

HPSPC Limited

Ofsted
Clive House
70 Petty France
London SW1 9EX

Enquiries@ofsted.gov.uk

21 June 2022

Dear Sir/Madam

Judicial Review Pre-Action Protocol Letter – CPR 54

Re: Ofsted Inspection of Holland Park School

LETTER BEFORE ACTION NEEDING ACTION BY YOUR LAWYERS

This letter has been prepared in accordance with the Judicial Review Pre-Action Protocol.

We write in relation to Ofsted’s Inspection Report of Holland Park School (“HPS”) dated 10 June 2022 downgrading HPS/the School from ‘Outstanding’ to ‘Inadequate’. The process leading to that conclusion and the conclusion itself was legally flawed.

This letter has been prepared with the advice of specialist counsel David Wolfe QC and Sarah Sackman (Matrix). Without a satisfactory response to the concerns below we will be instructing solicitors to issue a claim for Judicial Review.

We note recent turbulence at HPS arising from wholesale changes to its Governing Body and senior staff followed by the Governing Body’s push - without proper involvement of the wider school community - to move to force the school (1) into a Multi Academy Trust (“MAT”) and (2) the United Learning Trust (“ULT”) MAT in particular.

We stress that it is for the whole school community – students, parents, staff and governors – to undertake dialogue so as to unite around improving the school. The only prospect of success is if the school’s future and its governance arrangements are decided *locally* with proper involvement of those who will be most closely affected by the decisions on any restructure, including the students, parents and staff. Ofsted’s role should be to support the school to bring its community together not create further division and disruption. Regrettably, the process followed by Ofsted and the contents and timing of its Report will create the latter, not support the former.

Potential Claimant

The potential claimant HPSPC Ltd is a limited liability company formed by a group of members of the HPS Parents Collective. The Collective is a group of around 350 parents and carers of pupils at HPS formed in response to the Governing Body's announcement earlier in 2022 that the HPS trust and funding agreement would be ended such that HPS would become part of the ULT MAT. The Claimant's aim is to support parents, students and staff to create a more informed and democratic consultation about the future of HPS, involving those most affected by the proposed changes. To stress, the issue here is about the proper involvement of the whole HPS community, not necessarily about any particular outcome of the process.

Proposed Defendant

Office for Standards in Education, Children's Services and Skills ("Ofsted").

Details of Interested Parties

The Secretary of State for Education in the form of (1) The Education and Skills Funding Agency ("EFSA"), and (2) The Regional Schools Commissioner ("RSC")

Claimant's Legal Representatives

HPSPC Ltd currently acts as a litigant in person. We have received advice from David Wolfe QC and Sarah Sackman (acting on a Direct Access basis). If it is necessary to commence proceedings, we will instruct solicitors with whom you should then liaise. We will let you know if that occurs and the relevant contact details.

Decision Under Challenge

The Ofsted Report of 10 June 2022, including the decision to downgrade HPS from Outstanding to Inadequate.

Factual Background

Context of Ofsted's Inspection

1. Ofsted's inspection of HPS was conducted on the 20, 21, 25 and 26 April 2022 at a critical moment in the wider decision-making process about the school's future. Its outcome was shared with parents and carers on 10 June 2022.

-
2. As noted in the Inspection Report, on 2 November 2021, the ESFA issued the HPS Trust with a “Notice to Improve” relating to improvements to financial control and governance at the Trust.
 3. One of the required actions was for the Trust to consider starting the process of moving HPS from being a SAT to MAT. The Governing Body, wrongly, seemingly interpreted that as a requirement for HPS to join a MAT. By mid-March 2022 the Governing Body appeared to have decided that HPS should be subsumed into a MAT for September 2022 with the preferred MAT being ULT (which comprises some 80 schools).
 4. The Governing Body then initiated a “stakeholder engagement” with parents, carers and staff while undertaking a “due diligence” process on ULT. As below, we do not consider that process to have met the applicable legal requirements. That process is the subject of a live Judicial Review claim.
 5. On 11 April 2022, parents sent a letter before action challenging the legality of the Governing Body’s decision- making process. On 31 May 2022, HPSPC Ltd and the National Education Union issued Judicial Review proceedings challenging the anticipated decision (then subsequently taken by the Governing Body on 7 June 2022) to subsume HPS into the ULT MAT. The claimants challenged the legal fairness of the consultation process. The claimants were awaiting the Governors’ Acknowledgement of Service and Summary Grounds of Defence when the Ofsted Inspection Report was published. Ofsted would have been aware of the legal proceedings when it carried out its inspection and prepared its Report.

Trigger for Ofsted Inspection

7. The Report states that HPS has not been the subject of an inspection for seven years due to its “Outstanding” rating. However, the Report notes dates of the previous inspection were 21 and 22 January 2020 under section 8 of the Education Act 2005. That suggests that Ofsted’s previous inspection was not a routine inspection (under section 5 of the Act) but was an inspection carried out at the request of the Secretary of State or the Governing Body. In any event, that no-notice inspection carried out by Her Majesty’s Chief Inspector established that HPS’ safeguarding arrangements were effective. In your reply to this letter you will no doubt explain the position in clear terms.
8. The Report says the present inspection was under section 5 of the Education Act 2005 as a ‘routine’ inspection despite the inspection and publication of the Report coinciding with, and being highly sensitive in the context of, the ongoing legal proceedings.

Conduct of the Inspection

9. The Report notes that the Inspectors spoke with the Chair and other members of the Governing Body, and with HPS Trustees. They also apparently had separate telephone conversations with three local authority representatives. The inspection team also spoke with the interim headteacher, other senior leaders, the special educational needs coordinator, and other staff. Inspectors say they took account of parent views via an online survey and emails. They also conducted a pupil and staff survey.
10. Inspectors met with the senior staff on 20 April 2022. After this feedback meeting, the senior leadership team met together for a debrief about the conclusions of the inspectors and the requirements for day two. Discussions about the teaching were apparently very positive and there was no suggestion of an 'Inadequate' rating, although it was expected that the rating may drop from "Outstanding" to "Good".
11. On 21 April, Ofsted met with a group of parents who explained that teaching at HPS was excellent, but there were concerns about the governance of the school and the conduct of the Governing Body. Inspectors then met with the Governing Body on the same day. The parents had also been very critical of the recruitment policy of the Governing Body in failing to ensure adequate staff had been recruited since September 2021 and that the recruitments that they had made had been poor and had not followed due process.
12. As the Report notes, two members of the inspection team gathered additional evidence for this inspection on 25 and 26 April 2022 including meeting remotely with some members of the Governing Body.
13. However, contrary to what had been expected and was required by basic fairness, there was no further engagement with the senior staff after the first day of the inspection. That meant that, despite Report later referring to "*poor*" "*unfit*" leadership (which we take to be a reference to senior staff), those criticisms were never put to the school leadership (see Ground 1). It appears that inspectors accepted whatever they had been told about the leadership by the Governing Body and did not realise that they needed to give school senior staff a fair opportunity to respond to the criticisms made.

Ofsted's Report

14. Ofsted's Report identifies the core weakness at HPS as "*turbulence in leadership and governance*" leading to deteriorating pupil behaviour. Additional weaknesses (such as in SEN provision, in the early entry GCSE policy and in the lack of PE provision in year 11) were not given as, and could not be, the reason for the school's 'Inadequate' rating. The reason for the rating was set out as follows:

"Leadership is poor and unfit for purpose. Too much responsibility rests with too few leaders. These leaders lack sufficient time and capacity to ensure that all aspects of the school are managed well. They have also not recognised just how much needs improving. Recent instability in the senior leadership team has made this worse. Many remaining leaders are overstretched and overwhelmed. This means that they are not doing enough to tackle weaknesses, particularly the decline in pupils' behaviour and attitudes."

15. In contrast to its criticism of senior staff, the Report praises the Governing Body:

"Members of the new governing body are very experienced. They bring a range of expertise and have devoted considerable time to their work following their appointment in September 2021. New governors have quickly got to grips with serious issues that have emerged and are taking significant action to tackle these. They have a credible action plan to secure further improvement and create a more cohesive culture. However, there is dissonance between the governors, some staff (including some established senior leaders), and other stakeholders. This is because not all recognise the need for change. Some hold widely differing ideas for the future of the school. Mutual distrust between the governing body, several stakeholders (including a group of parents and carers) and the local authority is adding to disharmony in the community. Communication has largely broken down and some stakeholders, while possibly well intentioned, appear to be pushing their own agendas, thus fuelling further disharmony. All of this is a severe hindrance in securing the urgent improvements needed. Nevertheless, although acknowledging that differences in views exist, governors and the interim headteacher are determined to press ahead with making and implementing important decisions to improve the school and arrest its decline since the last full inspection."

In this regard, we note that Ray Blatchford (a member of the Governing Body since 28 September 2021) is a current Ofsted inspector. It is not clear to us if the inspectors and Mr Blatchford already knew each other as colleagues at the time of the inspection. It is however clear that Mr Blatchford would have been very familiar with Ofsted's expectations and that the shortcomings pointed out in the Report were not addressed during his 7 months as a governor of HPS, even to the "requires improvement" level.

16. Under the heading “*What does the school need to do to improve?*”, the Report says:

“Leadership is poor and not fit for purpose. Too few leaders are expected to do too much. This has diminished leaders’ capacity to recognise the extent of the school’s weaknesses and from taking effective action to address these in a timely and effective manner. Governors and the interim headteacher should continue to implement their plans to restructure and add capacity to strengthen leadership across the school.”

There is mistrust and disharmony between the governing body, some school leaders, some parents, the local authority and some people in the wider community. This is a serious impediment to securing the much-needed school improvement. The governing body should continue to seek ways to communicate more effectively with other stakeholders, notwithstanding the need to ensure that confidential and sensitive information is not divulged. School leaders too should play their part in behaving professionally and calming matters.” (our underlining)

17. Whilst there is no specific mention of a HPS being subsumed into a MAT, it appears (though the point is not made explicit) that Ofsted is recommending that governors “continue to implement their plans to restructure” and proceed with the MAT conversion.

Effect of the Inspection Report

18. Vic Daniels, the newly appointed Chair of Governors, wrote to parents and carers late on Friday 10 June 2022 informing them of Ofsted’s Inspection Report. He noted that:

“As the school has been judged ‘Inadequate’ by Ofsted, its future will be decided by the Schools Minister on behalf of the Secretary of State for Education. It is likely that the Minister will require the school to join a strong academy trust that has been assessed as having the capacity to bring about rapid improvement at the school, enhance standards and achieve sustainable change and a positive long-term impact.”

19. The main effect of Ofsted’s report and conclusion that HPS is inadequate will be that the decision-making about HPS is taken out of the hands of HPS Governing Body and moves to the RSC. In other words, fundamental decisions about whether the school should cease to be an independent, Single Academy Trust (“SAT”) and become part of a MAT (and of so which) would have been moved from the school’s control into the hands of civil servants.

20. Parents, carers and staff who have been advocating for a fair consultation process with the school’s community about HPS future for months have now been given just a couple of weeks to provide their views to the RSC, in circumstances where it is not known what potential options for the school are being considered.

-
21. The effect of Ofsted's report is, for the moment at least, to supersede the Governing Body's decision of 7 June 2022 to enter into the ULT MAT. Ofsted's actions have, in effect, removed the target of the ongoing Judicial Review proceedings challenging that Governing Body's decision by switching the decision-making about the school's restructure to the RSC.
 22. HPSPC Ltd and NEU are seeking a stay of those existing proceedings pending resolution of the issues raised by this letter.

Potential Grounds

Ground 1 - Unfair process/Failure to put criticisms to the School leadership

23. Ofsted's inspectors unlawfully failed to follow a fair process in reaching the conclusions in their Report. Discussions with School's leadership about teaching were positive with each inspector talking about one subject in depth. One inspector raised concerns around languages which were challenged on the basis of a history of outstanding results which did not support the conclusions of these concerns. The inspector asked to see more language lessons on the following day to widen the evidence base but that did not happen because inspectors did not meet again with the School's leadership. Notwithstanding this, the inspectors proceeded to downgrade the school to 'Inadequate'.
24. The pointed criticism of the School's leadership, which was found to be "poor", is repeated throughout the Report. However, the charge of poor leadership which is "not fit for purpose" is, in effect, a highly individualised criticism, since everyone knows who the school's leaders are.
25. However, none of these criticisms were ever put to the leadership by inspectors. They were not given any chance to address those or respond. So far as we were aware, a draft copy of the Report was shared with the Governing Body, but the strength of these criticisms was never raised with those who are the target of them. That falls well short of a fair process. It lacks procedural fairness and, in the context of where leaders were led to believe that the quality of education was sound, it suggests that irrational weight was given to the views of the Governing Body through a process which failed to comply with the requirements of basic fairness.
26. The claimant seeks disclosure of the draft report which was shared with the HPS Governing Body.

Ground 2 - Abuse of power/Improper purpose in the timing of the Inspection

27. The timing and effect of Ofsted's inspection and Report appears intended to drive through the School's conversion to a MAT (presumably with ULT) by taking the decision-making powers away from the School's Governing Body and placing them with the DfE at a time when that local process was being effectively challenged by way of a Judicial Review. That is an improper purpose for an Ofsted Inspection and would be an abuse of power.
28. Ofsted's report states that the inspection was a 'routine' inspection and that this was the first inspection in seven years. However, that is not the case. The timing appears to be anything other than routine. For one thing there had been a without notice Ofsted inspection of HPS as recently as January 2020, which did not result in any downgrade of the school or convert the process into an inspection under s5 of the Education Act. The timing of this inspection and Report at a critical time in the decision making about the future structure and governance of the school, and against the background of legal proceedings brought by some parents and the main staff union, appear to be linked to the process to subsume HPS into a MAT. Indeed, it is impossible to avoid this inference.
29. It is apparent that the RSC supports the restructure of HPS into a MAT and specifically a large MAT (presumably ULT). This is clear from both general Ministerial statements in support of schools joining MATs and the specific statements of the DfE advisor to the HPS Governing Body's meetings all of which apparently emphasised the need to subsume HPS into a large MAT as soon as possible. However, none of that can bypass the requirements for a lawful decision-making process or justify an approach by Ofsted which seemingly seeks to facilitate that purpose.
30. That matters because the process of conversion to a MAT had hit a (legitimate) obstacle with the Judicial Review brought by parents and staff with the aim of ensuring a meaningful, open community consultation.
31. The effect of the Ofsted Report – downgrading HPS from the highest rating of 'Outstanding' (confirmed as recently as January 2020) to the lowest of 'Inadequate' - is to overtake the JR claim (and render it, at least temporarily, academic) and to take the decision out of the hands of the Governing Body where it had met with controversy because of the process followed by the Governing Body, and into the hands of the DfE to take a fresh decision.

-
32. Ofsted's Report strongly supports the DfE position stating that *"Governors and the interim headteacher should continue to implement their plans to restructure"*, whilst appearing to directly blame those stakeholders (including the potential claimant) who oppose the conversion to a MAT *"Some hold widely differing ideas for the future of the school. Mutual distrust between the governing body, several stakeholders (including a group of parents and carers) and the local authority is adding to disharmony in the community. Communication has largely broken down and some stakeholders, while possibly well intentioned, appear to be pushing their own agendas, thus fuelling further disharmony. All of this is a severe hindrance in securing the urgent improvements needed."*
33. With that in mind, we consider the process to have been unlawful. We are concerned about the timing and initiative for Ofsted's inspection and we seek disclosure of all correspondence between Ofsted and the Secretary of State (in all its forms including DfE, RSC and ESFA) in relation to the decision to inspect this school and the basis on which that inspection should take place. It appears that the inspection and report have been conducted for an improper purpose.

Ground 3 - Irrational to downgrade to Inadequate

34. The third ground is that the conclusion to downgrade HPS to 'Inadequate' is irrational.
35. Even taken on its own terms, the Report should have concluded that the School's rating should have been to 'Require improvement' rather than 'Inadequate'.
36. That is because the "Quality of Education" (highly praised by parents but whose comments have not been reflected in the Report) and "Personal Development" were both rated as 'Requires improvement' and Sixth Form provision was rated as 'Good'. It was only "leadership and management" and "behaviour" (which is said to be linked to leadership) which were found to be 'inadequate' and even then, those issues, were never raised with the leadership.
37. It is highly unusual for a school to be downgraded from 'Outstanding' to 'Inadequate' in the space of 2 (or even 7) years, particularly where safeguarding practices at the School are recognised as being effective. This is in the context of the School having 94% of students leave with 11 GCSEs compared to 4% nationally.
38. Had the Report found the school to 'require improvement' (as an average of the Report's scores against the Ofsted criteria suggest should have been the case) the decision on the school's future about joining ULT and the related JR would have proceeded and would have remained the responsibility of the School and, in particular, its Governing Body.

39. By reaching the extreme and unjustified conclusion it did, the effect of Ofsted's Report is to take the decision away from the School and to be made, rapidly, with negligible community involvement, by the DfE which is known to strongly support the MAT conversion.

40. In other words, the approach taken by Ofsted and the results of its Report will be precisely to exacerbate the issue which, as Ofsted must realise, has been the cause of the problem it has identified, namely the failure of those currently making decisions about the future of HPS (namely the Governing Body) properly to involve the school community in discussions about its future. Ofsted has (as above) spoken negatively about the lack of a cohesive culture and lack of communication. Ofsted has given no consideration at all to how its decision and Report will impact on those things. Its actions will only make those things worse and seem calculated to do that. Ofsted's actions and its Report are thus irrational.

Information requested

41. Please provide us with copies of the following relevant documents:

- a. The draft inspection report which was shown to the Governing Body in advance of publication;
- b. All and any correspondence or records of any other communications between Ofsted (and/or its staff and/or inspectors) and the DfE (including as the EFSA and/or RSC) in relation to HPS between January 2022 to date; and
- c. All and any correspondence or records of any other communications between Ofsted (and/or its staff and/or inspectors) and United Learning Trust in relation to HPS between January 2022 to date.

Alternative dispute resolution

42. We hope that a satisfactory resolution can be found so as to avoid proceedings and we would consider entering mediation if that were appropriate. As such, we would be prepared to take part in ADR. If this is of interest to Ofsted, please indicate this without delay. We would obviously require a comprehensive response to this letter and disclosure before any ADR process could be undertaken.

Address for reply and service of court documents

43. Please reply to us using the contact details in our letterhead and by email to hpspclegal@gmail.com.

Timetable for a response

44. We request a substantive reply to this letter within 14 days, and **by 4.30 p.m. on 5 July 2022.** We look forward to hearing from the Governing Body or your firm as a matter of urgency.
45. In the event that it proves necessary to commence judicial review proceedings here, we will be inviting the court to deal with the case on an expedited basis including through abridging time for Ofsted's Acknowledgment of Service and dealing with the matter on a 'rolled up' hearing basis. If you disagree with that proposal please make clear your disagreement and the reasons for it so that we can properly explain the position to the court.

If you have any queries, please contact HPSPC legal at hpspclegal@gmail.com.

Yours faithfully

HPSPC Limited