Neutral Citation Number: [2024] EWHC 1792 (Admin)

Case No: AC-2023-LON-001575

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/07/2024

Before :

Mr Justice Cavanagh

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Between :

The King on the application of All Saints Academy, Dunstable	**Claimant**
- and -	
(1) The Office for Standards in Education, Children's Services and Skills (Ofsted) **(2) His Majesty's Chief Inspector of Education, Children's Services and Skills**	**Defendants**

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Paul Greatorex (instructed by **Irwin Mitchell LLP**) for the **Claimant**
Toby Fisher (instructed by **Ofsted Legal Services**) for the **Defendants**

Hearing dates: 24 and 25 April 2024

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Approved Judgment

This judgment was handed down remotely at 10.00am on Thursday 18 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Cavanagh :

Introduction

1. The Claimant ("the School") is an Academy sponsor-led secondary comprehensive school in Dunstable, Bedfordshire. There are 655 pupils on the school roll. The Defendants are statutorily responsible for conducting inspections of schools in England and for reporting on a range of matters relating to school performance. No objection has been made to this claim being brought against the two Defendants jointly.

2. This application for judicial review arises out of an inspection carried out at the School in 2022 and 2023, and is concerned with the grades awarded to the School under various headings in the final report ("the Final Report") that was produced at the end of the inspection process.

3. A first visit was undertaken by a lead Her Majesty's Inspector ("HMI") and three Ofsted Inspectors ("OIs") on 23 and 24 November 2022. At the end of this visit, the School leadership was told by the inspection team that their provisional judgment was that the School would be graded "Good" in four categories: quality of education, personal development, leadership and management, and the sixth form. The provisional grade for behaviour and attitudes was "Requires Improvement" and safeguarding arrangements were provisionally judged to be "Effective". The inspectors said that they intended to award an overall effectiveness grade of "Requires Improvement". (There is a dispute about whether the lead inspector at the first visit told the School's Principal, Ms Elizabeth Furber, that he had wanted to award an overall grade of "Good", but it is not necessary for me to resolve this dispute.) In any event, the School was told that these grades were provisional. The School had been graded "Requires Improvement" at its last two graded inspections in January 2017 and May 2019.

4. The lead HMI prepared a draft report which, in accordance with the normal quality assurance process, was reviewed by a more experienced HMI, to check that there were no major weaknesses, and to suggest amendments, corrections or improvements. The more experienced HMI flagged up some concerns about the report, including whether the provisional grade of "Requires Improvement" was consistent with the explanatory commentary, and a concern about inconsistencies in the evidence base. This led to an enhanced review by a Senior HMI ("SHMI") which again expressed concerns about the findings of the inspection team. The next stage was a full evidence-based review, in which the entirety of the evidence gained by the inspection team was revisited and re-evaluated, in order to consider whether the conclusions were justified by the evidence base. The conclusion reached was that the inspection process failed a number of Ofsted's internal quality standards. In particular, the evidence base was found not to support the provisional judgments which had been reached. A key concern was that the provisional judgments reached by the first inspection team did not appear to correlate with the experience of staff, pupils and parents as recorded in parent, staff and pupil surveys.

5. The conclusion that the first inspection visit had been inadequate triggered Ofsted's Gathering Additional Evidence ("GAE") protocol. The School's Executive Principal (i.e. headteacher), Ms Elizabeth Furber, was informed that the inspection had been deemed incomplete. She was told that inspectors would return to the school shortly to collect additional evidence. In a letter to Ms Furber dated 20 January 2023, Mr Michael

Sheridan, Regional Director of Ofsted with responsibility for the East Midlands and East of England Regions, said that the provisional judgments that were reached were not securely verified and were not substantiated by the existing evidence that had been collected and evaluated. This left a question mark over the validity and reliability of the inspection findings. Mr Sheridan recognised that this might place strain on staff and apologised for this. He said that the main areas of focus would be safeguarding, leadership, and management, and aspects of the quality of education that needed further evaluation. He said that this was because there needed to be further scrutiny against the Schools' Inspection Handbook ("SIH") to determine the accuracy of the provisional findings. He said that inspectors would also gather additional evidence linked to behaviour and attitudes and the Sixth form. This was necessary because Ofsted believed that the evidence for the inspection had not been triangulated sufficiently with the views of parents, staff, and pupils.

6. This development was, understandably, upsetting for the School's senior management team and other staff.

7. A second inspection visit took place on 24 January 2023. The new inspection team consisted of three HMIs and one SHMI. The lead inspector was Mr Charlie Fordham. Each of the inspectors chosen to be part of the new inspection team was selected for their experience, and for their reputations for fairness, objectivity and integrity. This was because Ofsted recognised the delicacy of the situation.

8. The day before the second inspection visit took place, the lead inspector, Mr Fordham, spoke to the Principal, Ms Furber. He told her that the pupil, parent and staff views of the School were not positive and needed triangulation, and that the inspectors would have to look further at alternative provision and safeguarding.

9. During the course of the second inspection visit, and prior to the final feedback meeting, inspectors had a total of 8 meetings with the Principal and/or one or more Deputy Principals, and one meeting with the Chair and another Governor.

10. Also during the second inspection visit, the School leaders provided the inspectors with information which they had been asked by the inspectors to provide. These included: a printout of all behaviour incidents logged on the SIMS system in 2021 and 2022, a printout of all incidents logged on CPOMS, a platform which recorded safeguarding incidents, and a leaders' survey of staff and pupils.

11. The second inspection team took account of their own observations and conversations with leaders and staff at the School during the visit on 24 January 2023, and also took account of the evidence gathered at the first inspection visit. They took account of the evidence obtained during the first visit because Ofsted's concerns about the first inspection visit were about the judgments and conclusions reached by the inspectors, rather than about the validity and reliability of the evidence that had been gathered on that occasion. The second inspection team took the view that, in light of the totality of the evidence that had been gathered, the judgments and conclusions of the first inspection team were not reliable. They took the view that the School had serious weaknesses and required improvement in a number of areas. The provisional judgments of the second inspection team were as follows: that the School should be graded "Inadequate" in the categories of behaviour and attitudes, and leadership and management; that safeguarding was "Not Effective"; that the School should be graded

"Requires Improvement" in the categories of quality of education and personal development; and that the School should be graded "Good" in respect of Sixth form provision. The School's overall effectiveness was provisionally graded "Inadequate". It follows that the second inspection team took the view that the grades to be awarded to the School should be significantly poorer than those that were assessed by the first inspection team.

12. The second inspection team provided the School with feedback at a meeting at the end of the visit on 24 January 2023. This feedback included notification of the proposed grades, with some explanation for them. The Principal, Ms Furber, was present for the entirety of this meeting. The Chair of Governors, Mr David Fraser, joined her part-way through, at her request, when it became clear that the news was not good. It is common ground that none of the Deputy Principals was present. There is a dispute between the parties as regards whether this was because Ms Furber was told by the inspectors that they were not invited, or because Ms Furber declined an invitation to be accompanied by them, but it is not necessary for me to decide this issue for the purposes of these proceedings. Both Ms Furber and the inspectors made a note of the meeting.

13. Following the second inspection visit, the lead inspector, Mr Fordham, prepared a draft report. As with the first inspection team's report, this report then went through a quality assurance process. The process was enhanced because, as a result of the second inspection team's assessment that the School's overall effectiveness was "Inadequate", the School was deemed to be in a formal category of concern. The report progressed through an initial quality assessment and then an enhanced assessment. There followed a moderation process, which was carried out by a SHMI who had not been involved with either of the visits to the School. This moderation process involved a review of the entirety of the available evidence. The SHMI checked that the judgments that had been reached by the second inspection team were underpinned by secure and reliable evidence and that the appropriate processes had been complied with. The conclusion of the quality assurance and moderation processes was that the draft report was found to be secure and reliable.

14. On 9 March 2022, the draft report was sent to the School, which was invited to provide any comments it wished to make. The School was not provided with the evidence base upon which the report was based. On 16 March 2023, the School provided detailed comments, running to approximately 21 pages, in which the School challenged the findings of the draft report. The School criticised differences and discrepancies between the first and second draft reports; highlighted what it said were factual inaccuracies; complained about the way in which the second inspection had been conducted; and made submissions as to why the various grading assessments should have been higher. The School said that there was insufficient evidence to make the assertions that had been made in the draft report.

15. The School's comments were considered by the lead inspector. Some changes were made where they were considered to be warranted by the evidence, but they were not material. The proposed gradings were not altered. The Final Report was sent to the School under cover of a letter dated 22 March 2023. The School was informed that Ofsted intended to publish the report eight working days from the date of the letter on the Ofsted reports website. The School was also informed that its comments had been carefully considered. The School was told that it was required to distribute a copy of the report to the registered parents of all registered pupils, within five working days

from receipt of the letter – this was a statutory obligation, under section 16(3)(c) of the Education Act 2005 ("the 2005 Act"). The School was also told that it had a right to file a complaint if it was dissatisfied with the inspection report or the inspection process.

16. On 30 March 2023, the School lodged a detailed complaint about the inspection and inspection process. This involved criticisms of the second inspection team and of the processes that had been followed. The School also complained about the way in which the comments on the draft report had been dealt with. The School made detailed criticisms of each of the grades in the inspection report, except the grading of "Good" for Sixth form provision. The School said that the grades were inconsistent with the evidence, and that this was supported by the different grades that had been awarded by the first assessment team. The School also made an allegation of bias against the Regional Ofsted team, and alleged that the second inspection team had only been interested in negative views about the School, and that three members of that team had acted in a dismissive and bullying manner during the inspection.

17. As a result of the School's complaint, the report was not published. A SHMI was appointed to consider the complaint, in accordance with Ofsted's complaints procedure. Normally, a SHMI from the same region is appointed to do this, but Ofsted decided to appoint a SHMI from another region. The SHMI reviewed the evidence and the judgments of the second inspection team. On 12 May 2023, the outcome of the complaint investigation was reported to the School. The great majority of the School's complaints were rejected. One aspect of the complaint was upheld, and, as a result, three relatively minor amendments were required to be made to the report. This was in order to ensure that certain findings relating to safeguarding were couched in more specific and less generalised language, so that they reflected the evidence more accurately. The changes were not changes to the substance of the conclusions that had been reached, and no change was made to the grades.

18. On 16 May 2023, Ofsted wrote to the school to provide it with Final Report, and Ofsted said that it intended to publish the report on 23 May. The School asked Ofsted to delay publication whilst it considered and then responded to the Final Report, and then whilst the School prepared an application to the Court. Ofsted declined to do so.

19. On 22 May 2023, the School issued proceedings in the Administrative Court, and applied for interim relief to restrain publication of the report. An urgent hearing took place before Morris J on the same day. The application for interim relief was not dealt with at the hearing before Morris J. Morris J gave directions for a hearing to deal both with the School's application for permission to apply for judicial review, and with its application for interim relief. Ofsted agreed not to publish the Final Report pending a further hearing.

20. The matter came back to the Court, before Linden J, on 22 June 2023. The School relied upon 10 grounds in support of its application for judicial review. Linden J gave leave on only two grounds, which are the grounds that I must determine. These are:

(1) Ground 1: the School was not provided with sufficient reasons, explanation or evidence to enable it fairly to contest the findings about it which the Defendants proposed to make in the final version of the report; and

(2) Ground 2: the Final Report does not give sufficient reasons, explanation or evidence to enable the School or any other reader to understand the adverse findings, what they are based upon, what the school has to do to correct them, or the change in judgment between the original inspection and the GAE inspection.

21. Linden J declined to grant interim relief in the form of a stay of the publication of the Final Report. He said, at paragraph 114 of his judgment:

> "114. Individually and cumulatively, in my judgment, there are neither a strong prima facie case, nor the sorts of exceptional compelling features in this case which would justify granting the relief sought by the School pending the determination of the grounds of challenge that I have identified as being arguable."

22. Linden J's judgment can be found at [2023] EWHC 1834 (Admin).

23. In his Order at the hearing on 22 June 2023, Linden J directed that the School should file for the Judge's approval an Amended Statement of Facts and Grounds ("ASFG"). Linden J declined to approve the first version of the ASFG filed on behalf of the School and, in a further Order dated 18 July 2023, Linden J directed that the ASFG should make clear the factual case that was advanced and should omit what is no longer relevant. The School filed a second ASFG on 25 July 2023. The Defendants again objected to it on the basis that it went beyond the grounds on which permission had been granted. The objection was made promptly, but, as a result of an administrative oversight in the Administrative Court, the objection was not placed before Linden J for some months. On 14 December 2023, Linden J ruled that four paragraphs should be excised from the ASFG, because they effectively pleaded a ground on which permission had been refused.

24. The School has been represented before me by Mr Paul Greatorex of counsel, and the Defendants by Mr Toby Fisher of counsel.

25. I should mention that Ofsted sometimes uses the word "judgement", and sometimes refers to "judgment". As the latter is the more common usage in the legal context, I have used it throughout this judgment.

The scope of this judicial review challenge

26. Ground 1 is a procedural fairness challenge, and Ground 2 is a challenge to the adequacy of the reasons given for the adverse findings in the Final Report. It is important to bear in mind the relatively narrow scope of the Grounds that Linden J permitted to proceed to a full hearing, and to identify the matters that are not before the Court for determination.

27. Linden J declined to give permission to the School to proceed with the various other grounds that the School sought to rely upon. I will summarise them briefly so as to emphasise that it is neither necessary nor appropriate to deal with them in this judgment.

28. The grounds upon which the School sought to rely in these proceedings but for which Linden J declined to grant permission were as follows:

(1) That the system of single-word judgments in the Defendants' Education Inspection Framework ("EIF") is unlawful because it is not in accordance with the Defendants' statutory functions and duties;

(2) That there was procedural unfairness because the practical effect of the guidance in the SIH is that if safeguarding is judged to be ineffective this will inevitably mean that leadership and management will be graded inadequate and that the overall effectiveness of the school will be graded inadequate, even if the school is outstanding in every other respect;

(3) That there was procedural unfairness in that (a) the first inspection team had wanted to award an overall grade of "Good" but were dissuaded from doing so; (b) the second inspection did not comply with the procedural requirements of the GAE protocol; (c) the evidence-gathering of the second inspection team ranged over a broader range of matters than the School had been led to expect; and (d) the names of all eight inspectors (i.e. including those who took part in the first inspection) were placed at the end of the Final Report, though the Final Report only represented the views of the four inspectors who took part in the second inspection;

(4) A number of specific criticisms were made of the conduct of the second team of inspectors which was alleged to be procedurally unfair, lacking in objectivity, and contrary to the Ofsted Code of Conduct. The essence of this ground was that the manner of certain inspectors during the second inspection was unduly negative, dismissive, undermining, unreasonable, and bullying;

(5) That the adverse judgments in the Final Report were based on material errors of fact and were not reasonably open to Ofsted on the evidence. This was a detailed irrationality challenge. The thrust of this ground, as Linden J pointed out at paragraph 85 of his judgment, was that this was an attempt to argue that the evidence should have been interpreted in a different way and different judgments reached;

(6) That the Defendants' refusal to delay publication to allow the School more time to prepare its judicial review claim was procedurally unfair, failed to take account of relevant considerations, and was irrational;

(7) That the Defendants had behaved irrationally in taking account of a whistleblower's allegation that Ms Furber had been bullying staff in relation to the inspection, when this was an obviously irrelevant consideration, and the allegation had not been put to Ms Furber; and

(8) That the Chief Inspector had erred in law in directing herself that she did not have the legal power to alter the grading system under the EIF, and that it was a matter for Government not for her.

29. Linden J gave reasons for his decision not to grant leave on any of the above eight grounds, and they are set out in his judgment. I will not repeat them. It is worth pointing out, however, that, as regards Ground (1), Linden J said that the School was impermissibly seeking to draw the Court into a political argument and/or an area of judgment which is a matter for Ofsted and the Chief Inspector, without any public law basis for doing so. It is important to note, therefore, that this judgment is not concerned

with the one-word grading judgments that are used by Ofsted and which have been subjected to some recent public criticism: see Linden J's judgment, at paragraph 54.

30. Similarly, it is important to note that the remaining grounds do not amount to a general challenge to Ofsted's inspection and complaints procedure. As Linden J pointed out at paragraph 70 of his judgment, such a challenge was addressed by the Court of Appeal in **Durand Academy Trust v Ofsted** [2018] EWCA Civ 2813. In that case, the Court of Appeal said that the process up to and including the final report of an inspection should be looked at as a whole, in terms of assessing its fairness. Moreover, as Lindblom LJ said in **R (Governing Body of X) v Ofsted** [2020] EWCA Civ 594, at paragraph 43, the Court of Appeal in **Durand** held that Ofsted's inspection, evaluation and reporting process, and its procedure for handling complaints, are inherently procedurally fair. In this case, following the grant of permission on limited Grounds, the surviving challenge now consists of a challenge to specific limited aspects of the way in which Ofsted conducted the inspection in this particular case.

31. Again, it is equally important to bear in mind that the remaining grounds do not include a challenge to the various conclusions that were reached in the Final Report. This is not a proxy for an appeal against the gradings that were imposed in the Final Report. This is not a challenge to the weight that was given by the inspectors to particular parts of the evidence, or to the exercise of judgments by the inspectors on particular matters. Similarly, it is not open to the School, at this stage, to challenge the factual material in the evidence base that was relied upon by the inspectors.

32. Moreover, as Lindblom LJ said in **Governing Body of X**, at paragraph 44, "dissatisfaction with the findings and conclusions of the inspection report does not, of itself, amount to a demonstration of irrationality." In his decision on the application for leave to apply for judicial review, Linden J said, at paragraph 86 of his judgment:

> "In the present case, the School is clearly dissatisfied with the judgments made in the final report, but it has not come close to establishing an arguable case that they are irrational notwithstanding the detailed internal scrutiny which they have undergone through the quality assurance, moderation and complaints process."

33. As for the two grounds for which Linden J gave permission, he did so in a way that was narrower in scope than the way in which they had been pleaded in the original Statement of Facts and Grounds and had been argued at the permission hearing.

34. I have set out in some detail the issues that this judgment will not be addressing for two reasons.

35. First, I do not want to raise expectations that this case is concerned with a broad root-and-branch challenge to Ofsted and to the way in which school inspections are conducted. That is not what this case is about. Nor is it a challenge to the conclusions reached by the inspectors by reference to the evidence base.

36. Second, it is apparent that the senior management of the School, and their legal advisers, continue to be very aggrieved by the outcome of the Final Report. This is wholly understandable, especially given the adverse consequences that may result from an

overall grading of "Inadequate" (which I will summarise below). However, the sense of grievance appears to have affected the way in which the School and its legal team have conducted this litigation. I have been provided with a number of bundles of documents, running to very many hundreds of pages. Many of these documents, whilst they may well have been relevant to the case as originally presented, are of no or no real relevance to the Grounds that remain. Moreover, the applications that were made at the start of the hearing on 24 April 2024, which I will deal with shortly, indicated, to some extent, an unwillingness on the part of the School and its legal team to give up on the grounds for which permission to apply for judicial review was not granted, and to focus on the two remaining Grounds. I fully appreciate that, in proceedings like these, the Court must be presented with sufficient background facts to obtain a flavour of the case and to enable the judge to resolve the issues before him or her, and, also, that it is often difficult to know what to leave out. However, in the present case I have been presented by the School with a great deal of documentation and some wide-ranging submissions which did not focus on the issues that I have to decide. It has not been entirely easy to wade through the great mass of material that has been placed before me in order to focus my attention on the things that matter. However, in this judgment, I will attempt to keep my focus on the central issues. This means that is neither necessary nor appropriate for me to refer to substantial parts of the evidence and documentation that has been placed before me by the School. The Grounds of challenge are capable of resolution without a detailed analysis of all the underlying evidence in the case (and, indeed, such an analysis would serve to obscure rather than illuminate the real issues in this case).

The applications that were made at the start of the hearing

37. At the commencement of the hearing on 24 April 2024, Mr Greatorex made a number of applications on behalf of the School. The applications took up a considerable part of the first day of the hearing. I provided my decisions, with brief reasons, orally on 24 April, but I will summarise in this judgment the applications and the reasons for my decisions. As a general proposition, however, it is fair to say that most of the applications were refused because they sought to adduce evidence which, though it would have been relevant to the issues that were originally pleaded by the School, was no longer relevant after the cull of the grounds of challenge that was carried out by Linden J at the permission stage.

38. Mr Greatorex applied for specific disclosure of the draft report that was prepared by the first inspection team following the first inspection in November 2022. The Defendants had declined to provide this report to the School and said that they were not obliged by their duty of candour do so. I declined to grant this specific disclosure on the basis that, whilst the draft report might well have been relevant if leave had been granted for the original merits-based and procedural challenges, it was not relevant to the remaining challenges. The first report failed to pass moderation and quality assurance tests at Ofsted and so was not given to the School. Unlike the evidence base that was gathered at the first inspection, the draft report prepared by the inspectors who attended the first inspection was not relied upon for the purposes of the Final Report. The School did not need sight of the first draft report in order to make its argument that it should have been given the first draft report in order to enable it to make its complaints about the final version of the report. Similarly, the first draft report is not relevant to the challenge that insufficient reasons were given for Ofsted's conclusions in the Final Report. This

stands or falls on what is said in that Final Report. I should add that a note of the final feedback session of the first inspection visit in November 2022 was disclosed by the Defendants.

39. Second, a request was made for confirmation that none of the second inspection team have had any complaints made against them and, if they had, to provide full details of that complaint and the outcome. I declined to make an order for disclosure of this material. The principles upon which disclosure should be ordered in judicial review proceedings are well established. Such orders are exceptional. The test for disclosure is whether, in the given case, disclosure appears to be necessary in order to resolve the matter fairly and justly, and that issue must be considered by reference to the issues that the court must decide. Disclosure should not be granted solely in order to facilitate fishing expeditions. In my judgment, this was a classic fishing expedition, with no relevance to the two remaining Grounds.

40. Third, Mr Greatorex applied to rely upon five new statements. These were the Fourth Witness Statement of Ms Furber, the Head Teacher, the Second Witness Statement of Mr Fraser, the Chair of Governors, and the Second Witness Statements of the three Deputy Principals, Ms Caroline Doolan, Mr Simon Millar, and Ms Kate Searle. I read this evidence de bene esse in order to deal with the application.

41. The main, but not the only, issue which these statements dealt with was whether Ms Furber was invited on her own to the feedback meeting at the end of the second inspection visit, on 24 January 2023, in circumstances in which she was dissuaded from bringing along her colleagues, the Deputy Principals. She also said that the layout of the room and the seating arrangements made it difficult for her to take notes.

42. It was not in dispute that Ms Furber did attend the feedback meeting on her own at first, though she left the meeting part way through to call Mr Fraser, Chair of Governors into it, as she realised that the second inspection team had reached judgments which were significantly worse than those reached by the first inspection team. In his Witness Statement, which was served on 22 January 2024, the lead inspector for the second inspection visit, Mr Fordham, said that it had been Ms Furber's own request to attend the meeting alone. This is hotly contested.

43. It was also not in dispute that Ms Furber had made some notes of the feedback meeting. These notes were in the bundle before the Court.

44. The directions made by Linden J at the permission hearing provided for any evidence from the School in response to the Defendants' evidence to be filed and served by 12 February 2024. The School did not serve this fresh evidence until 4 April 2024, about three weeks before the hearing, and over six weeks after the deadline had expired. This meant that I had to apply the well-known principles in **Denton v TH White Ltd** [2014] EWCA Civ 906 when considering whether to grant leave to the School to rely upon the additional evidence even though it had been presented out of time.

45. As for the evidence about whether the Deputy Principals had been blocked or discouraged from attending the meeting, I declined to admit this evidence. It was filed out of time and the Defendants would have been prejudiced if it was admitted, though I did not accept that an adjournment would have been necessary if it had been admitted. It was not evidence on a "new" issue, as this allegation had been made in the original

witness statements of some of the School's witnesses, including the First Witness Statements of Ms Doolan, Mr Miller, and Ms Searle. More significantly, perhaps, this issue is not relevant to the remaining Grounds in the case. The nature and content of the feedback that was given at the feedback meeting at the end of the second inspection visit is certainly relevant. The Court has been provided with notes of the meeting that were made by the inspection team and, separately, by Ms Furber. But the details of whether the Deputy Principals were invited to the meeting, or were dissuaded from attending it, is of no significance for the remaining Grounds. It is not in dispute that Ms Furber attended the meeting, and was able to make notes at it. It is not in dispute that she brought in the Chair of Governors, part-way through the meeting, when she wished to do so. If and insofar as the School wished to make the point that oral feedback at a meeting such as this was of little if any value because the Principal or other attendee from a school will be shocked and distressed, then it was able to make this point without the admission of the further evidence. Finally, I took the view that there was a real danger that, if this evidence were admitted, it would shift the court's focus from the real issues before the court. The court must be alive to the danger of reopening the grounds of challenge for which the Claimant has not been granted permission to apply for judicial review. The focus must be on the grounds for which permission has been granted. For that reason, I declined Mr Greatorex's invitation to admit the evidence de bene esse and to decide at the end of the hearing, after all of the arguments had been advanced, whether to admit the evidence formally.

46. I also refused to admit evidence in the new statements which dealt with the emotional impact of the second inspection and the Final Report upon the School's staff and upon others. Whilst I had no doubt that the feelings expressed in the statements were sincere and strongly felt, they were of no significant relevance to the legal issues that I have to decide. Nor was it evidence in reply. Moreover, and in any event, this new evidence covered ground that was covered by the original statements.

47. In her April 2024 statement, Ms Searle, who was the safeguarding lead, disputed whether the School's Senior Management Team had admitted to the inspectors that they had no way of monitoring safeguarding patterns because of a change in software systems. This is not relevant to the Grounds that remain. This is an egregious example of evidence that would have been relevant to a merits challenge to the conclusions in the inspection report, but permission was not granted for such a challenge. In any event, Ms Searle dealt with this in her first statement.

48. In his April 2024 witness statement, Mr Miller contested a statement in the Detailed Grounds of Defence ("DGD") that during the second inspection visit Ms Furber had discussed attendance data extensively with inspectors. He said that the Head Teacher had only been involved for a brief time and he was mainly involved in it. I agreed with the Defendants that the difference in evidence between the parties on this issue was immaterial: it was not disputed that a discussion on attendance data took place between an Ofsted inspector and a senior member of the School's leadership. This has no relevance to the remaining issues in the case. In any event, once again this was dealt with in Mr Miller's First Witness Statement.

49. Ms Doolan addressed the suggestion in the DGD that she was unaware that some of the alternative providers of education support to students were not registered or had not been inspected by Ofsted. This was a complaint about the evidence base relied on by the inspectors. It is not relevant to the remaining Grounds. Ms Doolan said that she

felt bullied and that the inspector had not properly reflected what she said. Once again, this is not relevant to the remaining Grounds, and it is a matter that was, in any event, covered by Ms Doolan in her First Witness Statement.

50. In his April 2024 Witness Statement, Mr Fraser, the Chair of Governors, referred to the aggressive and intimidating tone of the GAE inspectors. Once again, this is not relevant to the remaining issues in the case, and, in any event, is something that could have been said in Mr Fraser's first statement, if had been considered material.

51. As for the rest of Ms Furber's April 2024 Witness Statement, I declined to admit some parts of it on the grounds of relevance. This included material relating to the tragic death of Ruth Parry, the Headteacher of a different school, shortly after an Ofsted inspection, and about press coverage of statements made by a number of Headteachers and others about the anxiety that is caused by Ofsted inspections. This was not relevant to these proceedings, which, as I have said, are not concerned with a challenge to systematic unfairness in Ofsted inspections. This court is not a proper forum for policy disagreements about the way in which Ofsted functions.

52. I allowed in some parts of the new Statement where the new material was factual and was of direct relevance to the two remaining Grounds.

53. Mr Greatorex also applied to cross-examine Mr Fordham about his statement that it was Ms Furber who had asked to attend the feedback session at the end of the second inspection visit on her own. It is only in exceptional circumstances that the Court will permit cross-examination of a witness in judicial review proceedings: see CPR PD54A, paragraph 11.3. This is not such an exceptional case. Indeed, as I have said, the question as to whether it was Ms Furber's choice to attend the feedback session on her own, or whether she was discouraged from bringing her senior colleagues with her, is of no relevance to the two remaining Grounds.

54. The School applied for an order under CPR 31.22(1)(b), permitting the Defendants' disclosure to the School to be used other than for the purpose of these proceedings, i.e. to be published by the School. Mr Greatorex submitted that this application should be dealt with by the Court as part of its judgment on the claim. I agreed, and I will deal with it when dealing with consequential matters.

55. I also dealt with an application by the Defendants for an order under CPR 31.22(2) and CPR 5.4(c), restricting or prohibiting the use by the School of Exhibits JY3-3 and JY3-4 (the contemporaneous evidence base for the first and second inspection visits), for purposes other than these proceedings, save where specific passages were read out in court. The Defendants said that there was a real risk that the School would use this information for the purposes of its wider campaign against Ofsted. I made this order, which lasts until further order is made after judgment is handed down. If the School wishes to apply to me to discharge this order, it may do so as part of the consequential matters to be dealt with after judgment is handed down. I also made an order, at the Defendants' request, under CPR 5.4(c), that any future applications by third parties to be provided with copies of exhibits to the Witness Statements served by Ofsted should be made on 14 days' notice to Ofsted.

56. The Defendant made an application for the costs occasioned by the several applications by the Claimant. I said that I would deal with it after judgment is handed down. This matter is also suitable to be dealt with when I deal with consequential matters.

57. Having dealt with these preliminary matters, I now come to deal with the issues relating to the two surviving Grounds.

The legislative framework

58. Ofsted is a body corporate established under section 112 of the Education and Inspections Act 2006 ("EIA 2006"). It is referred to in that Act as 'the Office' and has a number of members, including the person appointed by the Secretary of State to the office of His Majesty's Chief Inspector of Education, Children's Services and Skills, referred to as 'the Chief Inspector'.

59. Ofsted's functions are set out in section 116 of the EIA 2006:

> "116 **Functions of the Office**
>
> (1) The Office has the following functions—
>
> (a) to determine strategic priorities for the Chief Inspector in connection with the performance of his functions;
>
> (b) to determine strategic objectives and targets relating to such priorities; and
>
> (c) to secure that the Chief Inspector's functions are performed efficiently and effectively.
>
> (2) The Office is to have such other functions in connection with the performance of the Chief Inspector's functions as may be assigned to it by the Secretary of State."

60. The way in which Ofsted should perform its functions is set out in section 117:

> "117 **Performance of Office's functions**
>
> (1) The Office is to perform its functions for the general purpose of encouraging—
>
> (a) the improvement of activities within the Chief Inspector's remit,
>
> (b) the carrying on of such activities as user-focused activities, and
>
> (c) the efficient and effective use of resources in the carrying on of such activities.
>
> (2) In performing its functions the Office is to have regard to—

(a) the need to safeguard and promote the rights and welfare of children;

(aa) any matters raised by the Children's Commissioner with the Office or the Chief Inspector;

(b) views expressed by relevant persons about activities within the Chief Inspector's remit;

(c) levels of satisfaction with such activities on the part of relevant persons;

(d) the need to promote the efficient and effective use of resources in the carrying on of such activities;

(e) the need to ensure that action by the Chief Inspector in relation to such activities is proportionate to the risks against which it would afford safeguards;

(f) any developments in approaches to inspection or regulatory action; and

(g) best practice amongst persons performing functions comparable to those of the Chief Inspector.

(3) In performing its functions the Office must also have regard to such aspects of government policy as the Secretary of State may direct.

(4) In this section—

(a) "children" means persons under the age of 18;

(b) "relevant persons", in relation to activities within the Chief Inspector's remit, means persons who have an interest in such activities, whether—

(i) as persons for whose benefit they are carried on, or

(ii) as parents (if they are carried on for the benefit of children), or

(iii) as employers;

(c) "parents" includes persons—

(i) who are not parents of children but have parental responsibility for them (within the meaning of the Children Act 1989 (c. 41)), or

(ii) who have care of children.

(5) Subsection (6) provides for the interpretation, for the purposes of this Part, of references to activities within the Chief Inspector's remit and related expressions.

(6) For those purposes—

(a) "activities" includes—

(i) the provision of any form of education, training or care,

(ii) the provision of any form of services or facilities, and

(iii) the performance of any function;

(b) activities are within the Chief Inspector's remit—

(i) if he exercises any inspection function in relation to them, or

(ii) if they are services of the kind provided by persons in respect of whom he is the registration authority by virtue of any enactment; and

(c) references to persons for whose benefit activities are carried on are, in relation to activities within paragraph (a)(i) or (ii), references to persons for whom the education, training or care is provided, or (as the case may be) for whom the services or facilities are provided.

61. The Chief Inspector's duties (in relevant part) are set out in section 119, which provides as follows:

119 **Performance of Chief Inspector's functions**

(1) The Chief Inspector is to perform his functions for the general purpose of encouraging—

(a) the improvement of activities within the Chief Inspector's remit,

(b) the carrying on of such activities as user-focused activities, and

(c) the efficient and effective use of resources in the carrying on of such activities.

(2) The Chief Inspector must ensure—

(a) that his functions are performed efficiently and effectively, and

(b) that, so far as practicable, those functions are performed in a way that responds to—

> (i) the needs of persons for whose benefit activities within the Chief Inspector's remit are carried on, and
>
> (ii) the views expressed by other relevant persons about such activities.
>
> (3) In performing his functions the Chief Inspector must have regard to—
>
> (a) the matters mentioned in section 117(2);
>
> (aa) any matters raised by the Children's Commissioner with the Chief Inspector; and
>
> (b) such aspects of government policy as the Secretary of State may direct.
>
> (4) In this section "relevant persons" has the same meaning as in section 117."

62. The Chief Inspector's duty to inspect schools (and certain other bodies) is set out in section 124 of the EIA 2006:

> "124 **Inspection of education and training to which this Chapter applies**
>
> (1) The Chief Inspector must conduct—
>
> (a) inspections of such education or training to which this Chapter applies as may be specified by the Secretary of State, and
>
> (b) inspections of such class of education or training to which this Chapter applies as may be so specified.
>
> (2) The inspections are to be conducted at such intervals as may be specified by the Secretary of State.
>
> (3) On completing an inspection under this section, the Chief Inspector must make a written report on it.
>
> (4) The report—
>
> (a) must state whether the Chief Inspector considers the education or training inspected to be of a quality adequate to meet the reasonable needs of those receiving it, and
>
> (b) may deal with such other matters as he considers relevant.
>
> (5) The Chief Inspector must send copies of the report to—
>
> (a) the Secretary of State,

> …
>
> (c) any local authority in England providing funds for the education or training inspected, and
>
> (d) the provider of the education or training inspected.
>
> (6) Copies may also be sent to such other persons as the Chief Inspector considers appropriate.
>
> (7) The Chief Inspector must arrange for the report to be published in such manner as he considers appropriate."

63. Section 123 lists the types of education and training which the Chief Inspector must inspect. This includes the education provided by the School.

64. Section 133 provides that the Chief Inspector must devise a common set of principles applicable to all inspections conducted under this Chapter of the EIA 2006 (s133(1)(a)). The common set of principles is referred to a "framework" and the Chief Inspector is required to publish the framework. The Chief Inspector has done this in the form of the EIF.

65. Paragraph 9 of Schedule 12 to the EIA 2006 provides that anything authorised or required by any enactment to be done by the Chief Inspector may be done by an HMI. This is the source of the delegated power for HMIs (and SHMIs) to conduct school inspections.

66. Section 5(1) of the Education Act 2005 ("the EA 2005") imposes a duty on the Chief Inspector to inspect every school in England to which the section applies (which includes Academy schools- section 5(2)(d)) and, when the inspection has been completed, to make a report of the inspection in writing. Subsections 5(5), (5A) and (5B) provide:

> "(5) It is the general duty of the Chief Inspector, when conducting an inspection under this section, to report on the quality of education provided in the school.
>
> (5A) The Chief Inspector's report under subsection (5) must in particular cover—
>
> (a) the achievement of pupils at the school;
>
> (b) the quality of teaching in the school;
>
> (c) the quality of the leadership in and management of the school;
>
> (d) the behaviour and safety of pupils at the school.
>
> (5B) In reporting under subsection (5), the Chief Inspector must consider—

> (a) the spiritual, moral, social and cultural development of pupils at the school;
>
> (b) the extent to which the education provided at the school meets the needs of the range of pupils at the school, and in particular the needs of—
>
> (i) pupils who have a disability for the purposes of the Equality Act 2010, and
>
> (ii) pupils who have special educational needs."

67. These graded inspections are known as "section 5 inspections", as provision is made for other types of inspections, under section 8.

68. Section 6(1) of the EA 2005 imposes a duty on the "appropriate authority" – in this case the proprietor of the School: section 6(3)(b) - to notify the registered parents of registered pupils at the school and other persons who may be prescribed of the time when the inspection is to take place. Section 6(2) provides that the notification must include a statement, in a form approved by the Chief Inspector, inviting the registered parents of registered pupils to inform the Chief Inspector of their views on matters relating to the school.

69. Section 7 provides that, in conducting an inspection, the Chief Inspector must have regard to the views of certain persons, who include the Principal or headteacher, in the case of an Academy school, the proprietor of the school, members of staff of the school, registered pupils at the school, and the registered parents of registered pupils.

70. The duty to give a school the opportunity to comment before a report is published it set out in section 13 of the EA 2005. This provides, in relevant part:

> "13 **Duties of Chief Inspector where school causes or has caused concern**
>
> (1) If, on completion of a section 5 inspection of a school, the Chief Inspector is of the opinion—
>
> …
>
> (b) that the school requires significant improvement,
>
> he must comply with subsections (2) and (3).
>
> (2) The Chief Inspector must—
>
> (a) send a draft of the report of the inspection—
>
> ….
>
> (ii) in the case of any other school, to the proprietor of the school, and

(b) consider any comments on the draft that are made to him within the prescribed period by the …. proprietor, as the case may be.

(3) If, after complying with subsection (2), the Chief Inspector is of the opinion that the case falls within paragraph (a) or (b) of subsection (1)—

(a) he must without delay give a notice in writing, stating that the case falls within paragraph (a) or (b) of subsection (1)—

(i) to the Secretary of State,

(ii) in the case of a maintained school, to the local authority, and

(iii) in the case of any other school, to the proprietor of the school, and

(b) he must state his opinion in the report of the inspection.

…."

71. The requirements of section 13 of the EA 2005 applied in the present case, because the proposed overall grade of "Inadequate" meant that the inspectors considered that the School required significant improvement.

72. The time period within which a School can make comments under section 13 is very tight. Regulation 5 of the Education (School Inspection) (England) Regulations 2005 (SI 2005/2038) ("the 2005 Regulations") provides that the prescribed period within which comments can be made is the period of 5 working days from the date of receipt of the draft report.

73. Section 16 of the EA 2005 provides that a copy of the section 5 inspection report must be sent without delay to the proprietor of the school. The proprietor must make a copy of the report available for inspection by members of the public, provide a copy to anyone who asks for one, and take such steps as are reasonably practicable to secure that every registered parent of a registered pupil receives a copy of the report within a prescribed period. The prescribed period is 5 working days from the receipt of the report by the proprietor (2005 Regulations, reg. 6). In practice, the school proprietor emails a copy of the report to every registered parent of a registered pupil. The report is also published on Ofsted's website.

Ofsted inspections

74. Ofsted carries out over 43,000 inspections, visits, and interviews each year. The obligation to carry out regular inspections does not apply only to schools. Ofsted also had responsibility to inspect colleges, apprenticeship providers, prison education, childcare, local authorities, adoption and fostering agencies, initial teacher training and teacher development. Out of the 43,000 inspections carried out by Ofsted last year, approximately 3746 were graded inspections under s5.

75. This is relevant, because it illustrates the scale of the task facing the Chief Inspector and his inspectors. The resources and the time that can be allocated to any single school inspection are necessarily limited.

76. The usual timetable for an Ofsted inspection is a two-day inspection, leading to the production of a draft report which is sent to the school within 18 working days. The school then has five working days for comments on the draft report, and publication will then take place within 30 working days of the completion of the inspection. Inevitably, the inspection report is a point-in-time judgment about a school's education provision.

77. Since 2019, and as a deliberate policy choice, Ofsted reports are relatively brief. They are written in what is intended to be a concise and digestible format. Mr Lee Owston, Ofsted's National Director for Education, said in his Witness Statement that this decision was based on detailed consultative work with the education sector and the Department for Education, and followed testing with different groups of parents. Mr Owston said that the summaries in the reports "are meant as a simple and easy-to-access summary of what it is like for a child to attend that school, what the school does well, and what needs improvement."

78. Only a very small proportion of section 5 Ofsted inspections result in an overall grade of "Inadequate". Last year, 136 schools were given an "Inadequate" overall grade, which is just under 4% of the total inspected in section 5 inspections.

Information and guidance

79. There are a number of sources of information and guidance about the inspection process, and the way in which inspectors should go about making their judgments.

The EIF

80. The EIF is the framework for inspections which the Chief Inspector is required to publish under section 133 of the EIA 2006. It is the source of the four-point grading scale - "Outstanding", "Good", "Requires Improvement" and "Inadequate" - which is applied to five key areas of judgment: "quality of education", "behaviour and attitudes", "personal development", "sixth form", and "leadership and management". The EIF also requires a judgment to be made by the inspectors as to the overall effectiveness of the school and one of the four grades is awarded as an overall grade. For each of the judgments which inspectors are required to make, the EIF provides detailed guidance as to what they must consider in deciding upon a grade.

81. The relevant version of the EIF was published in September 2023, after the inspection to which this claim relates. The following extracts come from the version of the EIF that was in force at the relevant time.

> "Inspection provides independent, external evaluation and identifies what needs to improve in order for provision to be good or better. It is based on gathering a range of evidence that is evaluated against an inspection framework and takes full account of our policies and relevant legislation in areas such as safeguarding, equality and diversity.

> Inspection provides important information to parents, carers, learners and employers about the quality of education, training and care. These groups should be able to make informed choices based on the information published in inspection reports.
>
> …
>
> Inspection provides assurance to the public and to government that minimum standards of education, skills and childcare are being met; that – where relevant – public money is being spent well; and that arrangements for safeguarding are effective."

82. The EIF further states that:

> "Ofsted exists to be a force for improvement through intelligent, responsible and focused inspection and regulation. This is our guiding principle. The primary purpose of inspection under this framework is to bring about improvement in education provision.
>
> Through the use of evidence, research and inspector training, we ensure that our judgments are as valid and reliable as they can be. These judgments focus on key strengths, from which other providers can learn intelligently, and areas of weakness, from which the provider should seek to improve. Our inspections act as a trigger to others to take action."

The SIH

83. Ofsted also publishes a handbook, for inspectors, the SIH. As with the EIF, the SIH has been updated since the inspection to which this claim relates, but it is the version of the SIH, dated 11 July 2022, and which was in force at the relevant time, that is applicable to this claim. References in this judgment to the SIH are references to that version of the SIH (though the current version of the SIH is not significantly different).

84. The SIH is described, at paragraph 6 of the SIH, as "primarily a guide for inspectors on how to carry out school inspections" which Ofsted "makes available to schools and other organisations to ensure that they are informed about the processes and procedures of inspection".

85. The SIH provides what Linden J described as "very detailed and prescriptive guidance" as to what the process of inspection entails.

86. The SIH sets out a three-part methodology for inspection. These are (SIH, paragraph 109):

> "- from their pre-inspection preparation and the educationally focused conversation with the headteacher, the lead inspector will form a top-level view – an initial understanding of the curriculum, the way teaching supports pupils to learn the

> curriculum, the standards pupils achieve, pupils' behaviour and attitudes, and the personal development of pupils
>
> - inspectors will then collect and connect evidence for each of the judgment areas throughout the on-site part of the inspection
>
> - towards the end of each day, inspectors will bring all the evidence together to draw the conclusions that will inform their final judgments."

87. Schools are normally only notified of an inspection the day before the inspection visit begins (paragraph 72).

88. The SIH states that each inspection will involve several stages. There is desktop research, and an on-site inspection. The views of parents, staff and pupils are sought. In advance of the inspection visit, the inspectors are required to review any previous inspection reports and other materials including, any surveys or monitoring letters, Ofsted's Inspection Data Summary Report, any parent survey responses, any complaints against the school, and any other publicly accessible information about the school and its provision (SIH, paragraph 82). During the inspection visit itself, inspectors seek the views of parents, staff and pupils (paragraphs 99 and ff). The views of pupils and staff are obtained from online questionnaires and from meetings in person (paragraphs 104 and ff). Any meetings with pupils or parents should take place without the presence of any leaders or staff, unless there are exceptional circumstances, and meetings with staff members are required to take place without leaders being present. Meetings should also take place with governors, which should be in the absence of the school leadership, unless, in the case of an academy, the leader is also a trustee.

89. The SIH makes provision for engagement with the headteacher and other school leaders. Paragraphs 17-19 stated that there must be engagement with school leaders throughout the inspection, including by encouraging academies to invite as many trustees as possible to meet inspectors during an inspection. The headteacher is to be invited to observe the inspectors' final team meetings at the end of each day of the inspection visit.

90. Paragraphs 83 and ff of the SIH require there to be a preparatory call from the lead inspector to the headteacher and makes provision for the contents of the conversation. This call should last 90 minutes or so and should cover two main areas.

91. The first is an inspection planning conversation. This includes, inter alia, inviting the headteacher and other school leaders to take part in joint visits to lessons and to observe the inspection team meetings at the end of each day; providing an opportunity for the school to provide information about any other factors they consider relevant to their current context, to ask any questions and to raise concerns; requesting any details of off-site alternative provision; and establishing the leadership and governance model for the school and arranging to speak to leaders and governors during the inspection.

92. The second aspect of the inspection planning conversation is a reflective, educationally focused conversation about the school's progress since the last inspection, including how COVID-19 had affected this (paragraph 91). That conversation should include discussion of a number of matters, including: the school's context, and the progress it

has made since the previous inspection; the headteacher's assessment of the school's current strengths and weaknesses, particularly in relation to: the curriculum, the way teaching supports pupils to learn the curriculum, the standards that pupils achieve, pupils' behaviour and attitudes, and the personal development of pupils; and the specific areas or subjects of the school curriculum that should be focused on during the inspection.

93. Paragraph 111 of the SIH requires the inspection team to keep leaders informed regularly throughout the inspection, and to provide updates on emerging issues, including initial general findings about the quality of education, and to enable further evidence to be provided; to allow the headteacher to raise concerns, including those related to the conduct of the inspection or of individual inspectors; and to alert the headteacher to any serious concerns.

94. Paragraphs 111-112 of the SIH state that the inspectors should invite the headteacher (and other staff at the lead inspector's discretion) to observe team meetings at the end of each day of the inspection and should use the first of such meetings to inform the headteacher if there is a possibility of an 'inadequate' or 'requires improvement' judgment on overall effectiveness.

95. The SIH makes provision for providing feedback to the school at the end of the inspection visit. It states:

> **"Providing feedback**
>
> 136. At the end of the final day of the inspection, inspectors will make an overall evaluation of the evidence. They will record the main points for feedback to the school in the evidence base. The on-site inspection ends with a final feedback meeting with the school. Those connected with the school who may attend include:
>
> • the headteacher and other senior leaders, as agreed by the lead inspector and headteacher
>
> …
>
> • for academies, including academies that are part of a MAT, the chair of the board of trustees and as many trustees as possible; the clerk to governors or the board (or equivalent), or their delegate, may also attend to take notes …
>
> 137. During this meeting, the lead inspector will ensure that the headteacher, those responsible for governance and all attendees are clear:
>
> • about the key findings from the inspection. The lead inspector must give sufficient detail to enable all attendees to understand how judgments have been reached and for those responsible for the governance of the school to play a part in beginning to plan how to improve

> • for graded inspections, about the provisional grades awarded for each key judgment and for overall effectiveness. They will also ensure that schools understand that the grades are provisional and so may be subject to change as a result of quality assurance procedures or moderation and must, therefore, be treated as restricted and confidential to the relevant staff (as determined by the school). They may be shared with all those responsible for the governance of the school, irrespective of whether they attended the meeting, so long as they are clearly marked as provisional, confidential and subject to quality assurance
>
> • that the main findings of the inspection and the main points provided orally in the feedback, subject to any change, will be referred to in the text of the report, although the text of the report may differ slightly from the oral feedback
>
> • about what the school needs to improve: this will appear in the inspection report as 'What does the school need to do to improve?'
>
> • that, on receiving the draft report, they must ensure that the report is not shared with anyone other than those stated above, or published under any circumstances until the school receives a copy of the final inspection report
>
> • that the headteacher is invited and encouraged to complete the post-inspection survey
>
> • about the implications of the school being placed in a category of concern if the school is judged to be inadequate, using the wording set out in the 'schools causing concern' section.
>
> …
>
> • about the procedure for making a complaint about the inspection
>
> …"

96. I note in passing that there was, at the time, no absolute entitlement for other senior leaders of the school to attend the final feedback meeting, in addition to the headteacher. This is subject to the agreement of the lead inspector.

97. Once the inspection visit is over, the lead inspector is responsible for writing the report and submitting the evidence for its conclusions to Ofsted (SIH, paragraph 144). Paragraph 158 states that:

> "the text of the report should explain the judgments and reflect the evidence. The findings in the report should be consistent with the feedback given to the school at the end of the inspection."

98. Paragraph 149 of the SIH states that the inspection process should not be treated as complete until all inspection activity has been carried out and the final version of the inspection report has been sent to the school. This is because a quality assurance process is undertaken to ensure, in particular, that the judgments reached by the inspectors are aligned with, and supported by, the evidence base.

99. When the draft report is completed, and has satisfied the quality assurance checks, Ofsted sends the draft report to the school for comment. This is known as the factual accuracy check ("FAC"). The draft report should usually be sent within 18 working days after the end of the inspection. As stated above, regulation 5 of the 2005 Regulations provides that a school has only a short period, five working days, to provide its comments. Any comments made by a school are considered by the inspectors and then the final report is sent to the school.

100. Ofsted publishes a Code of Conduct which provides guidance and expectations about the conduct of its inspectors.

101. The SIH also contains very detailed criteria for the awarding of each grade for each of the areas of assessment. These tell inspectors what they should have found in the evidence if they are to award a particular grade for a particular area of judgment. It is not necessary to summarise these parts of the SIH in this judgment. However, it is worth noting that paragraph 427 of the SIH states that "The judgment on the overall effectiveness will be inadequate when any one of the key judgments is inadequate and/or safeguarding is ineffective."

102. Paragraph 162 of the SIH states that "Schools whose overall effectiveness is judged to be inadequate following a graded inspection will be deemed to be in a formal category of concern." If a school is in a formal category of concern, this means that will be deemed to have serious weaknesses or to require special measures.

103. If the effect of the proposed judgments at the end of an inspection visit will be that a school is deemed to be in a formal category of concern, this triggers a requirement to make this clear at the final feedback meeting:

> "141. If a school is provisionally judged to require special measures or to have serious weaknesses, inspectors must use the following words during the final feedback to the school, indicating that the overall effectiveness judgment is subject to moderation by HMIs, and, in the case of special measures, agreement by HMCI.
>
> - When the school has serious weaknesses
>   In accordance with section 44 of the Education Act 2005, His Majesty's Chief Inspector is likely to be of the opinion that this school has serious weaknesses because it is performing significantly less well than it might in all the circumstances be reasonably expected to perform.
>
> - Where the school requires special measures
>   In accordance with section 44 of the Education Act 2005, His Majesty's Chief Inspector is likely to be of the

> opinion that this school requires special measures because it is failing to give its pupils an acceptable standard of education and the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school."

104. The SIH, and the other relevant documents, are made available to schools and other organisations so that they are informed about the processes and procedures of inspection.

The GAE

105. In the vast majority of school inspections, there is only one inspection visit. However, if, as a result of the quality assurance process, there are concerns that elements of the evidence base are not secure, i.e. there may be insufficient evidence for a judgment, or a judgment is potentially inconsistent with the evidence base, that an additional inspection visit may take place. This is dealt with by the GAE protocol, which states:

> Very rarely, and usually after considering concerns raised by a provider or following our own internal pre-publication quality assurance processes, we may identify elements in the evidence base that are not sufficiently secure. This may mean that we decide that the inspection is incomplete.
>
> In these cases, we will need to take further action to complete the inspection. This may include a further visit to the provider to gather more evidence, or the receipt of further evidence, to secure the evidence base. We will not publish the inspection report until we are satisfied that the inspection judgments are secure and/or the inspection report's narrative text is appropriately supported by evidence.
>
> After we have completed any necessary further inspection activity, we will send an amended draft inspection report to the provider for comments. We will then finalise and publish the amended inspection report in line with our normal processes.
>
> These situations should happen very rarely. However, when they do, it is important that we maintain full and sensitive communication with the provider throughout
>
> ….
>
> **Examples of when an inspection may be incomplete**
>
> Examples of circumstances in which we may decide an inspection is incomplete include when:
>
> - key judgments are not substantiated by the evidence gathered and recorded by the inspection team

- the conduct of the inspection was such that the evidence gathered and recorded cannot be relied on fully to provide a fair and accurate view of the provider, in whole or in part
- the inspector or inspection team has not gathered sufficient evidence or evidence of sufficient quality to get a fair and accurate view of the provider, in whole or in part
- information applicable to the provider at the time of inspection has been received after the inspection and before publication of the inspection report. The relevance of the information received necessitates a review and reapplication of the evidence gathered at the inspection against the inspection outcome
- the inspector or inspection team was not able to complete their on-site evidence-gathering activities due to reasons beyond their or the provider's control

What happens when we decide an inspection is incomplete

If we decide that the inspection is incomplete, we will take steps to secure the evidence base. These may include a further visit to the provider to gather more evidence. We will need to be satisfied that the evidence base is secure and that the inspection process is complete before publication of the inspection report.

Once we have decided that an inspection is incomplete, the decision maker will write to the provider to:

- explain the reasons for deciding that the inspection is incomplete if appropriate, offer an apology
- if appropriate, request further evidence or arrange a follow-up conversation with the inspector
- if appropriate, confirm that an inspector/inspection team will carry out a further visit in order to gather and analyse the necessary evidence to secure the evidence base and complete the inspection, and that this visit will take place as soon as practicable

The decision maker will also inform His Majesty's Chief Inspector and Ofsted's Chief Operating Officer of the decision.

….

If we decide that a further visit is necessary….

At the end of the further visit:

- the lead inspector will provide verbal feedback to the provider in the usual way for the type of inspection being carried out

- the lead inspector will follow the usual steps set out in the relevant handbook
- we will complete the quality assurance process set out in the relevant handbook."

The complaints procedure

106. There is a further and separate complaints process, pursuant to which, the school may raise any complaints it may have about the inspection process or the inspectors' findings. The complaints process takes place prior to publication of the report. The complaints procedure is dealt with at paragraphs 158-163 of the SIH.

107. There are three stages to the complaints procedure. Step 1 is resolving concerns quickly and informally during the inspection or at the FAC stage; Step 2 is making a formal complaint within five days of receipt of the final report, and Step 3 consists of requesting an internal review.

The consequences for an Academy school of an overall grading of "Inadequate"

108. An Ofsted inspection is a major event in the life of a school. There can be no doubt that the consequences for any school of an overall grading of "Inadequate" are serious. Such a negative outcome will inevitably be upsetting for the school's leadership and for its teachers and other staff. It is bound to have an adverse effect on morale. For members of the leadership team, teachers and others who have been working very hard, and who have been doing their best in very challenging circumstances, a negative judgment will come as a serious blow, to say the least. Senior managers at a school may consider, understandably, that a poor Ofsted report will reflect badly on them and might have a damaging effect on their career.

109. A poor grading may also have an impact on the willingness of parents to enrol their child at the school, and may even motivate some parents to withdraw their child from the school. It may well become more difficult for a school to attract and retain teachers. If the view is formed by members of the local community, as a result of an inspection report, that a school is "failing", then the reputation of the school will be damaged.

110. There are also potentially graver consequences. Adverse judgments by Ofsted inspectors trigger various statutory powers, authorising local authorities (where applicable) and the Secretary of State to intervene and take remedial action against schools. This could extend to removing the headteacher and/or governors and even the closure of the school. Where academy schools are concerned, section 2A of the Academies Act 2010 requires that an Academy agreement in relation to an academy school must contain provision allowing the Secretary of State to terminate the agreement if the academy is in special measures or requires significant improvement. The Secretary of State is not automatically required to terminate the academy agreement in such circumstances, however. Section 2B contains a similar requirement that there be provision for termination of an academy agreement if a school is "coasting" as defined in the Coasting Schools (England) Regulations (2022/720), regulation 4. This definition is met if a school receives one or more of various types of negative Ofsted inspection reports as set out in the Regulations. Before an agreement is terminated, the academy has the right to make representations.

111. The inevitable upset that will be caused by an adverse Ofsted report was inevitably exacerbated in the present case because the feedback at the end of the first inspection was significantly more positive than the feedback at the end of the second inspection and the Final Report. Though the feedback given at the first inspection was that the School would be given a "Requires Improvement" overall grading, rather than one of the more positive gradings, nonetheless the disappointment when the overall grading was reduced to "Inadequate" in the Final Report was acute.

Who are inspection reports provided for?

112. At the hearing before me, and at the permission hearing before Linden J, there was some discussion about how far, if at all, inspection reports are provided for the benefit of the schools themselves.

113. During the hearing on 22 June 2023, Mr Fisher, Counsel for the Defendants, said, in response to a question from Linden J and on direct instructions from officers of the Defendants who were present in court:

> "My Lord, Ofsted's primary responsibility is not to assist the schools at all. Its responsibility is to inspect schools and report on schools. By inspecting and reporting on schools it should have the effect of improving schools generally, and improving schools specifically, but that is not its statutory duty. It is the Department for Education who have the responsibility on the back of Ofsted reports for assisting schools to improve, and that falls under a different statutory framework."

114. In their ASFG, the School said that this was a misconception on the part of the Defendants, and, indeed, was irrational, given that inspectors are well placed to make clear to the school they have just inspected exactly what its shortcomings are and to help it improve, and it also wrongly implies that parents have completely separate interests from schools and that reports cannot be written in a way that is helpful and informative for both.

115. At the hearing before me, and again on instructions, Mr Fisher took a somewhat different line from that taken at the hearing before Linden J. He said that, while Ofsted is not an "improvement agency" (it leaves to others the task of implementing, directing or overseeing improvements in education provision), its inspections are a force for improvement, identifying and publicly reporting on what schools do well and what they need to improve. He said that the purpose of inspection reports is primarily to inform parents and potential parents. This is consistent with the Defendants' statutory duty to carry out user-focused activities. Inspection reports are meant to show prospective parents what it would be like for a child to attend the school, what the school does well and what needs improvement.

116. Clarification was also provided in the Witness Statement of Mr Lee Owston, who said:

> "Ofsted's inspection reports are designed primarily to inform parents about their children's school and potential parents making a choice about which school to apply for their child. They are meant as a simple and easy-to-access summary of what

> it is like for a child to attend that school, what the school does well, and what needs improvement. We provide a writing template for our inspectors, which includes guidance of the level of detail to include on various matters. This document is called "Graded (section 5) report template guidance".
>
> Our reports have been this way since the EIF was launched in September 2019, following testing those reports with different groups of parents (using focus groups) and taking on board what they prefer, as longer reports were also more difficult for parents to digest. The approach and report format was also discussed with unions and the Department for Education as part of the consultation work which preceded the September 2019 launch.
>
> Schools can and should use our reports to understand our inspection findings. Indeed, the information provided under the heading "What does the school need to do to improve?" is explicitly directed at the school and the appropriate authority. However, the report does not convey the total, or even the majority, of the information conveyed from Ofsted to a school. As set out above, schools benefit from regular communications with inspectors during the inspection and detailed feedback at the end of the inspection report that supplements the simple and easy-to-access summary contained in an inspection report."

117. Mr Fisher said, before me, that of course Ofsted is part of a system which is designed to help improvements in schools and Ofsted has, as part of its remit, the general purpose of encouraging improvements, but that does not mean that the primary purpose of an inspection is to assist a school to improve. The primary purpose of a school inspection is to inspect and to report. A consequence, however, should be to support an improvement in educational provision. He noted that the introduction to the EIF states that "Ofsted exists to be a force for improvement through intelligent, responsible and focused inspection and regulation. That is our guiding principle." However, he stressed that Ofsted is not a regulator and does not have the power to impose consequences upon a school following an inspection. That is for others.

118. In my judgment, the Defendants were right to resile from the position that was adopted during the course of argument before Linden J. Ofsted reports are there to help schools, even if that is not their only purpose. It is clear, as the EIF states explicitly, that Ofsted is a force for improvement, and one major way in which this is done is by giving information to schools in inspection reports which enables schools to learn from the experience and to help them improve. A report helps a school to understand what it needs to do to improve. This is not to detract from the other purposes, and in particular, the objective of providing information to parents, prospective parents, and others about how a school is doing, but it is an integral part of the function of a school inspection.

119. That part of the function of inspection reports conducted by or on behalf of the Chief Inspector is to help schools to improve is made clear from the statutory provision which deals with the performance of the Chief Inspector's functions, s119 of the EIA 2006. Section 119(1) provides that the Chief Inspector is to perform his functions, which include the function of inspecting schools, for the general purpose of encouraging (a)

the improvement of activities within the Chief Inspector's remit, (b) the carrying on of such activities as user-focused activities, and (c) the efficient and effective use of resources in the carrying on of such activities. This must mean that his purpose is to encourage better performance by schools. I have already said that this is reflected in the language of the EIF. It is also made clear in the SIH. Paragraph 137 requires the lead inspector to provide feedback at the final feedback meeting in a way which enables those responsible for the governance of the school to play a part in beginning to plan how to improve, and which explains to the leadership team what the school needs to do to improve. Still further, it is made clear by the fact that the standard inspection report has a section entitled, "What does the school need to do to improve?".

120. It follows that the inspection reports are directed in part at schools. This serves to emphasise, if emphasis were required, that schools have a direct interest in the inspection reports that are made about them. They really matter to schools. Ofsted reports can be upsetting, can affect morale and even the career prospects of school leaders and other teachers, and can in extreme cases even lead to the termination of the academy agreement and/or the closure of the school. In every case, inspection reports will provide the school with the views of external experts about the areas, if any, in which the school can improve, about where the main problems lie, and about what can be done to improve. It is true that Ofsted and the inspectors are not then responsible for assisting the school to deliver improvements, but the role of the Ofsted inspection is, nevertheless, key to driving improvements in schools.

121. This is relevant for present purposes because it is relevant to the nature and extent of the obligation for Ofsted and the inspectors to give reasons and explanations at various stages of the inspection process. The obligation is necessarily greater than it would be if the inspection outcome was of no real significance to the School.

<u>What should be taken into account when deciding whether the Defendants have acted fairly and give sufficient reasons?</u>

122. On behalf of the School, Mr Greatorex submitted that the adequacy of the reasons and the fairness of the procedure can only be answered by reference to the contents of the inspection report (draft or final) itself. This applies both for the purposes of Ground 1 and for Ground 2. In particular, Mr Greatorex submitted, the Defendants cannot rely upon the feedback that was given to the Principal at the final feedback meeting after the second inspection visit, or any other feedback given during that inspection.

123. So far as the responses to the FAC and in the complaints procedure are concerned, the School accepts that in principle these can be taken into account, but the School says that on the facts of this case they cannot assist the Defendants because no significant further information was provided. I will address this submission when I come on to deal with the Grounds themselves.

124. So far as the feedback that was given at the inspection visits is concerned, Mr Greatorex submitted that this cannot be relied upon by the Defendants in support of their arguments on Grounds 1 and 2, for the following reasons:

(1) In this case, there were two inspections over 3 days in which a great deal was said by numerous inspectors to numerous members of staff. The suggestion that any one of

those things can be relied upon later to show that sufficient reasons were given or enable a reader to understand a particular finding in the report is simply not credible;

(2) It is very surprising, given that the Defendants themselves have acknowledged that inspections "can be both stressful and high stakes" and "schools can feel pressured and under intense scrutiny", that they are seriously suggesting that what is said in such a situation can fairly and properly be relied upon.

(3) The Defendants' evidence and arguments do not distinguish clearly between points it says were made at the time and points which have only been revealed for the first time in the Defendants' DGD and accompanying evidence. Caution must be exercised about permitting reliance on subsequent evidence of reasons;

(4) The Claimant's evidence shows that there are numerous significant disputes about what was said during the inspections;

(5) A number of things said, particularly during the first inspection, were either positive or did not prevent the first inspection team from reaching the far more positive judgments that it did; and

(6) Even in the formal feedback session at the end of the second, GAE, inspection, the head teacher was told to attend this on her own and expected to sit at a chair where it would not have been possible to make any notes. Further, the Defendants have admitted that "the headteacher and the Chair of Governors were understandably distressed at that meeting" which again makes it very surprising that they are suggesting that what was said in that meeting can properly and fairly be relied upon.

125. I am unable to accept Mr Greatorex's submissions in this regard.

126. The starting point, is that, as a matter of legal principle, there is no reason why the court should not take account of all the information that was available to the School at the relevant time, that is at the time when it was in a position to make representations that might affect the drafting of the Final Report, both for the purposes of Ground 1 and Ground 2. The essence of these Grounds is that the Defendants failed to give the School an adequate explanation to enable it to respond to the draft report and then to enable it to understand the Final Report. In order to address the School's arguments, the court must take account of all of the information and explanation provided to, and available to, the School, not just that which was provided in the reports themselves. This includes the information and explanations provided to the School orally at the feedback meetings.

127. Taking the submissions made by Mr Greatorex in turn:

(1) I agree that things said to teachers in passing, such as in lesson observations, or to junior or middle ranking members of staff, cannot count as part of the body of information made available to the School to explain the judgments of the inspectors in the draft report. The Defendants do not suggest that they can. The Defendants seek to rely only upon things said during the inspection process, to the Principal and to other members of the senior management team;

(2) The feedback sessions are an integral part of the inspection process. This is made clear by the SIH. Paragraphs 17-19 of the SIH makes clear that inspectors should engage with the headteacher and senior management throughout the inspection process. Paragraph 83 provides that the lead inspector must have a lengthy preparatory call with the headteacher to discuss the school's progress since the last inspection. Paragraphs 111 and 112 require the inspectors to provide updates to the headteacher throughout the inspection, including a warning if the inspectors are contemplating an overall grade of "Requires Improvement" or "Inadequate." The headteacher is invited to observe the inspection team meetings. Most significantly of all, paragraph 137 of the SIH requires the lead inspector to inform the headteacher, the chair of governors, and other senior leaders if present, of the key findings from the inspection. The lead inspector must give sufficient detail to enable all attendees to understand how judgments have been reached and for those responsible for the governance of the school to play a part in beginning to plan how to improve. The school representatives must also be informed of the provisional grades awarded for each key judgment and for overall effectiveness. It would, in my judgment, be wholly artificial to ignore this transmission of information when deciding whether adequate reasons had been provided for the purposes of Grounds 1 and 2. It is true that the meeting would inevitably be stressful, but the Principal and Chair of Governors are professional people. The Principal was able to make notes during the meeting, and was able to provide detailed feedback in the FAC comments;

(3) The School is quite right that after-the-event provision of information or reasons cannot assist the Defendants with their defence to either Ground, but this is not a reason why the information and explanations provided during the inspection visits, which took place before the draft report was provided, should be ignored;

(4) I do not accept that the disputes between the parties about what was said, in particular at the final feedback meeting at the end of the second inspection visit, are such that the court is unable to form a view on the two Grounds; and

(5) The fact that different things were said at the final feedback meeting of the first inspection, as compared with the final feedback meeting of the second inspection, does not mean that the information and explanations provided at the second meeting should be disregarded. The School was well aware, at the time of the second inspection visit, that the inspectors were not going to rely upon the provisional conclusions or gradings of the first inspection team. They knew that the views expressed by the second inspection team were what mattered. There was no room for confusion; and

(6) Point (6) essentially repeats point (2), and I have dealt with it in sub-paragraph (2), above.

128. Furthermore, in my judgment, it is clear that, in addition to taking account of what was said to the School's senior leadership in the course of the inspection visits, and especially in the course of the second inspection visit, the court should take account of the background knowledge about the School, its circumstances, and its history, that the senior management team would have been aware of when they received the draft report and then the Final Report. Again, it would be artificial to do otherwise. This conclusion is supported by an observation of Lord Brown of Eaton-under-Heywood in **South**

Bucks DC v Porter (No 2) [2004] UKHL 33; [2004] 1 WLR 1953, at paragraph 36, "Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced." This was a planning case rather than a schools inspection case, but the point holds good in the present context.

129. For these reasons, when dealing with Grounds 1 and 2, I will take into account the information and explanations provided to the School's Principal, Chair of Governors and other senior management (if and where applicable) at the feedback meetings and, in particular, at the final feedback meeting at the end of the second inspection visit. I will also take into account the background knowledge that was known to the Principal and her senior management team.

Ground 1

130. Ground 1 is that the School was not provided with sufficient reasons, explanation, or evidence to enable it fairly to contest the findings about it which the Defendants proposed to make in the final version of the report.

The nature of the challenge in Ground 1

131. I accept Mr Fisher's submission, not contested by Mr Greatorex, that this is a procedural fairness challenge. It cannot be a pure reasons challenge because there is no general public law duty to give reasons for something that is not yet a decision. The common law obligation to give reasons for a decision, where it applies, applies only to a duty to give reasons for legally effective decisions, not for draft or proposed decisions. There is no express statutory duty to give reasons to a school at the point at which the draft report is sent to it. It follows that there was no statutory duty to give reasons at that stage, and the common law obligations in public law to give reasons for a decision cannot apply, because the report at that stage was only a draft.

132. However, this does not mean that the Defendants did not owe a duty to the School to provide them with reasons for the inspectors' conclusions in the draft report. As the Defendants acknowledge, they were subject to overlapping statutory and common law duties of fairness, and these, and in particular the latter, encompassed an obligation to give sufficient explanation for the conclusions to enable the School to respond.

133. The statutory duty of fairness is derived from section 13 of the EA 2005. If, as was the case here, the Defendants proposed to state in the report that the School required improvement, the Chief Inspector was required by section 13 to share the draft report with the School, and to consider any comments received from the School in response, before finalising the report.

134. There is no dispute that in the present case the School was provided with the report in draft and was given an opportunity to comment upon it. Nor is there any dispute that the inspectors considered the comments received from the School: some changes were made in light of the comments, albeit minor. Therefore, there is no issue as to whether the Defendants were in breach of their statutory duty in relation to Ground 1. They were not.

135. The real issue, in relation to Ground 1, is whether the Defendants were in breach of their common law obligation of procedural fairness by failing to provide the School with sufficient reasons, explanation, and evidence for the contents of the draft report to enable the School to provide a cogent set of comments. It follows that the legal context for Ground 1 is different from Ground 2, which is more of a classic "reasons" challenge.

136. I will first summarise the relevant legal principles as they apply to Ground 1, as set out in case law authority, and I will then apply those principles to the facts of this case.

The legal principles that are relevant to Ground 1

137. There was no dispute between the parties about the applicable legal principles. They were helpfully set out in the ASFG as follows:

(1) the Defendants' statutory powers must be exercised in a way which is fair in all the circumstances;

(2) the standards of fairness are not immutable and may change with the passage of time, both in general and in their application to decisions of a particular type;

(3) what fairness demands is dependent on the context of the decision;

(4) an essential feature of the context is the statute which creates the discretionary power, as regards both its language and the shape of the legal and administrative system within which the decision is taken;

(5) fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result, or after it is taken with a view to procuring its modification, or both;

(6) since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests, fairness will very often require that he is informed of the gist of the case which he has to answer;

(7) fairness does not require that a person to be criticised knows from whom or from what source or why those criticisms have been made but does require that he knows what that criticism is and to be given sufficient information about it to enable him to deal with it and to make the necessary investigations on his own side and to come up with any explanations or to set right any errors of fact which may lie behind it; and

(8) the reasons given for a decision must be intelligible, adequate and proper, they must enable the reader to understand what conclusions were reached on the main issues, and they must not leave room for genuine doubt as to what has been decided and why.

138. The first six propositions are taken from the judgment of Lord Mustill in **R v SSHD ex p Doody** [1994] 1 AC 531 at 560. The eighth proposition is of greater relevance to Ground 2.

139. In **In re Pergamon Press** [1972] Ch 388, Lord Denning held that, where a public body is to make criticism of a person, fairness requires that a person must be given a "fair

opportunity for correcting or contradicting what is said against him" but the inspectors "need not quote chapter and verse."

140. Proposition (4) refers to the importance of the statutory context. In my judgment, there are two matters of relevance to be drawn from the statutory context, though they point in different directions. The first is that an adverse inspection grading, such as an overall grade of "Inadequate", has serious consequences for a school and for those connected with it. The second is that the statutory framework provides for a very short period, a five working-day window, within which the School can make its comments on a draft report. This suggests that Parliament did not intend to afford a school the opportunity to make very substantial and detailed comments. It is also relevant, as I have said, that it is clear from the statutory framework that one of the purposes of Ofsted inspections is to help schools, by indicating to them what they should do to improve. Inspection outcomes are of great importance to schools and this must be taken into account when considering the scope of the obligation both to provide reasons, orally and in writing, in order to enable the school to comment on the report before it is finalised. I have taken each of these considerations into account.

141. Mr Greatorex also submitted that it is relevant, when considering the scope of the obligation to provide information and explanations at the draft report stage, that it is very difficult for a school to obtain an interim injunction restraining publication of an Ofsted report pending a legal challenge: **R (Governing Body of X) v Ofsted** [2020] EWCA Civ 594 at [82]. I do not accept that this is relevant. The nature and scope of the duty to provide information and explanations at the draft report stage must be analysed by reference to the law relating to procedural fairness. The law relating to the grant of quia timet injunctions is a completely different and distinct matter. The scope of a substantive legal obligation cannot by identified by working backwards from the forms of relief that are available.

142. On behalf of the Defendants, Mr Fisher submitted that the closest analogue in the case law to the present case was the case of **R(Hexpress Healthcare Ltd) v The Care Quality Commission** [2023] EWCA Civ 238. Hexpress provided an online medical service, in which a patient would complete an online set of questions which would be reviewed by a medical practitioner. If the practitioner agreed, the patient would be provided with a prescription medicine. Hexpress was subject to regulation by the Care Quality Commission ("The CQC") under the Health and Social Care Act 2008. The CQC operated a grading system which was similar to Ofsted's. After four serious incidents involving patients, the CQC carried out an inspection of Hexpress. The CQC sent a draft report to Hexpress which graded the company "Requires Improvement". The CQC operated a FAC process which was similar to Ofsted's, albeit that Hexpress was given 10 working days to respond, rather than the 5 working days that apply to schools. Hexpress challenged the ultimate decision of the CQC on the basis that the CQC had failed independently to review the FAC response, and had failed to provide the response of the lead inspector to the FAC comments, which was unfair. The Court of Appeal rejected this challenge. In the course of his judgment, Dingemans LJ referred to **Clegg v Secretary of State for Trade and Industry and others** [2001] EWHC Admin 394, in which Stanley Burnton J discussed the practice of "Maxwellisation", that is, the practice of giving those who were going to be criticised in a public inquiry the opportunity to comment before the report was published. Stanley Burnton J said that "if time and resources are devoted to Maxwellisation beyond what is necessary,

company enquiries may become so unwieldy, prolonged and expensive that they lose their utility."

143. I have not found the **Hexpress** case to be of particular assistance in deciding Ground 1 in this case. As all the case-law makes clear, the particular context is crucial, and the context in which the **Hexpress** case arose was different from the present case. Moreover, the alleged procedural failure was different from that addressed in Ground 1. However, the observation made by Stanley Burnton J in **Clegg**, and referred to by the Court of Appeal in **Hexpress**, is germane to the present case. Ofsted inspectors are required to conduct over 40,000 inspections, visits and interviews a year, including nearly 4000 section 5 graded inspections. They are expected to produce draft and then final reports within a few weeks of the inspection taking place. In those circumstances, there is a practical limit to the time and resources that can be allocated to any one inspection. If schools which are the subject of adverse comments are to be permitted to make very detailed and lengthy submissions before the report is finalised, and if the inspectors are required to provide the full evidence base, or a substantial amount of it, before the report can be published, the whole system will grind to a halt. No doubt, almost every school that receives an overall rating lower than "Outstanding" will want to fight its corner as to why its rating should be improved.

Ground 1: Applying the principles to the facts of this case

144. In my judgment, the School was provided with sufficient reasons, explanation or evidence to enable it fairly to contest the findings about it which the Defendants proposed to make in the final version of the report.

145. On 22 March 2023, the School was sent an email informing it that the draft report was available on the Inspection portal. The School was told that it had five working days to submit its comments and they would all be considered.

146. The draft report was in the same format as a final report. It provided gradings under the various headings, and the overall effectiveness grading of Inadequate.

147. In a section under the heading, "**What is it like to attend this school**", the draft report said:

> "Too many pupils do not feel safe at All Saints Academy Dunstable. A significant number do not feel happy and many parents and staff have concerns about provision. A large proportion of vulnerable and disadvantaged pupils have low attendance. Those pupils who receive education at alternative provision are not closely checked to ensure they attend and are achieving well. The small number of sixth form students have a better experience than pupils throughout the rest of the school.
>
> Behaviour is variable. Pupils experience frequent disruption to learning. There is not a culture of respect. Aggressive and abusive language towards peers and staff is common. Bullying happens. While pupils say that leaders deal with it if they know, it is often not reported. Pupils do not feel there is an adult in

> school they can talk to about concerns. They comment that some of this is down to the constant changes in staff.
>
> Pupils have the opportunity to access a range of activities beyond the classroom. However, the curriculum for personal development is not effective at ensuring and developing positive attitudes in pupils towards others.
>
> Pupils are mostly taught a well-planned curriculum. While this is the case, their experience of its delivery is inconsistent."

148. The next section was under the heading, "**What does the school do well and what does it need to do better?**" This contained the following:

> "Leaders do not have a clear and accurate understanding of the strengths and weaknesses of provision. Leaders' self-evaluation has been over-generous. As a result, leaders' actions for improvement have had limited impact. For instance, leaders have done a lot of work on the curriculum, but this has not been as effective as it should have been.
>
> Since the previous monitoring visit, leaders have reviewed and revised the curriculum again. They identify what pupils should learn and when across the full range of subjects. Leaders outline how pupils should build their knowledge over time in each year group. Teachers use this information to plan what to teach. They help most pupils with special educational needs and/or disabilities (SEND) to access the curriculum. However, some teachers do not adapt what they teach in response to what pupils already know. They do not check pupils' understanding effectively. This means that sometimes pupils do not build on secure prior learning, and do not develop the detailed knowledge they need to achieve well.
>
> Pupils who are in the early stages of learning to read are supported well. Leaders identify their needs accurately. Staff provide regular help so that pupils improve their confidence and fluency as readers.
>
> Leaders have not created a culture that leads to positive behaviour. They react to incidents rather than developing effective processes that will improve pupils' behaviour over time. They do not deal successfully with the underlying reasons for misconduct. The numbers of suspensions and exclusions have increased. Pupils who are removed from lessons do not learn the curriculum they would access in class. This does not support them to achieve well. Staff do not apply the sanctions and rewards detailed in the behaviour policy consistently. This creates confusion for pupils.

> Processes to address poor attendance are weak. Leaders do not have a clear understanding of the causes of pupils' poor attendance. As a result, attendance is low. Leaders have not successfully improved the attendance of pupils with SEND and those who are disadvantaged. As a consequence, pupils miss significant parts of their education.
>
> Leaders do not check effectively on the safety and curriculum provision for pupils who attend alternative provision. They record the attendance of these pupils incorrectly. Leaders do not ensure that pupils with education, health and care plans receive the support they require.
>
> The personal, social and health education curriculum supports some aspects of pupils' personal development. Pupils, including students in the sixth form, benefit from careers guidance that prepares them well to make decisions for their future steps. They learn about healthy relationships and online safety. However, some pupils do not demonstrate an understanding of respectful attitudes and behaviour.
>
> The provision in the sixth form is better than the rest of the school. The curriculum for the sixth form is well-considered. Students are motivated to learn and achieve well. They appreciate opportunities for leadership and are positive role models for younger pupils.
>
> Leaders have not built a clear and shared understanding with staff of their priorities. Too many staff are not confident in leaders' plans and actions to improve the school. Some staff feel supported by leaders. However, others say leaders' approach causes high levels of workload.
>
> Governors do not rigorously hold leaders to account. They accept assurances too easily. Governors do not check closely enough for themselves that leaders' work is improving the provision for all pupils."

149. The next section is headed, "**Safeguarding"**:

> "The arrangements for safeguarding are not effective.
>
> Leaders do not ensure that all safeguarding concerns are recorded. Systems for recording safeguarding concerns and serious incidents of behaviour are muddled. This means the right actions are not always put in place to ensure pupils are safe.
>
> There are gaps in safeguarding records. Staff who are responsible for making decisions that relate to the safeguarding of pupils are insufficiently trained.

> Leaders ensure appropriate checks are made when recruiting new staff.
>
> A significant proportion of pupils do not feel safe when they are in school."

150. The final section of the draft report is headed, "**What does the school need to do to improve (information for the school and the appropriate authority)**". This states:

> "■ Leaders have not developed robust systems and procedures for recording and triangulating safeguarding concerns. Some staff do not have the training they need to manage safeguarding concerns correctly. This means that leaders do not know if staff follow through potential issues of safeguarding as they should. Leaders must ensure thorough oversight of safeguarding processes and urgently provide relevant training so that staff record and follow up all safeguarding concerns promptly and appropriately.
>
> ■ Teachers do not consistently check pupils' understanding, and so do not adapt what they teach to meet the needs of pupils. This means that some teaching does not build on what pupils know and understand. Leaders should ensure that all staff are confident in checking learning so that teaching enables pupils to secure the detailed knowledge they need to achieve well across the full range of subjects that they study.
>
> ■ Leaders have not created a culture of respect and positive behaviour across the school. Pupils regularly experience disruption to their learning. Pupils, parents and staff report many incidents of disrespectful behaviour, including abusive language. Leaders must ensure that staff receive the support and guidance they need to maintain consistently high expectations of pupils' behaviour and urgently establish a culture of mutual respect.
>
> ■ Leaders do not have a clear understanding of the causes of pupils' poor attendance. Leaders' actions to address poor or declining attendance are ineffective. Persistent absenteeism is high, including for pupils with SEND and disadvantaged pupils. Leaders must ensure that they gather the information they need to develop effective strategies to support pupils to attend school regularly.
>
> ■ Leaders' oversight of pupils attending alternative provision is weak. Leaders do not check on the safety and well-being of pupils or whether they are in receipt of an appropriate curriculum. They do not accurately record the attendance of pupils who attend alternative provision. Leaders must put in place robust systems to ensure the safeguarding of pupils who attend alternative provision and assure themselves that the curriculum and provision are well matched to pupils' needs.

> ■ Too many staff do not have a shared understanding of leaders' priorities. This means that leaders' initiatives do not get effectively implemented. Leaders need to ensure they work collaboratively with and motivate staff so that staff are confident in implementing leaders' plans to improve the school."

151. In accordance with its normal practice, Ofsted did not provide the School with written materials containing the evidence base that the inspectors relied upon to produce the draft report. Nor did Ofsted provide the School with an explanation as to why the contents and conclusions of the draft report dated 22 March 2023 differed from the views expressed to the School at the final feedback meeting at the end of the first inspection visit in November 2022.

152. Nevertheless, in my judgment, the School was provided with sufficient information to enable it fairly to contest the findings in the draft report.

153. For the reasons I have already given, when considering this question, the court should not look at the draft report in isolation, but should also take into account the information and explanations that were given to the Principal during the second inspection visit and, in particular, at the final feedback meeting. The court should also take into account the knowledge that the School leaders have about the School and its circumstances.

154. Mr Greatorex criticises the draft report (and the Final Report) on the basis that it is too brief, and the assessments and explanations contained within in it are too vague and generalised to enable the School properly to prepare a response. It is necessary to unpick this submission in order to identify the strands of argument which make it up and to deal with them separately.

155. The first strand is that the report template used by Ofsted is unlawful because it means that insufficient reasons are given for the grades that are awarded. This is not a submission that is specific to the School and I do not consider it to be within the scope of the Grounds of challenge which the School has been permitted to advance at the full hearing. It is a root-and-branch challenge to Ofsted's practices, rather than a challenge to the reasons given in this particular inspection. In any event, however, I do not accept the submission. There is nothing in the statutory framework which requires a more detailed report format. As Mr Owston's evidence made clear, the style and content of Ofsted section 5 reports did not come about by accident, but was the result of careful consideration and consultation. Whilst it is true, as I have found, that one of the purposes of an Ofsted report is to assist a school to improve, it is also the case that the purpose of a report is provide information, in a readily digestible form, for parents, prospective parents, and the local community. It was open to Ofsted to conclude that this purpose would be undermined if the Ofsted reports were very detailed and dense.

156. The second strand is that the draft report was insufficiently informative because it did not provide the School with the evidence base that underpinned the conclusions that were expressed in the draft report. Again, I cannot accept this submission. There is nothing in the statutory framework which, expressly or by necessary implication, requires the inspectors to provide Schools, or other readers of the reports, with the evidence base that led to the conclusions. If Parliament had intended that to be done, it would have said so in the legislation. All that is required, as Lord Mustill said in **Doody**, is that the School knows what that criticism is and has been given sufficient information

about it to enable it to deal with it and to make the necessary investigations on its own side and to come up with any explanations or to set right any errors of fact which may lie behind it. The School must be given the gist, not the entirety of the evidence base. In my judgment, the draft report, even looked at in isolation, satisfies this requirement. The draft report goes into considerable detail in pin-pointing the criticisms that are made of the School. It is true that it does not provide the evidence base to back it up, but that is not required There is no obligation to provide Schools with the source of comments or criticisms, and, indeed, if the inspectors were to do so they would have to breach the confidences of the teachers, parents, pupils and others who spoke to them.

157. The third strand to the School's criticism of the draft report is that the draft report does not quantify statements that were made within it. For example, it states that "Too many pupils do not feel safe at All Saints Academy Dunstable." It is true that the draft report does not put a figure on it, or say how many are too many. But that did not prevent the School from putting in a proper response to this contention.

158. A fourth, related, criticism is that the draft report contains subjective expressions of view which are incapable of objective verification. However, in my judgment that is an inevitable consequence of the inspection process, and does not invalidate it. School inspections are conducted by experienced and knowledgeable members of the teaching profession who are able, as a result of their background and experience, to make judgments about schools and their provision. There is an unavoidable degree of subjectivity involved. The conclusions cannot be reduced to independently verifiable and objective criteria. They are subjected to the safeguard of quality assurance by other inspectors who were not involved in the inspection visits. The fact that the conclusions are, to some extent, subjective, does not prevent a school from challenging them, or from putting their side of the story.

159. As the School was given a detailed explanation of what the criticisms were, it was in a position to respond to them. In fact, the explanation given was not limited to the text of the draft report itself. The School also had the benefit of the feedback meetings, and, in particular, of the final feedback meeting at the end of the second inspection visit. I have seen the notes made by Ms Furber and also those made by the inspectors, which show that detailed feedback was given. More than that, the School's senior leadership were aware of the situation at the School and so were able, just to take two examples effectively at random, to respond to the criticisms that "Leaders do not ensure that all safeguarding concerns are recorded." and "Leaders have not developed robust systems and procedures for recording and triangulating safeguarding concerns".

160. Perhaps the clearest indication that the draft report, backed up by the feedback sessions and the knowledge of the senior leadership of the School and its circumstances, was sufficient to comply with Ofsted's procedural fairness obligations is that the School did provide detailed responses to the criticisms made in the draft. The School provided a FAC, running to 21 pages of detailed information. Three examples of the level of detail that the School was able to provide will suffice.

161. In response to the contention in the draft report that "Too many pupils do not feel safe at All Saints Academy Dunstable", the School's FAC response said:

> "First team judged that students did feel safe by triangulating student and parent surveys against student and staff interviews

> on site. First team ensured any issues raised in student survey were investigated thoroughly on second day during student interviews to see if there were any endemic issues. This is an over zealous judgment by GAE, which during current Ofsted news on 'seeing the bigger picture' which is unreliable as it has not been triangulated against student and staff interviews. The purpose of the GAE was to undertake further triangulation of safeguarding which does not mean simply look at the student survey again. This evaluation has not been based on robust evidence so questions the reliability of the statement.
>
> First inspection student survey 74% of students feel safe at school. ParentView survey 70% parents say child feels safe.
>
> First inspection Student Interviews :Do you feel safe?- Y7 all yes, Y8 all yes, Y9 all yes, Y10 all yes not really any danger, Y11 all yes.
>
> GAE Student Interviews :Y7 all yes except around some students with older siblings, Y8 all yes but one added not at top of field, Y8 and Y9 girls all yes nowhere not safe.
>
> GAE letter states that for Safeguarding there needs to be further scrutiny against the handbook to determine the accuracy of the provisional findings. HB353 Safeguarding will be deemed ineffective if children, pupils and students or particular groups of children, pupils and students do not feel safe in school or the setting. This is not true of older students, younger students, boys or girls."
>
> [I should add that the Defendants take issue with the observation that 74% of students said in the first inspection survey that they felt safe, because this included those who said that they sometimes feel safe at the School.]

162. In relation to the assertion in the draft report that "many parents and staff have concerns about provision", the School said in the FAC:

> "This statement has not been evaluated objectively. There may be some negative comments from a few parent and some staff but the parent surveys and staff interviews cannot be ignored as this was the purpose of the GAE Inspection being on site and not simply requesting more documentary evidence.
>
> 75% of parents on parent survey say a good range of subjects is offered and 73% that information is shared about provision, showing most agree good provision. 79% agreed with
>
> 'My child can take part in clubs and activities in this school.'

> If referring to alternative provision CJ (GAE) spoke to one parent whose testimony shows she is very happy with provision, though this was erroneously shared in feedback meeting.
>
> This statement about staff having concerns is written by the GAE LI but no staff groups reported any concerns about provision. Only one individual who met with inspector may have mentioned concerns but the reliability of this MoS was not verified with the Principal who would have informed inspectors that he was disgruntled because [information redacted in this judgment to avoid potential identification of the person referred to].
>
> Feedback from first inspection on parent survey positives, 'Improvements over last two years. Homework is now set, issues handled quickly. Communication improved and teachers go the extra mile. Quality of teaching improved, really amazing support for SEND students.'

163. Again, in relation to the assertion that, "A large proportion of vulnerable and disadvantaged pupils have low attendance.", the School's FAC response said:

> "We disagree with this statement because the evaluation has not been undertaken in line with national standards of attendance in the post pandemic world. First team stated, 'Attendance 90% same as last year -given the context there is nothing to worry about. Robust systems in place. EHCP behind others but not significantly. 90% whole school.
>
> 87% SEND, 85.5% Disadvantaged. EHCP 91%. Groups not significantly behind in terms of attendance - high attendance in context of pandemic.'
>
> The National Persistent absence rate is 27.4%. ASAD 34% (31% if we did not continue to register students who had left roll) . The Latest national statistics showed 34% of pupils who were eligible for free school meals were persistently absent in Autumn 2021 and the figure for Autumn 2022 has not been released yet. A new inquiry by the Education Committee will investigate causes and possible solutions to the growing issue of children's absence from school. Deadline for evidence was 9.2.23 so up to date inspection teams would have known this is not an issue that should be used to judge schools in the context of the pandemic."

164. These responses show that the School was well able to respond to the points made in the draft report.

165. The same applies to the School's Complaint submission. This document is 20 pages long, single-spaced. It dealt, section by section, with the contentions made in the draft report and explains why the School says that the conclusions are unfair and

misconceived. So, for example, in relation to section E, "Failure to triangulate students and staff voice against surveys and observations", the School's complaint response said:

> "The GAE letter states that,' …we believe that the evidence for the inspection has not been triangulated sufficiently with the views of parents, staff and pupils.' From this it is understood that parent and student surveys were not supportive enough of the improvements across the school to warrant a good judgment, so further student and staff interviews, and observations were required to secure the evidence base.
>
> It is therefore illogical that the GAE team has largely rested all of its decisions on the same surveys, ignoring wider (and arguably much more reliable) student and staff voice yet undertaking no further observations. In fact this makes the GAE team's triangulation process markedly worse than the alleged failings of the original team.
>
> Specifically:
>
> - The students and staff feel on the whole behaviour is consistently good across all years. There is evidence of some Year 7 pupils stating behaviour is an issue in most lessons but then can only list two teachers (5% of teaching staff) not having the same expectations as other teachers. [The complaint response went on to make observations about the teachers concerned which have been redacted in this judgment, at the School's request, to avoid the identification of individual].
>
> - In total, 74% (32/43) students who were spoken to over both inspections said teachers were consistent and behaviour was good in most of their lessons.
>
> - During the original team's lesson observations some LLD was seen in 2 out of 40 lessons. CF agreed that he did not expect the Principal to eliminate LLD, inferring he accepted 2 episodes of LLD in 40 lessons was a reasonable expectation for good behaviour.
>
> - A behaviour record was shared with the GAE team who then chose to highlight 6 students with multiple (3 or 4) high level incidents of abusive language or rudeness during the whole of the autumn term (15 weeks). 3 were SEND students, 1 was EHA and 2 suffer with mental health issues.
>
> - A further 10 students were highlighted for one-off incidents of verbal abuse and 2 students for physical abuse. Only 7 of these students still attend ASAD so have live records. Of these 7, there are 5 students who are extremely vulnerable and have EHA/CIN/CP/Mental Health and SEND needs.

> - This contextualises the behaviours recorded and the GAE team were remiss in not asking for further details about these students, and why behaviours had been classified in the way they had been.
>
> - Staff members have provided testimonies regarding their conversations over behaviour with the GAE inspection team. For example: ….;' I was really impressed with the behaviour system at ASAD as it is absolutely clear, the students completely understood it.' ….; "We said that the students behave generally well and that the behaviour systems work well, as the students are obviously aware of it and sort their behaviour out when they get warnings or behaviour points. We were asked whether we think behaviour is improving and we said yes.'
>
> - It is then of concern that the feedback from all of the staff spoken with by the GAE team (22 in total) did not seem to align with the agenda coming from the LI (CF).
>
> For example:
>
> - '…his response was that, "there are others who don't agree with you." I felt that he was dismissing my genuinely held views.'
>
> - And another, 'The HMI said this is not a view shared by other staff and asked me why do you think that may be? To which I replied because they haven't been at other schools. The HMI closed his laptop and seemed keen to wrap up the meeting.'

166. It is no part of the function of this judgment to decide whether the evaluations in the draft, or Final, reports are justified, or whether the criticisms made by the School had force to them. The fact that the inspectors made only minor amendments to the report in light of the School's responses does not mean that the School did not have enough information to make proper responses.

167. Mr Greatorex also challenges the fairness of the procedure because the Defendants did not explain to the School, in detail, why it was that the conclusions in the draft report differed from the provisional opinions that were expressed to the School at the end of the first inspection visit in November 2022. I do not accept this criticism. It was made clear to the School that the view had been taken that the provisional conclusions of the first inspection team at the end of the first inspection visit were not secure, and that this had triggered the GAE protocol. It was not necessary for the Defendants to go any further than that. The School was not being asked to comment up any provisional judgments that had been reached by the first inspection team, and the Defendants were not intending to rely upon those provisional judgments. What mattered were the provisional judgments that had been reached by the second inspection team after the second inspection visit. These were the draft judgments that the Defendants were proposing to put into effect in the Final Report, and so these were the draft judgments that the School needed to be given an opportunity to address. Put another way, any provisional conclusions or judgments that had been reached by the first inspection team at the end of the first inspection had fallen away and ceased to have any relevance.

They did not inform the draft report. As for the evidence that had been collected in the first inspection visit, and by the first inspection team, this was part of the evidence base that was being relied upon by the Defendants at the stage when the draft report was sent to the School. It follows that this was not a case in which the Defendants were disregarding or contradicting the evidence that had been collected on the first occasion. As was clear to the School, the point was that this evidence was supplemented by the further evidence collected at the second visit.

168. As I have said, it is entirely understandable that the School should be disappointed and upset that the second inspection team reached different and somewhat more unfavourable judgments as compared to the provisional views expressed by the first inspection team at the end of the first inspective visit. This made the draft conclusions all the more painful to read. However, this does not mean that the Defendants were under any obligation, as a matter of procedural fairness, to provide the School with a detailed comparison between the provisional judgments of the first inspection team and the draft conclusions of the second team.

169. For these reasons, the challenge in Ground 1 fails.

Ground 2

170. To repeat, Ground 2 is that the Final Report does not give sufficient reasons, explanation or evidence to enable the School or any other reader to understand the adverse findings, what they are based upon, what the school has to do to correct them, or the change in judgment between the original inspection and the GAE inspection.

171. The relevant parts of the Final Report, set out above, were, with one exception, in the same terms as the draft report. The difference was in the "Safeguarding" section. The paragraph,

> "There are gaps in safeguarding records. Staff who are responsible for making decisions that relate to the safeguarding of pupils are insufficiently trained."

was replaced with

> "There are gaps in safeguarding records. This means that leaders cannot be confident that they have all the information they need to keep pupils safe."

A minor alteration was also made to the section of the report entitled, "Information about the school."

The nature of the challenge in Ground 2

172. This is a "reasons" challenge, that is, it is a challenge on the basis that the Defendants gave insufficient reasons for the judgments and conclusions set out in the Final Report. Although the legal question in Ground 2 is distinct from the legal question in Ground 1, many of the relevant considerations and arguments overlap.

173. It was common ground between the parties that Ground 2 is not a pure common law "reasons" challenge. The question for Ground 2 is whether the Final Report complied

with the statutory duties impose on the Defendants in relation to a final report, taken together with the overarching public law obligations to provide adequate reasons for decisions.

174. In this case, there is a statutory duty to include certain matters in a Final Report, set out in subsections 5(5A) and (5B) of the 2005 Act. There is a statutory obligation for the Final Report to cover the achievement of pupils at the school; the quality of teaching in the school; the quality of the leadership in and management of the school; and the behaviour and safety of pupils at the School (section 5(5A). By necessary implication, section 5(5B) requires that the Final Report deals with the spiritual, moral, social and cultural development of pupils at the school; the extent to which the education provided at the school meets the needs of the range of pupils at the school, and in particular the needs of pupils who have a disability for the purposes of the Equality Act 2010, and pupils who have special educational needs."

175. The Final Report dealt with all of these matters, and so there is no basis for contending that the Final Report failed to contain all the matters that it was expressly required by statute to contain.

176. In addition to the express statutory obligation to give reasons, however, the Defendants were under a common law/public law duty to provide reasons. This must be considered against the background of the statutory framework and the nature of the decision in question. The scope of that common law duty is summarised in point (8) set out at paragraph 135, above: the reasons given for a decision must be intelligible, adequate and proper, they must enable the reader to understand what conclusions were reached on the main issues, and they must not leave room for genuine doubt as to what has been decided and why. As Mr Greatorex submitted, referring to **Judicial Review**, Auburn, Moffett and Sharland (OUP, 2013) at paragraph 10.34 and the cases cited therein, the level of detail that must be provided by way of reasons in a particular case will depend upon the circumstances of the particular case and caution must be exercised before attempting to apply the standard of reasons required in one context to another context.

177. Accordingly, the question whether the duty to give adequate reasons has been complied with in a particular case is necessarily context-specific and fact-specific. Having said that, the guidance given in the planning context by Lord Brown (with whom the other Lords agreed) at paragraph 36 of **South Bucks DC v Porter** is helpful and apposite:

> "36. The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable

> disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

178. In the present case, as with the scope of the duty to give reasons for the proposed judgments that is dealt with in Ground 1, it is relevant that an adverse inspection grading has serious consequences for a school and for those connected with it, and that it is clear from the statutory framework that one of the purposes of Ofsted inspections is to help schools, by indicating to them what they should do to improve.

179. There are three other major considerations.

180. The first is that the target audience for a section 5 graded inspection report is not solely, or even primarily, the school itself. As explained above, it is clear from the statutory framework that reports are intended to be read and used by parents, prospective parents and members of the local community. This means that the amount of information and explanation in the Final Report must be kept within reasonable limits, so that it is accessible to, and understandable by, parents and others who are not education professionals and who are looking for a relatively short summary of the condition of the school and its strengths and weaknesses, rather than a detailed and granular analysis of and explanation for the reasons for each of the grades awarded. They are designed to be a simple and easy-to-read summary.

181. The second is that the Chief Inspector is responsible for over 40,000 inspections, visits and interviews a year, and for nearly 4,000 section 5 inspections. It is not practicable, nor desirable, for the Chief Inspector to be obliged to prepare and publish each report in very great detail. There are insufficient resources for this to be done and the system would grind to a halt. Provided that they do not act irrationally, it should be for the Defendants to decide on the format of its reports, and the level of detail contained within them. As I have said, Mr Owston explained in his Witness Statement that the Defendants have carefully considered how much detail to include in a section 5 report and they have a template which must be used. It is not a matter for the whim or discretion of individual teams of inspectors. There is no challenge in these proceedings to the general policy and practice that is adopted by the Defendants in this regard.

182. The third consideration is one that I have also dealt with already in this judgment. This is that, when considering whether the Final Report provided the School with enough information to understand the adverse findings, and to enable it to understand what it needed to do to improve, the court should take into account both the knowledge that the School leadership team already has about the School and the problems it faces, and, importantly, the oral feedback that was given to the Principal during the second visit and, in particular, at the final feedback meeting.

183. Mr Greatorex submitted, and I accept, that the Defendants cannot rely, in defence of the "reasons" challenge, upon further detail and information that has been provided to the School during the course of this litigation about the reasons for the various conclusions that were set out in the Final Report. Nothing that was provided to the School after the Final Report was published is relevant in this regard.

Application of the legal principles to the challenge under Ground 2

184. Ground 2 can be broken down into four parts.

185. The first is whether the Final Report contained sufficient reasons, explanation or evidence to enable the School to understand the adverse findings and what they are based on. In my judgment, the answer is "yes". As will be seen from the draft report, set out above (which was in essentially the same terms as the Final Report), it was clear to the School from the text of the Final Report what the inspectors thought in relation to the four criteria and the overall assessment and why. The Final Report was not provided in a vacuum. To use the words of Lord Brown in the **S. Bucks** case, the School was "well aware of the issues involved and the arguments advanced" when it received the Final Report. The School leaders were immersed in the life of the School and they had access to previous inspection reports, most recently in September 2021, which had highlighted some problems. As Mr Fraser, Chair of Governors, pointed out in his First Witness Statement, there had been nine inspections/visits from Ofsted in the last seven years. Moreover, the School had been aware, prior to the publication of the Final Report, of some of the figures upon which the conclusions were based. This is amply made clear by the detailed FAC response that was provided by the School to the draft report. I have set out the School's response to the assertions, "Too many pupils do not feel safe at All Saints Academy Dunstable", "many parents and staff have concerns about provision", and "A large proportion of vulnerable and disadvantaged pupils have low attendance.", earlier in this judgment. Some of this data emanated from the School itself.

186. The School was left in "no genuine doubt about what [the inspectors] had decided and why": **Clarke Homes Ltd v Secretary of State for the Environment** [2017] PTSR 1081, per Sir Thomas Bingham MR (this was a planning case, which had been decided in 1993, despite being reported in 2017). As for what the judgments were based on, it was not necessary for the Final Report to provide the full evidence base, or more of the evidence base than was summarised in the Report. This was not required in order to comply with the "reasons" obligation in this context. Moreover, to require the full evidence base, or a substantial part of it, to be disclosed to the School in or along with the Final Report would be unduly onerous; and would run counter to the legitimate objective of providing a simple and easy-to-read summary. As Lord Brown said in **S. Bucks DC v Porter**, "The reasons need refer only to the main issues in the dispute, not to every material consideration."

187. It is not necessary, in order to satisfy the "reasons" obligation, that the Final Report sets out detailed sources or evidential support for the assertions that are made. It would be clear to any reader that the sources of the judgments were the research and observations of the inspection team, coupled with the expert views and experience of the inspectors. Moreover, where the sources of information were interviews or questionnaires completed by pupils, parents, teachers or others, it would be quite wrong for the Defendants to disclose those sources. Where the Final Report makes assertions in

general terms, such as "Too many pupils do not feel safe at All Saints Academy Dunstable" it is not necessary for the Report to go on to say how many pupils are concerned, let alone to set a threshold above which the number of pupils feeling unsafe is too many, and below which it is acceptable. I asked Mr Greatorex to say what further explanation the inspectors should have added to this contention. He said that they should have provided figures, or should have set out guidelines about what are acceptable and unacceptable levels. I do not consider that this would have been necessary or appropriate. It would make no sense, for example, for the Defendants to apply or refer to a benchmark which stated that, say, 40% of pupils who were spoken to feeling unsafe is not a problem, but 41% or more is too many. These are necessarily generalised judgments, based on the evidence gathering process, coupled with the experience of the inspectors.

188. Further, it would be an impossible job to require the inspectors to provide all the sources of information which fed into a particular judgment. It is not just a matter of collating survey results, or setting out comments in questionnaires and interviews, because the inspectors' conclusions on a particular issue will also be informed by observations at the School, the pre-reading that is done before an inspection visit takes place, plus the contribution of the experience and expertise of the inspectors themselves.

189. I should add that, during the course of argument, I asked Mr Greatorex to give me an indication of the type and extent of the additional information that should have been provided to the School. He declined to take up the invitation, beyond saying that sometimes the disclosure of the evidence base with cross references would be sufficient. He said that the School was not saying that the full evidence base should be disclosed in every case. This highlights a serious point: the amount of information and explanation that is required to be included in a final report is a matter of fact and degree and I am not persuaded that the judgment exercised in this regard by the Defendants as regards what was appropriate in the present case was so flawed as to be unlawful. Moreover, I do not think that it would be appropriate for the Court to find that the Defendants had provided the School with insufficient information and explanation unless the court is able to say how much more information and explanation would have been sufficient. I have not been provided with material or arguments which would enable me to say how much more would be enough.

190. Still further, and with respect to the School and its legal team, it was clear to me that, whilst the challenge at the substantive hearing of the claim for judicial review was ostensibly concerned with procedural fairness and the adequacy of reasons, the core of the dissatisfaction on the part of the School with the Final Report was not unhappiness with the adequacy of reasons, but disappointment and disagreement with the judgment and conclusions set out therein. As I have already made clear, however, this is a "reasons" challenge, not a "merits" challenge. The procedural fairness and "reasons" challenge must be disentangled from any putative irrationality challenge.

191. Mr Greatorex has pointed out that, since the Final Report was published, the Defendants have provided the School with more information to explain and back up the judgments in the Final Report, as part of their disclosure and evidence in these proceedings. He says that this shows that there was more material that the Defendants could and should have included in the Final Report itself. I do not accept this criticism. There is no doubt that there was evidence and other material relevant to the School's inspection which was in the possession of the Defendants at the time of the Final Report but which

was not included in the Final Report, and which has since been disclosed. However, it does not follow that the contents of the Final Report were inadequate. As I have said, the contents of that Report satisfied the Defendants' legal obligations in relation to reasons. There was no legal obligation to disclose the full evidence base, or to provide more material that was contained in the Final Report.

192. The second part of the challenge in Ground 2 is whether the Final Report contained sufficient reasons, explanation, or evidence to enable any other reader to understand the adverse findings, and what they are based upon. In my judgment, it is clear that the Final Report meets this threshold. The points I have made in relation to Ground 1 apply equally here. The criticisms and the reasons for it are clear in the text of the Final Report. Also, as the Court of Appeal pointed out in **R (Governing Body of X) v Ofsted** [202] EWCA Civ 594; [2020] ELR 526, at paragraph 92, a school is not powerless to minimise any potential reputational damage. There is nothing to stop it communicating to parents and pupils its criticisms of the Ofsted report, bringing to their notice other reports and surveys that – in their belief – cast doubt upon or disprove the conclusions of that report, and publicising the measures it has taken to deal with the concerns expressed.

193. The third part of the challenge in Ground 2 is whether the Final Report provides sufficient reasons, explanation or evidence to enable the School to understand what it has to do to correct the adverse findings. Once again, I do not accept that the Final Report is defective in this regard. The School and its leaders might not like the criticisms, but they are clearly set out and there is a section of the Final Report which deals with "What does the school need to do to improve (information for the school and the appropriate authority)". As the heading suggests, this section of the Final Report makes some specific recommendations and targeted criticisms which make clear what the School should do to improve. As Mr Fisher submitted, the Defendants' functions are limited to conducting inspections: they are not responsible for designing an improvement plan, or for putting improvements in place. This is a matter for the executive leadership of the school and those to whom they report. For academy schools that are causing concern, the trust is required to prepare an improvement plan, setting out the steps that will be taken to improve the school. Local authorities have an overarching responsibility for safeguarding in all schools, including academies, under section 10 of the Children Act 2004. Pursuant to section 13(3)(a) of the EA 2005, Ofsted must inform the Secretary of State and the proprietor of an academy school forthwith in writing if a school is causing concern.

194. The final part to the challenge in Ground 2 is whether the Final Report has given sufficient reasons, explanation or evidence to enable the School or any other reader to understand the change in judgment between the original inspection and the second, GAE, inspection. In my view, this part of the School's argument is based upon a misconception of what is required by way of reasons in this context. The requirement is that the School and others are given sufficient information and explanations to understand what the conclusions are, the reasons for them, and what the School can do to improve. The fact that one set of inspectors reached some different provisional views, by way of a process that did not pass the quality assurance standard, is not relevant to this, and there is no legal obligation to address this in the Final Reasons. The GAE process which led to the Final Report meant that, by the time the Final Report was published, the Defendants were satisfied that the inspection process overall and the

Final Report passed the quality assurance process and that is all that matters. It would not have assisted the School, let alone other readers, to provide them with a breakdown of the differences between the provisional conclusions of the first inspection team at the end of the first inspection visit, and the final conclusions of the inspection team at the end of the GAE process. It would have sown confusion for no practical benefit.

195. In any event, the reasons for a second inspection visit and the activation of the GAE protocol were given to the Principal, Ms Furber, in a telephone call from Mr Young dated 20 January 2023. An explanation was also given in the letter of the same date from Michael Sheridan, Regional Director East England and East Midlands Regions, which stated:

> "Following your telephone call with John Young, Assistant Regional Director, I confirm that inspectors will return to your organisation shortly to collect additional evidence.
>
> This is because our quality assurance process has concluded that your graded inspection on 22 and 23 November 2022 should be deemed as incomplete. The 'provisional' judgments reached are not securely verified and substantiated by the existing evidence collected and evaluated. This leaves a question mark over the validity and reliability of the inspection findings. Therefore, it is imperative inspectors revisit your school to gather additional evidence and complete the evidence base. I recognise that this may place strain on staff and apologise for that. However, we need to be satisfied that the evidence base is secure and the inspection process complete before publication of any subsequent report.
>
> I can confirm that the main areas of focus will be safeguarding, leadership and management and aspects of the quality of education that need further evaluation.
>
> This is because there needs to be further scrutiny against the handbook to determine the accuracy of the provisional findings. Inspectors will also gather additional evidence linked to behaviour and attitudes and the Sixth form. This is necessary because we believe that the evidence for the inspection has not been triangulated sufficiently with the views of parents, staff and pupils.
>
> I have directed Charlie Fordham, His Majesty's Inspector Tracy Fielding, Senior HMI, Katherine Douglas, HMI and Dawn Ashbolt, HMI to gather additional evidence as soon as is practicable. The lead inspector, Charlie Fordham, will be in touch prior to the inspection to confirm arrangements with you.
>
> You will receive verbal feedback in the usual way at the end of the further visit. Then a draft report will be sent to you for a factual accuracy check in the usual way ahead of final publication."

196. There is no reason why such information needed to be provided to parents or any other potential readers of the Final Report, apart from the School leadership.

Conclusion

197. For these reasons, both Grounds 1 and 2 fail.

198. As I have said, I will invite brief further submissions from the parties and I will then deal with any consequential matters that arise as a result of this judgment, including the matters referred to earlier in this judgment.