

## Care Standards

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

Heard at Pocock Street, London 29 and 30 March 2016

Panel deliberations 20 April 2016

Before  
Judge Hugh Brayne  
Specialist Member Heather Reid  
Specialist Member Margaret Diamond

**BETWEEN:**

**Beis Aharon Trust**

**Appellant**

v

**Secretary of State for Education**

**Respondent**

**[2015] 2531.INS**

### **Decision**

1. Beis Aharon Trust, Proprietor of Beis Aharon School, appeals under section 125(1) Education and Skills Act 2008 against the order of the Secretary of State dated 24 September 2015 that the school cease to admit new pupils from 23 October 2015.
2. The appeal was submitted on 23 October 2015. Until the appeal is finally determined the order has no effect. The school therefore was lawfully able to admit a cohort of pupils in October 2015.
3. Beis Aharon School is an independent school in the London Borough of Hackney, designated, as it says in the grounds of appeal, as a school of religious character of Orthodox Judaism. It takes boys from ages 3 to 13. It is highly regarded in the community which it serves, as a result of which it is oversubscribed: it had on roll (in August 2015) 342 pupils, compared with a registered maximum of 243.
4. As an independent school Beis Aharon is bound by the standards specified in the Education (Independent School Standards) Regulations 2014. These came into force on 5 January 2015 and are the standards relevant to the Tribunal's decision, even though when the respondent's decision was made the Education (Independent School Standards) Regulations 2013 applied.
5. The way the standards are enforced is set out in section 114 of the 2008 Act. If the Secretary of State is satisfied that one or more of the standards is not

being met, having considered evidence from the Chief Inspector of Ofsted, she may require the Proprietor to submit an action plan for approval. If that action plan is rejected and the Secretary of State is satisfied that one or more standards are not being met, and there has been at least one further inspection by Ofsted, then under section 116 she may impose a restriction on the proprietor. One of the available restrictions, under section 117, is the requirement to cease to admit new students.

6. Under section 118 the proprietor may at any time apply for the restriction to be varied or revoked. This is additional to the right of appeal.
7. The Tribunal may, under section 125 of the 2008 Act, either confirm the Secretary of State's decision, direct that the restriction cease to have effect, or direct that the restriction cease to have effect and impose a different relevant restriction on the proprietor.
8. The Trust submits that even if we find one or more standards is not met it would be proportionate to allow the appeal on the basis of the progress the school has made towards meeting the standards and of the damaging effect on the school of not being able to admit new pupils. In Mr Greatorex's closing submissions, should we not allow the appeal, we are asked to consider as an alternative restriction a postponement of the date on which the restriction would come into effect, in order to allow an intake for the 2016/17 academic year.
9. It is for the Trust to demonstrate that it meets, at the date of hearing, the relevant standards (*Marshall v Commission for Social Care Inspection* [2009] EWHC 1286 (Admin)).
10. Notwithstanding this burden of proof, we accepted submissions from the appellant that, as regulator, the Secretary of State should make her case before the Trust's witnesses were called. However we allowed for the respondent to recall witnesses should new matters emerge in the course of oral evidence. In the event the respondent did not recall either witness.
11. Save for brief updates, witnesses' statements were accepted as evidence in chief. We first heard from Vanessa Ward, one of Her Majesty's Inspectors for the London region of Ofsted, and lead inspector for the progress monitoring inspection on 14 January 2016. Her cross examination took a large part of the first day of the hearing. The Secretary of State's second witness was Peter Swift, Deputy Director of the Independent Education and School Safeguarding Division within the Department for Education. This division has responsibility for registration and regulation of independent schools in England. His evidence started on the afternoon of day 1 and was completed the next morning.
12. We heard from the three witnesses for the Appellant on day 2, first Mrs Gittel Koppenheim, who since September 2015 has been employed as consultant/advisor on the curriculum to the school, then Rabbi Mordechai Twerski, one of the Head Teachers at the school, and finally Rabbi Joseph Lipschitz, one of the three trustees of the Trust and the school's sole governor.
13. A number of procedural matters arose during the course of the two day hearing. Late evidence (now included in the bundle as Tabs 70 to 81) was tendered by the appellant. It comprised a third witness statement from the appellant's witness Mrs Koppenheim and exhibits. The documents bring her evidence up to date in terms of curriculum plans, assessment snapshots, an assembly schedule and confirmation of enrolment of staff on a required NVQ course. These documents struck us as highly relevant. Ms Kamm did not

object, and we agreed they should be admitted to allow us an up to date picture. The late evidence also included two news items from The Guardian newspaper about prejudice amongst pupils in state schools. We admitted these in the absence of objection.

14. Ms Kamm objected, however, to two aspects of this late evidence. The first was a collection of letters from parents supporting the school and criticising the respondent's decision. The second was a letter from Rabbi Friedman (we discuss this in detail in paragraph 55 below). In our view the letters from parents were not prejudicial to the respondent: the fact that parents strongly support the Trust's appeal is essentially a background fact. The letter from Rabbi Friedman explains the Trust's reasons for not telling pupils about certain protected characteristics under the 2010 Equality Act, and since that fact is not in dispute, and we had already read the letter, we admitted it into evidence.
15. At times Mr Greatorex was asked by the Judge not to pursue lines of cross examination for the sole purpose of challenging the opinions of the respondent's witnesses; this was because, the Judge explained, the issue for the Tribunal now is not the merits of opinions held by the witnesses but the facts relevant to determining whether the appellant complies with standards and, if not, should or should not remain subject to the restriction. On this the Tribunal must reach its own conclusions. Mr Greatorex, on the few occasions where he submitted he should be allowed to pursue such cross examination despite this reminder, was allowed to do so. We are satisfied that at no point was he denied the opportunity to challenge a witness's evidence, whether fact or opinion.
16. Time did not permit closing submissions to be made orally and by agreement we set a timetable for written closing submissions, those of the respondent to be received within one week and those of the appellant in reply within a further week. Mr Greatorex had to request a short postponement, for unavoidable reasons which we accepted, but in order to keep to the date for panel deliberations we revoked the direction allowing Ms Kamm to apply, should anything unforeseeable come up in Mr Greatorex's submissions, for a right of reply. In the event we are satisfied that nothing has arisen in Mr Greatorex's written submissions on which an application for a right to make further submissions could be founded. We are grateful to both Counsels for their helpful submissions at the end but also for their comprehensive understanding of the evidence and issues, and their ability to help the Tribunal throughout.

### **Beis Aharon School**

17. A description of the school and its underlying principles is set out in Rabbi Twerski's first witness statement. The school opened in the early 1980s. It has 347 boys on roll in 20 classes, with an average of 18 pupils per class. It caters for ages 3 to 13. (We were told that some pupils turn 13 before the end of the academic year of their time at the school. The school is registered for pupils to the age of 12, but this was never an issue raised in the appeal. Whether those who turn 13 are in Year 7 or Year 8, or this operates as a mixed Year 7 and class, was not raised.)
18. The school is popular and may seek to expand. It operates Sunday to Thursday from 9 am to 6 pm, and Friday 9 am to 12 noon. Most pupils speak Yiddish at home. They learn English, Hebrew and Aramaic at school.
19. The school's aim, Rabbi Twerski informed the Tribunal, is "to preserve and enhance the basis for a Torah true way of life ... to produce well educated

pupils, who have the right values instilled into them so that they learn to become respectful of others, responsible and law abiding citizens who can contribute to society and provide for their families. The school aims to educate the pupils in both Jewish and secular studies as well as placing a strong emphasis on morals.”

20. Rabbi Twerski explained that the school has two parts to the curriculum. The Kodesh curriculum is based on studies of religious texts and commentaries, in which Hebrew, Aramaic and Yiddish are studied, and also includes “reading, speaking, listening and writing skills, mathematics, science and technological, human and social sciences (especially law, philosophy, political science, geography and history), creative and aesthetic, personal and social education.” The Chol curriculum is the secular curriculum “which includes English (literacy, reading, handwriting, spelling, grammar, comprehension, creative writing and developing skills), mathematics, science, geography, history, PE, PSHE and Citizenship. About five hours per week are devoted specifically to the Chol curriculum.”
21. Rabbi Twerski said in his statement that children in the community are brought up “in an environment that is free from the distractions and dangers of modern technology, there is no general use by children of mobile phones, computers, internet or television.” Mrs Koppenheim told us adults may have such access and the school itself uses the full range of IT.

#### **Relevant history**

22. We are aware of a history of Ofsted visits and inspections from 2007 to 2010, and that following a November 2010 inspection, Ofsted rated the school satisfactory, though some of the then-applicable standards had not been met. At that point it became the subject of the normal inspection cycle. Both parties in evidence or through cross examination placed weight on this earlier history: the Trust, on the basis that what was satisfactory in 2010 and has not changed since then could not now be unsatisfactory, the Secretary of State to flag up a history of failed inspections going back to 2007.
23. We do not consider Ofsted findings between 2007 to 2010 to be persuasive now. The focus for the Tribunal is the history from 2014 onwards, which is the date on which a routine Ofsted inspection resulted in a requirement to produce an action plan. The question for the Tribunal is whether standards are now met, and, if not, whether, in light of that history and present considerations, the appeal should nevertheless be allowed. However, the 2011 finding that provision was satisfactory becomes relevant to the extent that Rabbis Twerski and Lipschitz both relied on it when criticising Ofsted or the respondent in oral evidence for now changing their requirements.
24. The following post 2011 history is not disputed. Ofsted inspected the school between 18 and 20 November 2014 and found the school to be inadequate. The relevant standards at that time were those set out in the 2013 Regulations. More specifically Ofsted found the following failings (we summarise paragraph 15 of Mr Swift’s statement):
- Failure to ensure children in the Early Years Foundation Stage were adequately protected from harm.
  - In secular subjects, in particular English and Maths, leaders did not provide adequate support or guidance for teachers, resulting in inadequate pupil achievement and less progress than pupils were capable of.
  - The school did not provide a broad and balanced range of subjects.
  - The school did not actively promote fundamental British values.

- The proprietor did not hold leaders to account for the safe and effective operation of the school or for achievement in the secular subjects.
  - The school did not have arrangements to rigorously check suitability of staff, and staff in the early years settings did not have required qualifications.
  - The quality of education had declined since the previous inspection.
25. The Department required the school to provide an action plan. The action plan provided by the school on 19 February 2015 was rejected on 1 May 2015 as inadequate. The respondent said it failed to provide actions for some of the failings and timescales for others.
26. A progress monitoring inspection took place on 4 June 2015. Ofsted identified standards as not met in the areas of quality of education, spiritual, moral, social and cultural development, welfare, health and safety, suitability of staff, supply staff and proprietor, provision of information, and quality of leadership and management.
27. Mr Swift's division provided submissions to ministers on 17 August 2015, which he told us is the normal procedure; following this advice the Secretary of State made her decision to impose the restriction.
28. The Trust in its appeal against that decision did not challenge the inspection findings of Ofsted but (see paragraph 16) stated that the school had "undertaken extensive work to address the failings identified in the Ofsted Report dated 6 June 2015". The appeal contained the following grounds (omitting matters not now disputed):
- An education/curriculum consultant, Mrs Gittel Koppenheim, had recently been engaged as curriculum advisor; Mr Joel Sager, head teacher at Pardes House (a maintained school) was also assisting with reviewing the curriculum. Books and other resources had been purchased, and the school intended "to have the whole system up and running by approximately 10 November 2015".
  - It was now teaching English to all pupils [having previously refused to extend this to pupils in Years 1 to 4,].
  - The school would address the issue of limited understanding or appreciation of, and lack of teaching relating to, different cultures, faiths or beliefs and Equality Act issues through a weekly programme of full school assemblies.
  - The safeguarding policy had been revised in line with statutory requirements.
  - The school understood its obligation to teach pupils about prejudice-based bullying and would deliver this through assemblies.
  - Six members of staff would start their training for NVQ Level 2 in 2016.
29. In conclusion it was asserted that "vast and significant improvements ...had been made and continue[d] to be made".
30. At the request of the Secretary of State, in preparation for the appeal hearing, Ofsted carried out a further progress monitoring inspection on 14 January 2016. The lead inspector was Vanessa Ward. The appointment of the curriculum advisor and the purchase of materials was acknowledged but this had not led to any significant changes to what pupils were taught. Teaching of English had been extended to pupils in Years 1 to 3. 34 standards were found not to be met. There was little attempt to measure progress and the school continued to avoid discussion of issues related to some of the Equality Act protected characteristics. Pupils remained largely ignorant about other faiths and pupils had a restricted view of the role of women. Pupils in Years 1 to 4 had needed an interpreter to talk to the inspector.

31. The adverse findings on which the respondent relies are drawn from the January 2016 progress monitoring report and, taking into account evidence from the two previous reports, are summarised as follows:
- Despite the purchase of commercial curriculum resources and assessment resources for the secular curriculum and the employment of a curriculum manager, the school fails to meet a significant number of standards.
  - School precludes awareness of particular protected characteristics under the 2010 Equality Act and fails to promote fundamental British values
  - The school fails to prepare pupils for life in modern Britain
  - Quality of teaching of English is poor
  - The school fails to make adequate safeguarding checks
32. The Secretary of State considered in light of the 14 January 2016 inspection whether to continue to defend the appeal. The Department's advice is set out in a document dated 8 February 2016. It states that 34 standards remained unmet. The school was refusing compliance with standards it does not agree with, leaders accepted that pupils' work remained well below age-related expectations and that nothing had been done to rectify the situation. Some improvements had been made where this did not conflict with the school's faith ethos, for instance in relation to reporting and recording safeguarding concerns and providing information to parents. Resources had been purchased but improvements to the secular curriculum had had limited effect, partly because insufficient time was allowed for it. EYFS staff remained unqualified. The PHSE policy did not cover the full age range. The school failed to challenge an "extremely restricted view of the role of women" and to avoid discussion of some protected characteristics under the Equality Act. The teaching of English remained a serious concern. A potential breach of the Equality Act was noted (at paragraph 22): the pupils are all Jewish boys, and sex, race, religion and belief are all protected characteristics. It was not acceptable that "pupils at the school receive a different standard of education than other children at independent schools in England are entitled to."
33. The Trust made an application on 23 March 2016 for a postponement to the previously agreed 29 and 30 March 2016 hearing date. It sought a postponement to August 2016, on the basis that it needed time to improve provision to better meet the standards. This was refused by the Deputy Chamber President after hearing oral argument in a telephone case management hearing on 24 March 2016. The application was not renewed at the hearing on 29 March 2016.

### **The issues**

34. There have been challenges from the appellant in the evidence to the fairness of Ofsted's inspection process, as well as suggestions of moving of goalposts, given that the school provision (particularly in relation to the secular subjects) has not changed since 2010, when it was found to meet the standards applicable at that time. This is clearly explained in the part of Rabbi Twerski's first witness statement labelled "The Historical Context", where he describes the impact of being told that a limited secular curriculum, acceptable previously, was now "leading to a threat against the school that would result in no more pupils being allowed to be admitted". He adds: "In many ways the requirements of the DfE are against [the] beliefs of the community."
35. Notwithstanding this, and similar, evidence, we are clear that at no time, in its grounds of appeal or Mr Greatorex's opening written submissions, or in any

iterations of the Scott Schedule, has the school challenged as a ground of appeal the lawfulness of the basis on which the Secretary of State's decision was originally made. The Tribunal starts from the accepted premise that standards were not met and the Secretary of State acted lawfully in making the decision now under appeal.

36. Despite submissions that it would be fairer to give the school more time, the school's case is that, with one exception, on the evidence presented to the Tribunal on 29 and 30 March 2016 standards are now met. The standard not met relates to qualifications for six EYFS teachers. All are taking the relevant Level 2 NVQ and, if they pass, that standard will be met at a future date, but is not now met.
37. If all standards are found to be met, the only decision available to the Tribunal would be to allow the appeal. However, it is accepted that one standard is not met. This means the Tribunal must, whatever its findings on any other standards, exercise its discretion as to whether the appeal should be allowed and the restriction lifted.
38. In making findings of fact in relation to the disputed standards we consider it helpful to consider the overall evidence and to make broad findings, before looking at individual standards under the 2014 Regulations. The broad headings we find helpful are those we have ourselves identified as a useful way of making sense of the evidence, not those set out in the Regulations.
39. We also consider, as a discrete topic, allegations which could be summarised as "Alleged Ofsted/respondent bias".

#### **Findings of fact**

40. This appeal is concerned with standards the Secretary of State says are not met. We do, however, take the opportunity to note the many examples of positive evidence, from both parties, about the school. It is extremely well thought of in the community it serves. It takes seriously the need to improve, and has made significant commitments of its resources in order to do so. Pupil behaviour appears to be of a very high standard. It has co-operated at all times with the Tribunal and with Ofsted, despite at times strong differences of opinion. It is, however, necessary to focus on the respondent's concerns.
41. Until receipt of an updated Scott schedule on day 1 of this appeal, the appellant's response to the findings of Ofsted, the grounds of the appeal, and the original Scott schedule, consistently indicated that the appellant accepted those findings, and submitted that the shortcomings were being addressed. That was the basis of an application made days before the hearing for a postponement, on the basis that more time was needed for that work.
42. That is not the case now. The appellant's case in relation to the 2014 standards, set out in the Scott schedule handed in at the hearing, and confirmed in the appellant's closing submissions, is that standards are now (with the one agreed exception) met.
43. The appellant's case now appears to have two elements. The first is that the improvements made in response to the previous findings show the standards are met; and the second is that the findings in relation to some of the standards are unreliable. Mr Greatorex's cross examination and closing submissions made this clear. For this reason we have to consider the issue of whether the Ofsted findings are inherently unreliable. We then have to consider the evidence that standards are met, based on both improvements and submissions that they were always met.
44. A difficulty for the appellant is that in some respects there is no fresh evidence or challenge relating to the findings of Ofsted. In three inspections

from November 2014 through to January 2016 findings of varied quality of teaching, lack of stimulation in the classroom, lack of depth in science teaching, poor use of resources and teaching aids, and evidence of pupils being, at that time, three years behind age-related expectations, have not been challenged by either written or oral evidence or cross examination. The Tribunal has no alternative but to accept such evidence.

45. Before we are able to make any findings, we must consider what evidence we need to look at. Ofsted has at all times confined its inspection to the secular, Chol, curriculum. No complaint has ever been made, to our knowledge, that evidence from the Khodesh curriculum was overlooked, nor has there been any invitation to include it in any inspection. The contents of the Khodesh curriculum have not, as we have understood the parties' positions, been considered by either party as relevant. We say this without in any way wishing to doubt the overriding importance of the Khodesh curriculum for the pupils and community which the school serves. It was not until day 2 that Mr Greateorex submitted that we should consider the content of this curriculum. We do not consider we can or should do so, as it represents a fundamental change in the manner in which the school would seek to demonstrate compliance with the standards for which the respondent is unprepared and on which reliable evidence is unavailable.
46. All that appears to be relied on as evidence of content, for the purposes of the appeal, is a document setting out daily timetables of activities. This document is exhibited to Rabbi Twerski's first witness statement. We do not know which year group particular pages refer to. We have no knowledge about content of the activities listed. We do not know how the curriculum is taught nor learning outcomes assessed, nor was there evidence or submissions from which we could reach conclusions as to how any of it maps onto the 2014 standards. We have no reason to doubt the quality of its content, and it could indeed be the case that some topics mentioned could be relevant to the 2014 standards: in particular we note that time is set aside for Art and Design. It may well be that matters which would fall under PSHE would also be covered here. However any invitation to make findings on this basis is an invitation to speculate, and no findings would be reliable.

#### Alleged Ofsted/respondent bias

47. This now forms an important part of the appellant's case, though it was not raised in the grounds of appeal.
48. The school now argues that it met standards in 2010, in terms of the secular curriculum the education delivered by the school has not changed, and there is an inconsistency and/or unfairness in now finding that the standards are not met. It is also said that it is unfair that on some inspections standards were met and then later on a monitoring visit the same standard was found not to be met.
49. We accept the evidence of Ms Ward that the findings on any visit relate to evidence obtained as a result of that visit. It cannot be either wrong or unfair to make findings on one visit which are different from those made on a previous visit. The appellant repeatedly sought to demonstrate that because findings in 2010 led to the school being rated satisfactory, it was now wrong and, implicitly, unfair, to reach a different conclusion now. A complaint is made that the secular curriculum was deemed adequate at one hour a day in 2010 so should be sufficient now. As the school has now taken steps to increase that allocation to 1 ½ hours (to be implemented shortly) it accepts the need to change. However, if we ignore that particular issue, there is a real difficulty for the Tribunal (and, we believe, for the parties) if we pursue this



approach. The submission that standards were met in 2010 and should be met now would, if pursued, require examination of the quality of the evidence in 2010 which led to that conclusion. That would demand a much longer hearing, for little benefit: whether or not we found the 2010 evidence supported that rating, it could not, six years later, cast a great deal of light on the present situation. Further, we would have to look at a history of failed inspections leading up to that inspection in 2010. We are clear that our task is to consider evidence that shows whether or not standards are met at the date of the hearing, or, in terms of whether the restriction should continue, are likely to be met within a particular timescale.

50. The view expressed by Rabbi Lipschitz to the effect that it was Ofsted's duty to brief the school and help it to address the changes in the 2014 Regulations is misguided. Ofsted is required to inspect with reference to the Regulations and it is the responsibility of a school wishing to remain registered with the Secretary of State as an independent educational institution to be aware of, and take sufficient steps to comply with, those regulations. Mr Greatorex criticises Ofsted in his written submissions for not discussing matters adverse to the school outside the scope of the inspection, which, again, suggests a misunderstanding of Ofsted's role. Even if he were right that more could have been done to assist the school, it would not affect our examination of the evidence as to whether standards are now met.
51. Mr Greatorex submits that the respondent (and now the Tribunal) is not in a position to gainsay the evidence of the appellant that standards are met, since it refused to agree to a postponement to allow for reinspection. Unless the Tribunal hearing takes place within days of inspection, this is always available to an appellant as a rhetorical argument, but in fact the time from inspection to hearing was under two months and the inspection was specifically for the purpose of this hearing, undertaken during a period in which the appellant claimed it already met the standards. We do not agree with this argument, and in any event inspection at the date of the hearing would have confirmed the evidence given by Mrs Koppenheim at the hearing (see below) that, in most respects, the new curriculum is not yet being delivered.
52. The repeated suggestion by Mr Greatorex in cross examination and submissions that if enough time is not allocated to the secular curriculum Ofsted must state what is the right amount of time represents a fundamental misunderstanding of the role of both Ofsted and, if the complaint is levelled against the Secretary of State, the regulator. It is clear that the thinking behind the standards for independent schools is that schools should be able to determine for themselves what are their priorities, how they organise the curriculum, who they employ to teach it (to the extent that no minimum qualifications are specified), how they assess achievement, and what else pupils do while at school. It would be impossible, and inconsistent with this approach, if Ofsted were at the same time expected to specify how the teaching is organised. We agree with the evidence of Ms Ward, which was to the effect that the school has responsibility for deciding how to arrange its timetable and resources to meet the standards.
53. Rabbi Lipschitz, and to a lesser extent Mrs Koppenheim and Rabbi Twerski, in their oral evidence suggested a level of bias on the part of Ofsted. They expected Ofsted to fail them on inspection and to look for new grounds for doing so. Mr Greatorex did not put these allegations to the Secretary of State's witnesses, in particular Ms Ward, who was personally involved in the latest inspection. There is no objective evidence to support these allegations.

We are satisfied that normal procedures were followed, in line with such guidance as is published. In any event, the challenge to the respondent's impartiality appears to be a means of challenging their conclusions, not the evidence on which those were based. For reasons already explained we are not now considering the reasonableness of the opinions of the respondent's witnesses; we are making our own decision on the evidence, so bias would only need to be considered if it might affect the evidence we are looking at. That has not been alleged. Where relevant challenges were put to the evidence, as to the opinions, put forward by the respondent's witnesses, we have considered the weight we can place on that evidence. In particular we felt we could not place great weight on Ms Ward's responses from groups of pupils (see below) about the role of women.

54. We note the views of the many parents who wrote letters for our attention. They share the school's views about Ofsted's requirements and conduct, and also speak very positively about the school. We take note of this evidence, but it does not affect the above conclusions.

#### Addressing protected characteristics

55. Mrs Koppenheim exhibits to her third witness statement a copy of a letter from Rabbi S Friedman, Dayan of the Union of Orthodox Hebrew Congregations, dated 16 March 2016. The letter is addressed to Rabbi Lipschitz, and is written as a response to the latter's query regarding "teaching protected characteristics as demanded by Ofsted, which at present is not being taught". The letter is signed by Rabbi Friedman and countersigned by four other Rabbis who give their "full rabbinical authorisation" to its contents. Rabbi Friedman gives a clear and helpful explanation of the difficulties presented to the school by the requirements of the Regulations (it is inaccurate to say they are the requirements of Ofsted, but in this context this is an unimportant detail). He refers to a codification of the laws of the holy Torah and Talmud in books named Yad Hachazoko, saying that "every word ... is regarded as part of our faith and sanctified". If something is forbidden in the Torah "we are not allowed to put our minds to it, to understand what is done and the reasoning behind it, nor broaden our knowledge of it. Should such thoughts which are forbidden enter our mind, we are commanded to cease and reject such thoughts." After further explanation of the importance of this principle and the consequences of not following it, he goes on to explain how it relates to the protected characteristics (though he does not name them as such). He says that "religions other than authentic Judaism, beliefs, sexual orientation, gender reassignment, are forbidden in the Jewish faith".
56. This guidance is submitted to explain the school's reasons for not teaching about other religions, about sexual orientation, and gender reassignment. It is clear from this rabbinical guidance, and the evidence we received (about which there is no dispute) that the school does not intend to teach about these three, or in any way refer to the characteristics of sexual orientation or gender reassignment.
57. There is a distinction, however, in the evidence given between the school's decision not to teach about other religions and not to teach about sexual orientation and gender reassignment. Rabbi Twerski told us in oral evidence that, through the vehicle of assemblies, he can and does tell pupils to respect those of other faiths, in the course of which his brief notes indicate that he names some other faiths. This is part of the teaching to respect other cultures. His notes of an assembly given in January 2016 confirm that he spoke, or intended to speak (he could not recall whether the notes were

written before or after the assembly) about tolerance of those with different faiths and cultures, noting “No matter if Christian, Muslim, Sikh, Chinese, African, everyone must be tolerated, everyone is entitled to have their own belief and traditions”.

58. However Rabbi Twerski made clear to us, and it is confirmed in his assembly note, that he does not intend to mention, the existence of the protected characteristics of sexual orientation, civil partnerships or gender reassignment. Nor are these mentioned in the school’s Policy Statement on Safeguarding Children and Safe Recruitment and Child Protection, where, under the heading Equality and Diversity, it is stated: “This policy helps to ensure that the school promotes the individuality of all of our children, irrespective of ethnicity, religion, attainment, age, disability, gender, or background”.
59. The school contested the conclusions drawn from the finding of the inspectors that in one book the word Christmas had been crossed out. Rabbi Twerski gave evidence (first and second witness statements) that this is not a practice of the school. There is no evidence to contradict his evidence. If we find that it was the act of one, or more than one, pupil, the relevance is potentially twofold: firstly, we are asked to draw an inference that this reflects, in some way, the values he has acquired at school; secondly, we are asked to conclude that because the school used rather than withdrew this altered textbook, it was failing in some way to manage its resources appropriately. We find the first conclusion logically possible, but in the absence of evidence that pupils are made to think the word Christmas (or other cultural or religious words associated with other faiths) is somehow unacceptable it cannot be our conclusion. The idea that a school is liable for the contents of parts of a book altered by a pupil is in our view too far-fetched. To inspect all text books periodically may be wise, but it is not such an obvious requirement as one on which to base findings in this appeal.
60. The appellant’s case is that the standards are met without acknowledging the content of other faiths or the existence of particular protected characteristics.

#### Role of women

61. Evidence from the school that women are treated as equals in the community is not challenged. We accept the evidence that boys will encounter women in a range of professional roles in their lives, such as seeing a female GP, and that (though this is Rabbi Twerski’s estimate only) up to half the women in the community have jobs. Mrs Koppenheim is held up as an example of a woman in an important and visible role.
62. The principal evidence relied on by Ofsted in relation to what is taught about the role of women is that, when inspectors spoke to pupils during the June 2015 and January 2016 inspections, they all said when asked what women do that “girls cook, help in the home and look after the children”. The fact that this was said is not challenged. Ms Ward told us that she had met three different groups of approximately eight pupils, one of 12 year olds and two from younger age groups. However Mrs Koppenheim, when she was examined by Mr Greatorex, said that she had been present to interpret for the youngest age group during this meeting with the inspectors, and what happened is one pupil gave the answer and when asked if they all agreed, no-one disagreed. She said she had asked Ms Ward if the question could be rephrased to try and elicit more information and this had been refused. Mrs Koppenheim believed that had the question been put differently and the answers explored, the true beliefs revealed would have shown that the pupils

knew that girls could have the same aspirations as boys, and that all careers were equally available.

63. The respondent had the opportunity to recall Ms Ward to address this evidence of how, it was said, the meeting with the younger boys had taken place. The evidence has not been rebutted. We are asked to conclude that the evidence does not reflect a bias against women as equals, but as evidence of inadequate exploration of the answers. In the absence of a transcript or of evidence of the promotion of a view that women have a limited role, we are precluded from relying on this particular part of the respondent's evidence that the school fails to promote an appropriate understanding of the role of women in society.
64. Mrs Koppenheim also told us that, although she told her own son she had important work helping in school, she was keen that her own son saw her role as principally that of a mother. Both parties rely on this evidence, the appellant to show boys will come across female role models in important positions, the respondent to show the way the role is described downplays to Mrs Koppenheim's son the importance of her job. We do not give it great weight: the witness was giving evidence about her attitude as a mother within her community, and it cannot be relevant to the school's teaching that she conveys it to her son in one way or in another way.
65. Mrs Koppenheim said the History curriculum would in the future make reference to Florence Nightingale as a woman who made a difference. This was the only part of the curriculum she referred to in respect of roles of women.
66. The school confirms that images in reading books depicting women and girls in short sleeves are obscured by stickers as it is improper to allow pupils to see those images. We were told by Rabbi Twerski that this range of books is to be withdrawn. He also said in his second witness statement that pupils would be used to seeing such "imagery" (quotation marks in the original) in everyday life walking to and from school. It was his view (second witness statement) that one "can discuss the opposite gender without having to look upon images of them in short sleeves".

#### Secular curriculum issues

67. The school has up to now taught the secular curriculum for five hours a week (Rabbi Twerski's first witness statement – see above) and now acknowledges an increase is needed. We were told it cannot yet go up to 1 ½ hours a day as an extra teacher has to be recruited. It also acknowledges that English should be taught from Year 1 rather than Year 4. This has already started.
68. Commercially available curriculum and assessment schemes have been purchased and adopted by the school. There is no challenge to the overall appropriateness of these schemes. However the evidence relating to how these have been implemented gives rise to a number of concerns.
69. Mrs Koppenheim confirmed to us that large parts of the new curriculum maps are directly copied from the commercial provider. Much of the material exhibited to her witness statement comprises a copy of pages from these schemes. Our concern, on the evidence, is the extent to which these are adapted to the needs of this school, owned by those delivering the new schemes, and effectively and systematically applied.
70. The evidence appears to be that the schemes have been, essentially, transcribed rather than used as a resource for the school to design its own curriculum. The time interval between purchase of the materials and expectation that they would be fully implemented was never realistic (Mrs

Koppenheim initially thought they would be fully implemented by November last year, a matter of weeks after they had been purchased). At one time, she told us, she needed seven typists to work on this. This suggests the exercise was predominantly, or at least initially, seen as the clerical task of demonstrating the existence of schemes, rather than the educational challenge of designing suitable programmes. When it was pointed out to the school on day 1 of the hearing that some pages of the curriculum duplicated identical material for different years, and some pages had blank columns, she explained this as a copying failure. She then herself retyped the relevant pages overnight and could not confirm that the pages in the relevant version held at the school were correct. She had not checked. This approach does not lead us to have confidence that the school has, as yet, designed and developed comprehensive curriculum schemes. The school to some extent recognises that it does not yet have the expertise it needs. It will soon have the benefit of advice from a qualified teacher, Mr Sager, and he is said to have reviewed the new curriculum. But we had no direct evidence from Mr Sager, and other than his mention by witnesses and his presence at one staff meeting, no evidence of his involvement. Even if the expertise he can offer is demonstrated to be impressive, his work will take place in the future and his input is relevant to the argument that the school needs more time, not that it has sorted out its present curricular problems.

71. It is very clear from Mrs Koppenheim's oral evidence, given with admirable clarity and honesty, that the schemes are largely not yet being implemented. The head teacher responsible for the secular curriculum is not comfortable with the new curriculum, and teachers delivering the curriculum can no longer be supported by him. He will leave shortly, and be replaced by a new headmaster for the secular curriculum (Rabbi Twerski's second witness statement). These failures are listed in Ms Kamm's written submissions, seen by Mr Greatorex before he wrote his in reply: they are not contested and that must be because they are consistent with the evidence Mrs Koppenheim gave. We need, therefore, only give a summary.
72. She accepted that the new secular curriculum does not yet cover aesthetic and creative requirements of the standards. She is still working on this, but said this is also covered in the Kodesh curriculum.
73. The new curriculum maps do not cover Year 7 at all, because the pupils in that year are so far behind that they need to cover material from earlier years. She told us, after detailed cross examination that teachers were not yet delivering the new curriculum in History and Geography, and that teaching in Maths and PE was not being carried out according to the new schemes.
74. There is little direct evidence we can identify, and none in the submissions of Mr Greatorex, pointing to where it is shown that any aspect of the new curriculum is being taught. We have to conclude that its development and direct translation into teaching plans is some way off, and that Mrs Koppenheim's own comment in her first witness statement, that "There was and still is a lot of work to be done" is truthful and appropriate. This is, we think, understood by the school, even if inconsistent with Mr Greatorex's submissions. It is, for example, confirmed by Rabbi Twerski in his second witness statement in relation to History, Geography, and Creative Arts. The Rabbi says that the school is committed to these improvements, but "teachers find it very difficult to adapt to the new schemes of work" and "need some time to be comfortable with the set up and layout". His conclusion that "Overall the school is aware that there are still lots of issues to deal with in the

Chol [secular] curriculum” appears to be an honest and accurate appraisal of the point the school has reached.

75. Other than the fact that no teachers are qualified teachers (which, of course, is not a requirement for an independent school) we have no evidence of any sort about the qualifications and experience of any of the teachers of the secular curriculum. We do, however, know Mrs Koppenheim’s qualifications, which comprise five GCSEs, and her educational experience, which comprises eight years experience as a teaching assistant and teacher, a year as curriculum advisor at Beis Yaakov Girls’ School, and four years as head of that school. We also know that there are varying degrees of acceptance of the new curriculum amongst the six teachers currently employed to teach the secular curriculum.

#### Progress of pupils

76. At the time of the 2014 and 2015 inspections it is not denied that pupil attainments were significantly behind national expectations for their age.
77. The school has purchased an assessment package, known as Rising Stars, which teachers have started to implement. We were provided with a snapshot of results from single assessments of classes. The ones we saw were for Maths in a Year 5 class, Reading in a Year 4 class, and Science in a Year 1 class. These are colour coded and Mrs Koppenheim could not help with interpreting our black and white copies, other than to say that she believed that this showed that progress was in line with age appropriate expectations, but below the expectations of the school. We have no way of comparing these scores with age-related expectations and cannot place weight on the scores to show there has been any catching up since pupils were found to be three years behind such expectations.
78. Mrs Koppenheim told us that pupils learning English, as they now do, in Year 1 were making good progress. That is not challenged.
79. She also explained that the school has introduced a commercial assessment scheme (“Busy Ants”) for Maths, and that Year 3 pupils are currently working at the level expected for Year 1 pupils. Other pupils, she told us, have also completed tests for age groups younger than their own. They have not been tested in all subjects only English, Maths and Science. She accepted that the school did not yet have enough information about each pupil to inform the teaching plans or an analysis of individual pupils’ progress.
80. We have little detailed or systematic information on which to draw reliable conclusions as to improvements in terms of pupil progress, in part because the initiatives are so new. We cannot safely conclude that staff themselves have the expertise to measure this for individual pupils as they develop or for whole cohorts. The evidence of the snapshots we saw, and Mrs Koppenheim’s evidence of standards reached, provides cause for some, albeit extremely cautious, optimism. This evidence does not displace, in our view, the unchallenged evidence from inspections of progress being significantly behind expectations for the pupils’ age.

#### Quality of teaching and management

81. We know from the school prospectus that the teachers are highly qualified rabbinical scholars, but we do not know their qualifications as teachers of the secular curriculum, nor their experience. Rabbi Twerski told us there are no qualified teachers. The only member of staff whose qualifications and teaching experience is known is Mrs Koppenheim. She has relatively low level academic qualifications (five GCSE passes) but does have teaching and school leadership experience. Different school responsibilities are taken up

by different head teachers. Rabbi Twerski and Mr Pomerantz are the most relevant. The former has responsibility for both secular and Khodesh curriculums, but told us that it is not his responsibility to look at the detail of the secular curriculum. The latter we did not meet and he is said to have found the demands of the new curriculum hard to accept, and his departure, which is imminent, is by mutual consent. The identity and qualifications of his replacement are as yet unknown.

82. The school agrees that it does not at present have sufficient teachers to deliver the planned increase to the secular curriculum to one and a half hours a day.
83. Mrs Koppenheim has carried out some 40 classroom observations, but does not engage in formative feedback to the teachers. She shares her findings, on request, with Rabbi Twerski. She says teaching is improving, but she accepted that she has no previous knowledge of the quality with which to make comparisons. We saw no protocols, either blank or completed, for classroom observations. Training of teachers in the new curriculum is the responsibility of Mrs Koppenheim, but she showed us no programmes or materials for this purpose. She appears to work with teachers on an ad hoc basis when asked for help. At present Mrs Koppenheim has an office in a different building, with the Early Years part of the school, but we were told that she will move into the Key Stages 1 and 2 part of the school shortly.
84. On the evidence of the school's own witnesses, we can place no reliance on the expertise or assistance of Mr Pomerantz, who is a reluctant participant in change. The school intends to make use of a qualified teacher as advisor, but we know little beyond his name and the name of the school he currently works in. His input, in any event, is to occur in the future.
85. At present, as acknowledged by the appellant, the new curriculum schemes are not being delivered as written. Mrs Koppenheim gave evidence of significant areas where they are not being applied: The written submissions of Ms Kamm under the heading "The extent to which the standards are not met in full" are entirely correct and accord both with the explicit admissions of Mrs Koppenheim in her oral evidence and the documentation she showed us. We therefore need only provide examples. There is inadequate detail in relation to aesthetic and creative education, because it is not explicitly addressed. Plans and schemes of work for technology provide summary maps only. There is no material for Year 7. There are no plans, and no evidence at all, in relation to the early years curriculum. The material provided by Mrs Koppenheim showed repetition and gaps, which have only been addressed by her retyping these overnight for our benefit at home after day 1 of the hearing. This does not lead to the conclusion that the gaps and duplication have actually been addressed by the school. There has been no attempt to implement curriculum plans for History or Geography. Design and Technology is not being implemented, because the school wants to do more Maths, English and Science. We have almost no evidence on content of English lessons for Years 5 upwards. The PE map is not being implemented, and teachers prefer to do football, which the boys enjoy. Year groups are following plans for younger children in Maths, and for some classes Mrs Koppenheim did not know what activities the classes were doing; for example she could give no evidence on what work children were doing in Science at any particular time. The scheme is not being followed in PHSE for Years 1 to 5.
86. The difficulty facing the school in relation to the major and rapid changes which the school accepts are required to meet the standards in the

regulations, compared with what was considered good enough previously, is that it has limited experience and expertise to tackle this task. It draws its expertise from a restricted pool, and may wish to consider whether its obligations under the Equality Act in relation to the secular curriculum would, in fact, permit, indeed require, it to look for expert help from not only within its own community but to men and women of any background qualified to develop and deliver it.

87. Its response has been to purchase and type up commercially obtained schemes. There is limited evidence that the schemes are understood let alone embraced by the teachers involved, none of whom the school saw fit to ask to testify. There is significant evidence in witness statements from all three witnesses of resistance and difficulty, such that the head teacher in charge has agreed to leave. It is hard to be sure, from the evidence given by Mrs Koppenheim, whether she truly understands that her role is more than the clerical role of putting a paper curriculum in place, or that those who manage her appreciate the levels of expertise required to adapt and transform these documents into classroom practice which is owned by those delivering it. Similarly it is hard to be sure that Mrs Koppenheim has the necessary authority in the school to drive through the comprehensive changes required to the curriculum.
88. The school's honest response, at times in its evidence (in particular the very frank thoughts of Rabbi Twerski), that it needs more time, is probably right. See for example paragraph 23 of his first statement: "the request is simply time to allow the curriculum to bed in. Realistically this will take a long time." What is perhaps less realistic is the complaint that it is for Ofsted or the respondent to provide more explicit help, for example in determining how much time is needed for the secular curriculum, or failing to alert the school to the changes to the standards in 2014. The school has to recognise that it is entrusted by the legislation to run a school according to its own values and standards so long as it can guarantee compliance with those demanded by Parliament in the act and Regulations. Freedom to do things the way it thinks fit is not compatible with the Regulator providing prescriptive guidance and support.
89. It is of note that when explicit guidance was provided by Ofsted, in terms of the detailed areas in which the curriculum and its delivery were deficient, Rabbi Lipschitz gave evidence that he thought this was less important than rectifying deficiencies in the physical aspects of the school. He thought, as we understand his evidence, that the Ofsted findings relating to the curriculum were an aberration, given the satisfactory rating in 2011. He all but admitted that he did not take the findings seriously. We also note the unrealistic promises in the grounds of appeal to have the new curriculum up and running by November 2015. The school leaders do not yet, in our view, understand or give appropriate priority to the requirements of the standards which relate to the curriculum, and that is primarily a failing of leadership which makes delivery more difficult than it needs to be.

#### Other findings

90. It is accepted that the Policy Statement on Safeguarding Children and Safe Recruitment and Child Protection refers at one point to out of date official guidance and that there is no designated safeguarding governor. We also note that Rabbi Twerski, the designated safeguarding officer, did not know of this requirement.
91. Appropriate careers guidance is required by the standards for pupils receiving secondary education, which includes Year 7. We had evidence of



implementation by way of Rabbi Twerski's first witness statement (paragraph 48) where he said that he had met with the relevant teacher and would consider how to address the perception that the policy did not meet the standard. We also note evidence from Ofsted inspections that pupils showed limited understanding of the range of jobs or careers open to them as adults.

### **The standards**

92. Our decision must relate to the standards as approved by Parliament. We cannot place weight on the complaint that these standards have changed, however strongly felt, nor does it assist the school to argue that the way in which they have changed disadvantages this community. We nevertheless understand Rabbi Twerski's view expressed in his first witness statement at paragraph 2: "In many ways the requirements of the DfE are against beliefs of the community".
93. We accept Mr Greatorex's submission that we are not concerned with how well standards are met, and the question is whether or not they are met. We presume that the shortcomings he acknowledges in his written submissions relate to the work to be done to show they are well met, not acceptance on his part that they are not met. It must also be in this context that we are to understand his submission that "if parents wish to send their child to a school which, judged by the standards of other schools might be said to be found wanting .. the state respects that right." He cannot intend to say that the state respects the right to deliver such parents an education which does not meet the standards in regulations. Children of the Chassidic community who attend an independent school have the same right to an education which meets the standards set for independent schools as any other child attending any other independent school, and a school serving that community has a legal obligation to provide it as a condition of registration.
94. Comparisons in Mr Greatorex's submissions warning the Tribunal of the dangers of strict interpretation of British values, and comparing Ofsted's attitude to that of the US House un-American Activities Committee in the 1950s in the US, were, in our view, wide of the target. We are not aware of any hidden agendas or evidence which implies attempts to repress difference. In any event, the standards form a part of English law and our task is to determine whether they are met.
95. We have made some broad findings already. We do not, in this part of the decision, concentrate on positive developments. We have to focus on standards the respondent says are not met.
96. In summary the areas where we have found concerns, or where evidence has not been provided to dispute previous Ofsted findings, are the following:
  - The school does not acknowledge to pupils the existence of certain protected characteristics;
  - It is able to tell pupils of the existence of other faiths, but not anything about them
  - It has adopted, but only in small parts begun to implement, a new and secular curriculum and plans to give it more time in the pupil's day
  - Teaching quality is inconsistent and pupils are not always appropriately challenged
  - The school will not allow pupils to see images of females which it deems immodest
  - (Agreed by the parties) EYFS staff are not yet qualified

- Governor checks have not been completed

97. The standards which must be met are set out below. We omit those which now do not appear in the most recent Scott Schdeule. We do not omit Standard 10 because, though not now in dispute, the Tribunal itself has significant concerns.

## PART1

### *Quality of Education Provided*

#### 2.—

(1) The standard in this paragraph is met if —

(a) the proprietor ensures that a written policy on the curriculum, supported by appropriate plans and schemes of work, which provides for the matters specified in sub-paragraph (2) is drawn up and implemented effectively; and

(b) the written policy, plans and schemes of work—

(i) take into account the ages, aptitudes and needs of all pupils, including those pupils with an EHC plan; and

(ii) do not undermine the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

(2) (a) full-time supervised education for pupils of compulsory school age (construed in accordance with section 8 of the Education Act 1996), which gives pupils experience in linguistic, mathematical, scientific, technological, human and social, physical and aesthetic and creative education;

(d) personal, social, health and economic education which—

(i) reflects the school's aim and ethos; and

(ii) encourages respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act(a);

(e) for pupils receiving secondary education, access to accurate, up-to-date careers guidance that—

(i) is presented in an impartial manner;

(ii) enables them to make informed choices about a broad range of career options; and

(iii) helps to encourage them to fulfil their potential;

(f) where the school has pupils below compulsory school age, a programme of activities which is appropriate to their educational needs in relation to personal, social, emotional and physical development and communication and language skills;

(g) where the school has pupils above compulsory school age, a programme of activities which is appropriate to their needs;

(h) that all pupils have the opportunity to learn and make progress; and

(i) effective preparation of pupils for the opportunities, responsibilities and experiences of life in British society.

3. The standard in this paragraph is met if the proprietor ensures that the teaching at the school—

(a) enables pupils to acquire new knowledge and make good progress according to their ability so that they increase their understanding and develop their skills in the subjects taught;

(b) fosters in pupils self-motivation, the application of intellectual, physical and creative effort, interest in their work and the ability to think and learn for themselves;

(c) involves well planned lessons and effective teaching methods, activities and management of class time;

(d) shows a good understanding of the aptitudes, needs and prior attainments of the pupils, and ensures that these are taken into account in the planning of lessons;

(e) demonstrates good knowledge and understanding of the subject matter being taught;

(f) utilises effectively classroom resources of a good quality, quantity and range;

(g) demonstrates that a framework is in place to assess pupils' work regularly and thoroughly and use information from that assessment to plan teaching so that pupils can progress;

4. The standard in this paragraph is met where the proprietor ensures that a framework for pupil performance to be evaluated, by reference to the school's own aims as provided to parents or national norms, or to both, is in place.

## PART 2

### *Spiritual, moral, social and cultural development of pupils*

5. The standard about the spiritual, moral, social and cultural development of pupils at the school is met if the proprietor—

(a) actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;

...

(iv) enable pupils to acquire a broad general knowledge of and respect for public institutions and services in England;

(v) further tolerance and harmony between different cultural traditions by enabling pupils to acquire an appreciation of and respect for their own and other cultures;

(vi) encourage respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act; and

(vii) encourage respect for democracy and support for

participation in the democratic process, including respect for the basis on which the law is made and applied in England;

### PART 3

#### *Welfare, health and safety of pupils*

6. The standards about the welfare, health and safety of pupils at the school are those contained in this Part.

7. The standard in this paragraph is met if the proprietor ensures that—

(a) arrangements are made to safeguard and promote the welfare of pupils at the school; and

(b) such arrangements have regard to any guidance issued by the Secretary of State.

10. The standard in this paragraph is met if the proprietor ensures that bullying at the school is prevented in so far as reasonably practicable, by the drawing up and implementation of an effective anti-bullying strategy.

...

### PART 4

#### *Suitability of staff, supply staff, and proprietors*

17. The standards about the suitability of staff, supply staff, and proprietors are those contained in this Part.

18.—(1) The standard in this paragraph relates to the suitability of persons appointed as members of staff at the school, other than the proprietor and supply staff.

(2) The standard in this paragraph is met if—

(a) no such person is barred from regulated activity relating to children in accordance with

section 3(2) of the 2006 Act where that person is or will be engaging in activity which is regulated activity within the meaning of Part 1 of Schedule 4 to that Act;

(b) no such person carries out work, or intends to carry out work, at the school in contravention of a prohibition order, an interim prohibition order, or any direction made under section 128 of the 2008 Act or section 142 of the 2002 Act, or any disqualification, prohibition or restriction which takes effect as if contained in either such direction;

(c) the proprietor carries out appropriate checks to confirm in respect of each such person—

(i) the person's identity;

(ii) the person's medical fitness;

(iii) the person's right to work in the United Kingdom; and

- (iv) where appropriate, the person's qualifications;
  - (d) the proprietor ensures that, where relevant to any such person, an enhanced criminal record check is made in respect of that person and an enhanced criminal record certificate is obtained before or as soon as practicable after that person's appointment;
  - (e) in the case of any person for whom, by reason of that person living or having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish the person's suitability to work in a school, such further checks are made as the proprietor considers appropriate, having regard to any guidance issued by the Secretary of State;...
- (3) The checks referred to in sub-paragraphs (2)(c) and (except where sub-paragraph (4) applies)
- (2)(e) must be completed before a person's appointment.

## PART 8

### *Quality of leadership in and management of schools*

34.—(1) The standard about the quality of leadership and management is met if the proprietor ensures that persons with leadership and management responsibilities at the school—

- (a) demonstrate good skills and knowledge appropriate to their role so that the independent school standards are met consistently;
- (b) fulfil their responsibilities effectively so that the independent school standards are met consistently; and
- (c) actively promote the well-being of pupils.

(2) For the purposes of paragraph (1)(c) "well-being" means well-being within the meaning of section 10(2) of the Children Act 2004(a).

98. In relation to the appellant's submission that all standards save the EYFS qualification standard are met, we make the following findings

Standards 2(1)(a), 2(1)(b)(i), 2(2)(a)(b)(d)(e)(ii) and (iii) (f) (i) and (h), 3(a), 3(b), 3(c), 3(d), 3(e),3(g) 3(f) and 4.

These standards are not met.

There is not yet a written curriculum policy with appropriate plans and schemes of work which is being effectively implemented across the list of subject areas specified in 2(1)(a) or adequate evidence of progress by pupils in those curriculum areas.

The school does not have a programme of activities appropriately addressing the pupils' needs in relation to personal, social, emotional and physical development because there is no PHSE policy for the Early Years within the secular curriculum.

In so far as it is set out within the schemes of work, we can have no

confidence in provision matching those schemes for the reasons set out above.

The opportunity to make appropriate progress is not demonstrated while the curriculum map is not being applied and reliable systematic evidence of pupil progress is not obtained.

The new assessment framework does not yet cover all subjects and there is limited evidence of its implementation.

The preparation for adult life in British society is inadequate, not least because of the failure to allow pupils to see unedited images showing women and girls in everyday situations. Evidence that women in a range of roles are encountered outside school does not cover this as a matter the school has to address. Evidence of quality of teaching observed by Ofsted was not rebutted by any evidence to the contrary and the level of challenge to pupils was observed to be low.

The new curriculum has not been properly tailored to the needs of the pupils nor is there evidence that it is yet understood and capable of being implemented by teachers.

It is acknowledged that it is not yet being implemented and that inadequate time is currently available to teach the secular curriculum.

Staff are admitted to be struggling with the secular curriculum.

Standards 2(2)(d)(ii) and 5(b)(v)

These standards are not met.

In obscuring images of parts of the bodies of women and girls who are dressed in a manner which pupils will encounter, because this is seen as impure, the school fails to encourage respect for women and girls for reasons of their gender. Although the particular books have been withdrawn, the evidence that pupils learn in school that women showing bare arms and legs are impure remains a concern. Such messages, in addition, fail to prepare pupils for their responsibilities in British society (relevant to Standard 292)(i) above).

The school agrees it does not acknowledge to pupils, or enable them to acquire any awareness of, that some people are different because of sexual orientation or gender reassignment. This prevents the school from encouraging respect for people who have such characteristics. People with these characteristics play a full and equal part in British society and pupils are not prepared for the experiences of participating in a society where, for example, families have same sex parents, same sex people can marry or form civil partnerships, or people have gender reassignment.

The fact that there is no evidence of pupils showing disrespect for such people is extremely positive, but it does not address this deficiency, since respect based on deliberate ignorance cannot in the long term equip pupils as members of a society in which such people have a right to be respected and not discriminated against for having a protected characteristic. The school raises the important question of how this is to be done with children of the age 3 to 13. This is a matter for professional judgement, but if difficulties are foreseen that does not mean the standards have to be interpreted as meaning they only apply to children of a particular age. Put simply, it is not the job of the Tribunal and it is not the job of the school to decide when the encouragement of respect, including having regard to protected characteristics, starts. It applies to all independent schools.

Further, it is relevant that there may be pupils in the school who themselves

have, or may have, such characteristics (or in the case of gender reassignment, a need to understand such characteristics because of their own gender confusion). Such pupils could themselves be denied respect, because neither they, their peers nor their teachers will be able to acknowledge the protected characteristic.

We accept the fundamental difficulty this presents to the school, but the standards which Parliament has laid down are explicit. As is made clear in guidance of November 2014m, *Promoting fundamental British values as part of SMSC in schools*, they do not require promotion of such characteristics, but they do demand their acknowledgement (the wording “particular regard to” is clear) of the existence of all of the characteristics. Pupils will not be equipped to enter modern British society, which accepts as part of its diversity civil partnerships, gay marriage, families with same sex parents, and acceptance of transgender persons in their assigned gender. Mr Greatorex’s submission that because sex education is not compulsory the standards cannot have been intended to make pupils aware that respect extends to a protected characteristic based on sexual orientation or gender reassignment is not logical. It is not necessary to provide information about sex to inform pupils that some people have same sex relationships or can have a reassigned gender and are to be respected.

We also note the inconsistency of the school’s evidence. Its welfare and safeguarding policy requires it not to discriminate on the basis of other protected characteristics. Rabbi Twerski made clear, he says, in his assembly in January 2016 that pupils should not discriminate on grounds of faith or culture, which implies he agrees he needs to tell pupils about differences which can give rise to discrimination. There is no lawful basis for it to choose which of these characteristics deserve particular regard. They all do because that is what the standard explicitly requires.

We agree with the respondent that the obligation is to make pupils aware, in an age-appropriate way. We take note of the guidance of November 2014 *Promoting fundamental British values as part of SMSC in schools*. It makes explicit that pupils should understand how the rule of law protects individual citizens, and that pupils should be aware of the difference between religious law and the law of the land. Further, in advice *Improving the spiritual, moral, social and cultural (SMSC) development of pupils: supplementary information* of November 2014 points to the need for respect (by which it is implied that the respect is to be promoted) for “other people, even if they choose to follow a lifestyle that one would not choose to follow oneself”. Leaving aside the unfortunate wording that suggests sexual orientation and gender reassignment are lifestyle choices, it is clear that the object of the standard is to require some knowledge of those so-called choices and lifestyles.

In our view the standard is not ambiguous and a school must encourage respect in relation to each of the protected characteristics. It is no defence to say that it is incompatible with the faith of the institution, nor to argue that these are matters of sex education and no sex education is required in the standards. Nor is it a defence to point to the ages of the children. The requirement does not specify how the particular regard is to be promoted, and an independent school is free to determine how to do that in an age appropriate way.

Standard 2(2)(e)

This standard is not met.

Evidence of the type of jobs held by alumni (Rabbi Twerski’s first witness

statement, exhibit 1) does not in itself show careers guidance. We noted his intention to talk to teachers to address the “perceived” problem. We note the submission that in a normal secondary school cohort this might be addressed after Year 7. Nevertheless the standard is not yet met because the evidence of Rabbi Twerski, which is all we have, relates to future intentions.

Standard 5(a).

This standard is not met.

The school acknowledges that some other faiths exist. The evidence is not compelling: all we have is the following instruction in note of an assembly by Rabbi Twerski in January 2016, to treat equally everyone whether “Christian, Muslim, Sikh, Chinese, African, everyone”. He was able to remember little about this assembly, including what he had said beyond this brief note. Respect for and tolerance of those with different faiths requires something which goes further, and requires at least an explanation which pupils will understand so that they know that members of different faiths have different beliefs, customs and values, and something about those matters.

Standard 5(b)(iv).

This standard is not met.

The school relies on a list of assemblies and the fact that in June 2015 this standard was met, together with a Proud to be British display. This is not adequate to rebut the findings on Ofsted’s visit, detailed in the report and unchallenged in terms of accuracy, of limited knowledge by pupils of public institutions and services.

Standard 5(b)(v)

This standard is not met.

The link between faith and culture within many communities means pupils cannot appreciate other cultures where the culture and faith are closely linked and they have no knowledge of those aspects derived from faith. An example of culture where faith and culture cannot be separated is, in fact, the Chassidic community itself. To learn about the culture without any information about the faith would be impossible. Because they cannot be taught anything about other faiths, pupils are not able to acquire the appreciation of other cultures required by this standard.

Standard 7.

This standard is not met.

The appellant has provided a safeguarding and welfare policy which the respondent accepts as satisfactory other than it refers to out of date guidance. Rabbi Twerski acknowledged in the hearing that the school does not have a designated safeguarding governor and had not previously known of that requirement. The latter failure is, in our view, an indication of the importance of understanding safeguarding as well as having a paper policy, and makes more important the failure to ensure the policy is entirely up to date. Given the lack of understanding of detail, and failure to mention the most recent guidance, it is not safe to conclude that the up to date guidance has been carefully considered.

Standard 10.

The standard is met but the Tribunal has concerns.

The respondent accepts that the anti-bullying strategies are appropriate. We are however concerned that bullying in relation to unacknowledged protected characteristics will be worse if neither the perpetrator nor the victim knows



anything about those characteristics, or that they are to be respected; and if it comes to the attention of the school that underlying cause cannot be addressed. We also flag up our concerns that the school maintains there is no evidence of bullying in the school. In a school community of this size this is not very likely and the lack of evidence could even mask a problem which the school cannot deal with because it is not reported.

Standard 14, EYFS 3.23.

We have not cited the EYFS requirement because the failure to meet this standard is not disputed. Until staff in the early years team obtain the required qualification this standard is not met. The appellant in submissions treats this as if it is a relatively minor matter, which it is not. There is no justification for employing insufficient staff with the essential qualification, and the fact that the required number are now enrolled on the relevant NVQ course is belated. There is no guarantee that they will pass.

Standard 18(2)(e) 20(6)(b)

This standard is not met.

While the appellant claims the standard is met, it is also acknowledged that appropriate checks have not yet been carried out in relation to trustees.

Standard 34.

This standard is not met.

The senior leadership is responsible for all the above failures and has failed to discharge its responsibilities. We cannot identify anyone in a senior position with full understanding and the time and authority to ensure the school systematically and urgently addresses the failures identified in inspections (and, now, in this decision). It misguidedly relied on a historic finding that provision was satisfactory, and failed to take seriously, when given the opportunity, the need to produce an action plan covering all the work that was needed. Change has begun to be made, and this is acknowledged, in the face of the respondent resorting to the present restriction. The school has not yet appointed staff with sufficient expertise to manage the changes required. It has previously failed to grasp the magnitude of the task, suggesting that commercial materials can be converted to an implemented new curriculum within weeks and inviting the Tribunal to make findings of standards being met when its own curriculum advisor and the relevant head master simultaneously told us that the school still has a long way to go. There is as yet no evidence that anyone is managing the process of change, Rabbi Twerski not having the time and Mrs Koppenheim not managing the teachers who need to deliver the curriculum. Leaders have yet to accept that the standards are not negotiable. It is for the leaders to identify a means of meeting the standards, including those which they currently identify as incompatible with the school's fundamental ethos.

**Discretion**

99. The respondent has on many occasions told the appellant in letters that failure to adhere to the standards is likely to lead to deregistration. In fact, no such action has been taken, and the threat has been empty. In the ministerial advice the Secretary of State was recommended to apply a restriction rather than to deregister the school. The respondent has made plain a preference for an order which puts pressure on the school while keeping open the possibility at any time that the school can apply at short notice for the restriction to be lifted. We are of the view that the present failures would be sufficient for a more severe decision, but that is not a matter for this appeal.

100. The school submits, if the standards are found not to be met, that it needs more time, and it acknowledges that the pressure of the present order has been effective in leading to the changes introduced to date. Mr Greatorex asked, in fact, for an extension of a further academic year to the date when the restriction would come into effect (which would be two years from the original date).
101. He also submits that the intake into the Early Years would not be affected by the standards not being met. We do not accept that submission as wholly accurate. Some failures do relate to those children. These children will progress. The school may admit pupils of any permitted age, such as those who move into the area.
102. However, in favour of the argument that more time is needed, we are still far from persuaded that the school has applied itself to the scale of the changes required. There is no senior manager currently in place who has the authority and understanding to develop the secular curriculum and train the staff to the overall standard required. Few of the curriculum improvements have been shown to have been implemented. The new head teacher has yet to be identified, and the same applies to the new classroom teacher whose appointment must take place before the secular curriculum time can be increased. The chances of standards being met by October 2016 are not high, and Mr Greatorex is realistic in asking for more time.
103. However, we have two reasons for not agreeing to allow more time. The first is that the extent of failure to meet standards is serious, and we believe only with the pressure of the sanction will the school's leaders prioritise the work needed. The second relates to the protected characteristics. Even if we allowed additional time to meet the other standards, we have found that the school does not meet those standards which refer to having regard to particular protected characteristics. This cannot be addressed by allowing more time for compliance.
104. We find the restriction is proportionate and necessary. We bear in mind that the school can apply for the condition to be lifted following reinspection and the respondent's witnesses said such a reinspection would be available at very short notice. In the long run, by ensuring that the school takes all necessary steps to adhere to the standards, it can avoid the alternative outcome, cancellation of registration. This would have a very serious effect on families in the community this school serves.

#### **Order**

The appeal is dismissed.

**Judge Hugh Brayne  
Primary Health Lists/Care Standards  
First-tier Tribunal (Health Education and Social Care)**

**Dated: 26 April 2016**