Dear Meg

Following my appearance before the Public Accounts Committee on Monday 15 January, I thought it might be helpful to provide you with some more information regarding the injunction that Learndirect obtained against Ofsted.

When making an injunction, it is usual for the court to adopt the wording requested by a claimant in their application. The judge followed usual practice in this case by making the order in the exact terms requested by Learndirect, even though that wording imposed unusually stringent restrictions. I am attaching a copy of the order for your information. The exact wording is:

No report of or relating to this claim and in whatever form shall, until further notice, name or refer to such a way that can be identified, any individual referred to in the materials in the case or mentioned in court or the education provider that is the subject of these proceedings.

This wording prevented Ofsted from making any report, in whatever form, of, or relating to the Learndirect claim that named the provider. Ofsted’s understanding of the order was that any report made to another Department or agency which named Learndirect or its employees was capable of being a breach of the injunction.

I used the term “super-injunction” in my evidence to the Committee because the restriction requested by Learndirect and imposed by the court was much wider than we would normally expect, because in practice it prohibited any mention of the claim itself which in effect would have identified the parties.

In another recent injunction made by the court the restriction wording was that: The Defendant is restrained from publishing its inspection report on the Claimant school until the claim is determined or further order. This is an example of the restriction on publication that we would usually expect to see. If the claimant also seeks anonymity in the proceedings such an injunction may also say that no one (including the media)
may publish details of the claimant or their employees until further order. In the last two years, four orders restricting publication of Ofsted’s inspection reports have been made by the courts (including the one in Learndirect). Applications for similar orders were refused in three other cases. The restriction requested by Learndirect was more stringent than those requested in any of the other cases.

It is fair to say that, despite the restriction on Ofsted, the Department and ESFA may have become aware of the details of the judicial review challenge. If that was so, it may have been as a result of information provided to them by Learndirect. However this does not alter the position I communicated to the Committee that while the court order was in place Ofsted was not free to discuss Learndirect with the Department or ESFA.

Unfortunately, shortly after the injunction was granted, Ofsted did, in error, confirm to FE Week that the inspection report would not be published until after the conclusion of a judicial review. The provision of this information did breach the injunction, and as soon as we were made aware of our mistake, we worked with FE Week to ensure the story was taken down.

If you would like any further information on this, please let me know.

Yours sincerely

Amanda Spielman

Amanda Spielman
Her Majesty’s Chief Inspector