

21 December 2018

PRESS SUMMARY

The Office for Standards in Education, Children's Services and Skills ("OFSTED") (Appellant) v The Secretary of State for Education and R (on the application of Durand Academy Trust) (Respondent) [2018] EWCA Civ 2813

On appeal from [2017] EWHC 2097 (Admin)

The Court: Sir Terence Etherton MR, Lord Justice Hamblen, Lord Justice Green

BACKGROUND TO THE APPEAL

This appeal concerns an Ofsted report arising out of an inspection of Durand Academy School carried out on 30 November and 1 December 2016. Ofsted produced a report which found the School to be "inadequate", and a recommendation was made under section 44(1) of the Education Act 2005 that the School be placed into "special measures". The trust responsible for the School, the Durand Academy Trust, brought a claim for judicial review seeking an order that the report be quashed on the grounds that Ofsted's assessment of the school was *Wednesbury* unreasonable and/or that Ofsted's complaints procedures are procedurally unfair.

HHJ McKenna, sitting as a judge of the High Court, found that the absence of any ability effectively to challenge the report rendered the Ofsted's complaints procedures unfair, and that this in turn vitiated the report, which was accordingly quashed. In those circumstances it was not necessary for the Judge to rule on the rationality challenge.

JUDGMENT

The Court of Appeal unanimously allows the appeal.

REASONS FOR THE JUDGMENT

Looked at overall Ofsted's procedures for inspection, evaluation and reporting are fair and reasonable for schools which are provisionally judged to have serious weaknesses or to require special measures because, although such schools cannot challenge substantive judgements through the complaints procedure once the report has been finalised, additional safeguards have been provided for them at the stage prior to finalisation of the report.

Those additional safeguards are a combination of statutory procedures under section 13(1) and (2) of the Education Act 2005 and non-statutory procedures under Ofsted's school's inspection Handbook. These include the fact that opportunities are provided at the inspection stage for issues of concern to be identified and addressed; schools are encouraged to raise any concerns during the inspection stage under the Step 1 complaint procedure; at the draft report stage, issues of concern may be raised by the school and will be addressed by Ofsted; additional protections and quality assurance processes are then provided if the school may be considered inadequate; and where a

school is judged to require special measures the judgment has to be authorised by or on behalf of the Chief Inspector [see generally paragraph 63].

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: <https://www.judiciary.uk/judgments/>