of his role and to ensure other governors were aware of their obligations. We concluded that as the Appellant was someone who clearly knew what the requirements were and he failed to ensure they were met, the breaches identified were all the more serious. The evidence presented demonstrated that he proceeded to act in breach of these requirements. The Appellant acknowledged some of these breaches but he described some of them as "*technical breaches".* The Appellant talked about investigating and correcting those breaches which suggested that he did not appear to realise that they occurred some time ago. Our concern was that we were not clear what lessons the Appellant has learned from his experience or what he would do differently in the future.

302. The general impression we formed in this case was that the Appellant was focusing on issues that were the responsibility of the Executive Principal/Headteacher (such as recruitment and operational matters at school) and failed to focus on those issues that were his responsibility as chair of the governing body (such as safeguarding and governance).

303. The parties agreed that by virtue of s.3 of the Human Rights Act 1998 ("the HRA"), the Tribunal has both the power and the duty to read and give effect to both primary and subordinate legislation in a way which is compatible with Convention rights. There is equally no doubt that the Tribunal *does not* have the power to declare a provision of primary legislation incompatible with Convention rights. That power is conferred by s. 4 of the HRA on senior courts only. Nor does the Tribunal have power to make freestanding findings about whether the Appellant's Convention rights have been breached. This latter point was made clear by a very recent decision of the Court of Appeal (Sir James Munby P, Gloster LJ & Sir Ernest Ryder SPT): *Secretary of State for Justice v MM & PJ* [2017] EWCA Civ 194. The Court in that case had to consider whether the First-tier Tribunal could determine whether a community treatment order in the mental health context gave rise to a deprivation of liberty contrary to Article 5 ECHR. Its answer is plainly relevant outside the mental health context:

> "59. Neither the Convention nor the Human Rights Act 1998 confer jurisdiction on Tribunal. There is nothing in the general role and function of a Tribunal that permits it to exercise a function that it does not have by statute…

304. In this case, the Tribunal's jurisdiction is conferred by s. 129 of the 2008 Act and by reg. 7 of the 2014 Regulations. Under reg. 7(1)(b), the Tribunal's function is limited to considering whether the direction made against the Appellant is "not appropriate" and, if it does consider that the direction is not appropriate, considering whether to order the appropriate authority to vary or revoke the direction. Neither the 2008 Act, nor the 2014 Regulations, nor any other provision, confers power on the Tribunal to reach freestanding findings that the Appellant's Convention rights have been or would be breached, save insofar as such findings are required to construe the primary or secondary legislation in accordance with s. 3 of the HRA or are directly relevant to the appropriateness of the direction.

305. The Respondent accepted that Article 6 was engaged in light of the Appellant's evidence as to the effect of the barring order on him and that the making of the barring order determined his civil right to engage in a professional capacity in the management of independent schools. The Appellant has, over the course of the barring process, which includes the Respondent's initial process and proceedings before the Tribunal, every necessary procedural right to ensure the proceedings were fair. We did not consider that the Respondent's case had been presented unfairly or presented in an overly adversarial way.

306. We were referred to the case of *Wright v Secretary Of State for Health 2009 1AC 739* where the scheme as a whole was not sufficient to satisfy the procedural requirements of Article 6 of the EHCR. That was because there was no opportunity at all for a care worker to make representations, whether in writing or in person to the Secretary of State before his name was provisionally included in the barred list(with the result that he could not work in his chosen profession). In the present case, the statutory scheme is quite different. The legislation provides a full opportunity for the Appellant to make representations, after the "minded to bar" letter has been sent, but before a decision is taken to bar him. In the present case, unlike the care workers in Wright, the Appellant was given the opportunity to make representations (and several extensions of time to enable him to avail himself of that opportunity). He did in fact make representations and they were taken into account.

307. The Respondent makes it clear that it does not dispute the Appellant's right to hold or manifest religious beliefs. However, the right to manifest one's religious beliefs does not include the right to impose those beliefs on children in a non-faith school. In addition, we were not presented with any persuasive evidence that Respondent was treating the Appellant any differently from the way it would treat a person of any other religion.

308. Whilst it may be good practice, there was no authority cited for the Appellant's submission that the Secretary of State was obliged to inform him of his right to legal advice. In any event, this point is academic because the Appellant had legal advice (as evidenced by the letter from Kuddus solicitors dated 9 July 2015) before he responded to the "minded to bar" letter.

309. We concluded that, having considered all the evidence, the Appellant's conduct was so inappropriate that that the direction made was appropriate and proportionate taking into account all the circumstances of this case. We therefore did not need to make findings in relation to all of the allegations against the Appellant and we did not consider allegations relating to FBV.

310. We reminded ourselves that although the Appellant refers to this as a lifetime ban, the 2014 regulations allow him to make an application to the Respondent to vary or revoke a direction in certain circumstances and these include where there has been a material change of circumstance. That carries with it a further right of appeal to the Tribunal.

Decision

311. The direction of the Secretary of State for Education made against Mr Tahir Alam on 3 September 2015 is confirmed.

Order

312. Appeal Dismissed

Judge Mr H Khan
Specialist Member Ms H Reid
Specialist Member Ms W Stafford

Date Issued: 6 June 2017