DECISION No. 415

CHILDREN ACT 1989

REGISTERED HOMES TRIBUNAL

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B E T W E E N :

PROSPECTS CARE SERVICES LTD

Appellant

and

SECRETARY OF STATE FOR HEALTH

Respondent

Before: Mr Mark Rowland (Chairman)
Mr Christopher Wakefield
Mr Frank Watts

Hearing in Bristol on 10, 11, 12, 13, 14, 17, 18, 19 and 20 July and in London on 18 and 19 September 2000 of an Appeal against the decision of the Secretary of State for Health dated 31 March 2000 to cancel the registration under section 60 of the Children Act 1989 of seven voluntary homes carried on by Prospects Care Services Ltd at

3 Lyde Road, Yeovil, Somerset,
Linden House, Broad Street, Somerton, Somerset,
Ravensglade Cottage, Badyant, Whitelackington, Ilminster, Somerset,
The Den, 63 Bancombe Road, Somerton, Somerset,
The Anchorage, Thorney, Langport, Somerset,
Ashden, 3 Longcroft Road, Yeovil, Somerset,
Annod, Marden, Little Marston Road, Marston Magna, Somerset.

Representation:

For the Respondent:

Miss Sarah Moore of counsel, instructed by the Solicitor to the Departments of Social Security and Health

For the Appellant:

(in Bristol) Mr Richard Lovegrove of counsel, instructed by Messrs. Clarke Willmott & Clarke, Bristol
(in London) Mr Stephen Hyland, managing director of Prospects Care Services Ltd

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DECISION

It is the unanimous decision of the Tribunal that the Appeal is allowed in respect of all seven homes and that the Secretary of State's decision shall not have effect (although The Anchorage and Annod are to be removed from the register).

REASONS FOR DECISION

Introduction

The parties

Prospects Care Services Ltd is a company of which Mr Stephen Hyland is the sole director. He and his wife, who is the company secretary, are the only shareholders. The company is registered as a not-for-profit organisation and trades as The Prospects Organisation.

Mr Hyland was formerly a karate instructor and he still has some involvement with the sport. His interest in working with and for children led to his taking a post as a teaching assistant at Sedgemoor College. Subsequently, on a self-employed basis, he worked for the college in various roles - as a care assistant, fostering, and giving violence management training. He became concerned at the way that young people with exceptional behavioural difficulties fared in the child care system. With the help of a social worker and a timely inheritance he set up The Prospects Organisation. There have been as many as 80 staff employed at a time to care for up to 10 very disturbed young people. Mr Hyland has clearly been the driving force within the organisation but there has always been a qualified and experienced social worker as head of care. Mr Keith Biggs has occupied that position since 1997.

Mr Hyland was concerned at the number of placement breakdowns there were for the most difficult young people. He reasoned that, in the short term, one could not expect such young people to behave in other than a difficult manner so that it was unreasonable to place them in a home which would reject them when they inevitably behaved in that way. The Prospects Organisation expects difficult behaviour and has a staff group that is trained to cope with it. The young person is accepted despite his or her behaviour, which may be extremely violent. This approach requires the young person to be controlled. The young people live in separate homes spread over quite a large part of Somerset and are "cocooned" and surrounded by good role models. Some require continual supervision by two members of staff for some time after they arrive. Physical restraint to prevent a young person from significantly injuring himself or herself or others or causing serious damage to property occurs more frequently than would be necessary or acceptable in most children's homes. Mr Hyland has developed techniques and trained the staff. Language is used to try and avoid the necessity for physical restraint, it is used to calm a young person while he or she is being physically restrained and it is used to show the young person that he or she is still cared for after the restraint has ceased. It is expected that the behaviour will gradually improve as a result of the young people developing self-control. Meanwhile, other aspects of the young person's development are pursued. There is an Interdependence Training Programme. Also, The Prospects Organisation has its own education department and it is made very clear to the young people that the expectation is that they *will* learn. Mr Hyland is justifiably proud of the educational attainments of young people who have previously been school refusers. The Prospects Organisation's approach does not always work, but it appears to have done so with many very badly disturbed young people.

The Prospects Organisation have had children placed with them on a fostering basis but, after a certain amount of correspondence with various authorities about whether registration was required and, if so, by whom, it was accepted in about 1996 that The Prospects Organisation was a "voluntary organisation" and that each of the homes accommodating the young people was a "voluntary home" and should be registered by the Secretary of State under section 60 of the Children Act 1989.

As a registration authority, the Secretary of State acts through the Social Services Inspectorate who carry out the necessary inspections. The Social Services Inspectorate describe their four main functions as being to provide professional advice to Ministers and central government departments on all matters relating to the personal social services, to assist local government, voluntary organisations and private agencies in the planning and delivery of effective and efficient social care services, to run a national programme of inspections, evaluating the quality of services experienced by users and carers and to monitor the implementation of Government policy for the personal social services.

The procedural history

The poor relationship between the parties is a matter we shall consider later in this decision. It is sufficient here to say that it is plain that the Inspectorate became fed up with Mr Hyland at an early stage in their relationship. Mr Hyland considers the appointment of Mr Balfe as senior inspector in Bristol as the watershed but it seems to us that that is merely because his predecessor hid his irritation. The last announced inspection of the homes was in April and May 1998. There was an unannounced inspection in March 1999 led by Mr Colin Bowker. It generated an indication that there would be a formal complaint against Mr Bowker. On 1 October 1999, Mr Balfe wrote to The Prospects Organisation saying that consideration was being given to the continued registration of the homes. On 23 November 1999, Mr Bowker arrived to lead another unannounced inspection by four inspectors and a lay assessor. (While we appreciate that the homes were spread out and that there was a large staff group, inspection of what was equivalent to one seven-bed children's home by such a large group at least gives the appearance of being a bit heavy-handed.) Mr Hyland objected to Mr Bowker, who was withdrawn. Mr Steve Hart then led the inspection, which took place over the next few days and on 6 and 7 December. There was something of an influenza epidemic at the time and Mr Hyland was away, as were some members of staff. The inspectors formed the view that The Prospects Organisation were being obstructive. On 10 December, Mr Hart asked Mr Hyland to supply certain documents but there was no meeting to discuss the findings of the inspection. Mr Hart rejected an offer by Mr Hyland to travel to London with any members of staff that he might wish to interview on the ground that he did not consider the offer to be genuine. The draft report was faxed to The Prospects Organisation on 11 January 2000, when Mr Hyland was on holiday abroad. It included a recommendation to the Secretary of State that the registration of the homes be cancelled. The organisation were given until 17 January to submit comments as to the report's factual accuracy. On the morning of 17 January, Mr Hyland asked for an extension of the time for making comments. In view of the fact that The Prospects Organisation had sent five letters of an average length of six pages since 11 January, the Chief Inspector considered that they had had sufficient time but nonetheless extended the deadline until midday on 18

January. Mr Hyland commented on the process but not on matters of factual accuracy. The report was formally issued on 19 January.

On 25 January 2000, the Secretary of State issued a notice of proposal to cancel the registration of the homes. The reasons were given at some length but were nonetheless vague in a number of respects. On 17 March 2000, Mr Hyland attended with counsel to make representations as to why the proposal should not be adopted. It appears that the Inspectorate had in the meantime declined to provide particulars of the several unparticularised allegations in the notice. Not surprisingly counsel complained about the lack of particulars and about the apparent approach of the Secretary of State that it did not matter because Mr Hyland could appeal against an adverse decision and particulars would be forthcoming at that stage, but she elicited no response. On 31 March 2000, the Secretary of State adopted the proposal save for one small part of the reasoning. The Prospects Organisation immediately lodged an appeal and sought again the particulars and also an expedited hearing because the effect of the case hanging over them was that local authorities were not placing children with them. The Secretary of State declined to consent to the minimum six weeks notice of hearing, provided for by rule 5(1) of the Registered Homes Tribunal Rules 1985, being abridged and it appears to have been only the threat of a preliminary hearing before the chairman that induced the Secretary of State to produce some particulars on 22 May 2000. Even then it was said that exhaustive particulars could not be provided because investigations were ongoing. Eventually, proper grounds for the cancellation with full particulars were served on Friday, 9 June 2000, the last day allowed under the 1985 Rules.

The grounds raised a number of entirely new issues and it became apparent during the course of the hearing that the reason for that was that the Inspectorate had interviewed a number of the witnesses for the first time *after* the cancellation decision had been made and the appeal had been lodged. One of the effects of this was that there were more witnesses than anticipated and the time allowed for the hearing in July proved to be too short, notwithstanding that the chairman had doubled the Secretary of State's time estimate. In the end, The Prospects Organisation elected not to call most of their proposed witnesses so that the case could be concluded as quickly as possible.

The process of cancellation seems to us to have been conducted in a most unsatisfactory manner. We are particularly concerned at the failure adequately to identify the grounds for cancellation both before and after the notice of proposal was issued.

During the hearing, it was suggested to the inspectors that, before the inspection in November and December 1999, they had decided to have the homes closed. Plainly they had that possibility in mind because the letter of 1 October 1999 said as much. As far as it went, that letter was a perfectly proper warning. We accept, too, that had the inspectors found everything to their satisfaction during their inspection they would have been pleased, but that was never a realistic possibility because, in our view, they had given up any hope of The Prospects Organisation dealing with the matters about which they were concerned. They were entitled to have low expectations in view of the history of the case but little of their advice had been calculated to secure change and they had never tried a proper focused threat of cancellation or other formal action before recommending the issue of a notice of proposal. This was not a case where the

matters complained of were so serious that urgent action had to be taken. There was time to escalate the pressure on The Prospects Organisation. Whether before or after the inspection, the inspectors ought to have identified clearly those issues that were, in their view, "cancellation issues" and ought to have made it clear what they expected to be done about them and have given a clear deadline for action. At least The Prospects Organisation would then have understood what the issues were.

As it was, that was not even clear from the notice of proposal. In a letter dated 8 June 2000 to the tribunal chairman explaining the delay in providing particulars, the Secretary of State's solicitor explained that the Secretary of State relied heavily (although not solely) on the Inspectorate's reports in which specific details are omitted so as, for instance, to protect the identity of children. She said that the details "are locked in the notes and/or the memories of the individual Inspectors" and implied that it took some time to unlock them. She also said that the Secretary of State relied on verbal reports by local authority officers that might not refer to specific children so that the details had subsequently to be extracted from the authorities. It is not necessary for the Inspectorate to have witness statements from all potential witnesses before the Secretary of State makes a decision (although sometimes obtaining a reasonably contemporaneous statement might be a good idea) but it *is* necessary for them to obtain, and furnish to the Secretary of State, sufficient details of those incidents upon which they wish the Secretary of State to rely to enable the Secretary of State to make an informed judgement and to provide adequate particulars in the notice of proposal. The Inspectorate might consider doing what other registration units do which is to submit to the registration authority a separate report recommending cancellation that is entirely separate from the inspection report available to the public from which specific details are quite properly omitted. The need to provide sufficient details to enable an incident to be identified or a concern to be understood arises from the right of those carrying on a home to make representations before a proposal to cancel registration is adopted. It is to be presumed that Parliament intended that right to be an effective right and it cannot be effective if those making representations do not know the case they have to meet. Of course, if the inspectors have already, before the notice of proposal is issued, made focused demands on those carrying on a home, both parties will already be clear as to the issues.

The lack of particulars in the notice of proposal was carried into the decision. It seems extraordinary in this day and age that there is no statutory duty on a registration authority to provide reasons for a decision until a month before the date fixed for the hearing of an appeal against the decision. In practice most authorities do provide reasons when the decision is issued and the Secretary of State no doubt considered that he had done so in this case. However, if insufficient particulars are given, reasons are inadequate. Proper reasons for the decision in this case were not given until 9 June 2000. They then included matters that were not known to the Secretary of State at the time the decision was made and were therefore not strictly speaking reasons for the decision at all. This, however, is normal practice because tribunals tend to regard the statement of reasons for the decision as a statement of reasons for defending the decision. It makes pragmatic sense to take this approach because it avoids a multiplicity of proceedings and it is desirable that matters of concern to a registration authority, coming to their attention while an appeal is pending and affecting the welfare of those living in registered homes, should be considered as

quickly as possible. However, in this case, a number of the witnesses had been approached for the first time by the Inspectorate (rather than them approaching the Inspectorate) after the decision to cancel had been taken and the Inspectorate appear to have been using the time allowed before the statement of reasons had to be served to construct an entirely new additional case against The Prospects Organisation.

Miss Moore submitted that the Secretary of State had acted within the 1985 Rules and that is so, but that merely serves to emphasise how unsatisfactory the Rules are. If proper reasons for a decision were required at an earlier stage, it would be possible to hear appeals much more quickly. This is of the utmost importance to those carrying on homes. Naturally, local authorities are reluctant to place children in a home that may be about to have its registration terminated and, indeed children may be removed from such a home, as has happened here. A home may therefore get into severe financial difficulties while an appeal is pending and it is little consolation to those carrying on a home to win an appeal but lose the home. It is the Secretary of State for Health who is responsible for making rules for registered homes tribunals and the lack of action to amend the rules has been the subject of comment by the Council on Tribunals. It is not attractive to see the weaknesses of the rules being exploited by the Secretary of State. Whether it is appropriate for a potential party to proceedings before a tribunal to be responsible for making that tribunal's rules may be a matter to which some consideration will have to be given now that 2 October 2000 has passed.

The grounds for cancellation

By paragraph 1(4) of Schedule 5 to the Children Act 1989, registration of a voluntary home may be cancelled on the grounds that the conduct of the home is not in accordance with regulations made under paragraph 7 or is otherwise unsatisfactory. In her written final submissions, Miss Moore helpfully grouped the matters upon which the Secretary of State relied under a number of headings. We broadly adopt her scheme, with one or two exceptions. However, before we consider those grounds of cancellation, we must deal with a preliminary point raised by the fact that The Prospects Organisation no longer have an interest in two of the seven homes with which this appeal is concerned.

The Anchorage and Annod

After the July adjournment of the appeal, Mr Hyland wrote to the Department of Health stating that The Prospects Organisation had been forced by financial considerations to close two homes, The Anchorage and Annod. The leases had not been renewed. He wished the registration of those homes to be removed on that ground. The Department refused to remove the registration, taking the view that they should not do so while the appeal was pending.

Tribunals have differed as to how to deal with cases where a person who has carried on a home ceases to have any interest in the home while the appeal is pending. Miss Moore invited us to follow *Decision 376*. In that case, which arose under Part II of the Registered Homes Act 1984, it became apparent during the proceedings that the appellant had ceased to own the home *before* his registration was purportedly cancelled. The tribunal took the view that his registration had lapsed on the sale of

the home so that there was no registration to cancel and they allowed the appeal on that ground while making it clear that their decision did not mean that the appellant was still registered. However, they suggested, *obiter*, that a sale of a property *after* cancellation would not affect a decision to cancel and that a tribunal would still be required to consider the merits of the decision if neither party gave way. The rationale of the decision is that lack of legal interest in a home is not *per se* a matter going to the *fitness* of a person wishing to be registered but simply goes to his eligibility for registration.

That decision was given in ignorance of the decisions of the High Court in *Woodard v. North Somerset District Council* [1998] 1 F.L.R. 950 and *Jenkins v. Essex County Council* [1999] 1 F.L.R. 420 which both arose under Part X of the 1989 Act relating to child minding and day care of young children. In *Woodard*, the appellant had ceased to have an interest in the relevant premises *before* the local authority decided to refuse her application for registration on the ground of her unfitness. That was therefore not a decision on cancellation at all. The justices dismissed the appeal on the ground that the appellant was not eligible for registration. They did not record any decision as to her fitness. Bracewell J held that they had not erred in their approach. In *Jenkins*, the facts were rather different. There, the appellant had ceased to have an interest in the relevant premises *after* the local authority's decision to cancel her registration on the ground of her unfitness. The stipendiary magistrate decided that the appellant's unfitness had not been proved but nonetheless dismissed the appeal because she considered that she was obliged to do so in the light of *Woodard* and the lack of premises. Her decision was upheld by Sir Stephen Brown P.

The precise statutory basis for those decisions is a little obscure. Plainly the courts took the view that a lack of premises meant that a person could not be registered, but it is not clear whether they considered that grounds for “refusing to register” were limited to those set out in section 71(7) to (11) of the 1989 Act or whether they considered that lack of available premises was also a ground for "refusing to register" and therefore also a ground for cancellation (see section 74(1)(a) and (2)(a)). If the latter approach was taken, it easy to see why the appeals were dismissed, notwithstanding the lack of any finding of unfitness, although the decisions would have had the unfortunate effect of bringing the appellants within regulation 2(m)(iii) of the Disqualification for Caring for Children Regulations 1991. If, on the other hand, the former approach was taken, so that lack of available premises was considered not a ground for "refusing to register" or cancellation, but only a ground of non-eligibility for registration or one causing an existing registration to lapse (as was decided in *Decision 376*), the decisions to dismiss the appeals instead of allowing them are still explicable on the basis that in those cases, by contrast with the position in *Decision 376*, the appellants were not only challenging the decisions based on unfitness but were also seeking registration because they each hoped to recover the relevant premises.

Miss Moore drew our attention to a third decision of the High Court, *Craig v. Shropshire County Council* (unreported, February 18, 2000). In that case, the appellant had been carrying on a children’s home registered under Part VIII of the 1989 Act. She ceased to have any interest in the home *before* the local authority purported to cancel the registration of the home under paragraph 4(3) of Schedule 6 to the Act on the ground that the home was being carried on otherwise than in

accordance with the relevant requirements. Her appeal was dismissed by a registered homes tribunal (*Decision 375*) on the ground that there were no premises in existence at the time of the hearing before them. In doing so, the tribunal followed *Woodard* and *Jenkins* and they did not consider it necessary to make any finding as to whether the local authority had been right to conclude that the home had been carried on otherwise than in accordance with the relevant requirements. Maurice Kay J allowed an appeal against the tribunal's decision on the ground that registration could not be cancelled if the home was not being carried on at the date of cancellation. This decision is consistent with *Decision 376* (to which the Judge was referred but upon which he placed no reliance) but, once again, it was unnecessary for the Judge to consider the position where a person ceases to have an interest in the relevant premises *after* the cancellation decision. It was not suggested in *Craig* that the appellant was entitled to be registered once she had ceased to have an interest in the premises.

Maurice Kay J said, in *Craig*, that *Woodard* and *Jenkins* were "undoubtedly correct" but he distinguished them on the ground that "[w]hat is in issue in the present case is not whether the Home qualifies or is eligible for registration, but whether the Council can bring itself within paragraph 4(3) so as to set in motion the procedure which will lead to cancellation". A similar distinction arises in the present case. We, too, are not concerned with whether or not the two relevant homes are eligible for registration but are concerned only with the question whether the Secretary of State can bring himself within paragraph 1(4) of Schedule 5 to the 1989 Act in relation to those homes. Therefore, *Woodard* and *Jenkins* are also to be distinguished from the present case and we need not consider the reasoning of those decisions any further.

However, Maurice Kay J did record the concession of counsel for the appellant in *Craig* that "if the Home was still being carried on at the time of the decision to cancel but ceased to operate before the Tribunal hearing, there would have been no basis upon which the Appellant could have appealed to the Tribunal". There is no indication in the judgment as to why that concession was made. Counsel appears to have had in mind *Jenkins* but we consider that either he misunderstood the import of that decision or else he had failed to appreciate the grounds upon which it could be distinguished. In any event, we take the view that the concession is inconsistent with Maurice Kay J's reasoning. He decided that the tribunal had jurisdiction to hear an appeal from the registration authority that was not made within the authority's powers (for the purpose of declaring as much) because paragraph 8(1) of Schedule 6 (like paragraph 5 of Schedule 5 by virtue of which we are hearing this appeal) provided that an appeal against a registration authority's decision *shall* lie to a tribunal. It is not consistent with that approach to suggest that there should be no right of appeal against a decision that *was* within an authority's powers because it was made at a time when the home was being carried on.

Maurice Kay J pointed out that the consequences of cancellation of registration under paragraph 4(3) of Schedule 6 to the 1989 Act were "potentially catastrophic" because the appellant would be disqualified from fostering a child privately, and therefore from carrying on a children's home without consent which might be difficult to obtain (see section 65 of the Act, regulation 2(k) of the Disqualification for Caring for Children Regulations 1991 and paragraphs. 2.6 and 2.7 of *The Children Act 1989 Guidance and Regulations: Volume 8 - Private Fostering and Miscellaneous*). This is

extended to those wishing to carry on voluntary homes (see regulation 3(1) of the 1991 Regulations) and cancellation under paragraph 1(4) of Schedule 5 to the Act has the same effect (see regulation 2(h)(ii) of the 1991 Regulations). It seems to us that it is as important for a person to be able to challenge a cancellation where the appellant has ceased to have an interest in the premises *after* the date of cancellation as it is where he or she has ceased to have an interest in the premises *before* that date. The difference, of course, is that in the former case the tribunal must deal with the merits of the case and consider whether cancellation would be justified if the appellant still had an interest in the property and in the latter case the tribunal can decide simply that the registration had lapsed and there was no registration to cancel.

For these reasons, we accept Miss Moore's submission that the appeal in relation to the two homes no longer held by The Prospects Organisation continues in being. However, it is obvious that the homes can no longer be registered and have not been eligible for registration ever since the leases expired. Both *Decision 376* and *Craig* are based on the notion that lack of premises means that registration lapses without being cancelled. In the present case, the cancellation decision was suspended pending the appeal (paragraph 4(3) of Schedule 5 to the 1989 Act) so that registration continued. It seems to us that the registration in respect of the two relevant homes nevertheless lapsed when The Prospects Organisation ceased to have an interest in them, but that that did not affect the appeal which subsists to enable the tribunal to decide whether or not the cancellation decision in respect of those homes should be upheld for the purposes of the Disqualification for Caring for Children Regulations 1991.

Mr Hyland was therefore right to suggest that the two homes should have been removed from the register when the leases had not been renewed but Miss Moore was right to argue (in The Prospects Organisation's interests) that the appeal in relation to those homes should not be dismissed simply on that ground. The appeal must, in respect of all seven homes, be considered in the light of the way the homes were conducted.

The conduct of Mr Hyland towards the young people

We agree with Miss Moore that these are the most serious allegations.

The treatment of ET

ET suffered from anorexia nervosa. Notwithstanding that The Prospects Organisation did not hold themselves out as specialists in dealing with severe eating disorders, it was decided to place her with the organisation on her discharge from the adolescent psychiatric unit at Leigh House. The view of Dr Carolyn Coverley, her consultant child and adolescent psychiatrist, was that ET was controlling her eating disorder and she was only placed with The Prospects Organisation because she had other difficulties and was considered to require 24-hour supervision to avoid her fatally harming herself. Leigh House knew of previous placements there that had apparently been successful. ET arrived on 31 July 1998 weighing 42 kg which was a good weight for her. On 2 September, Dr Coverley received from ET's mother, who had just visited ET, a letter reporting that ET had lost 4 kg. Dr Coverley had not been

notified of this weight loss by The Prospects Organisation. On 2 September 1998, she telephoned Keith Biggs who informed her that ET's weight was then down to 37 kg. Dr Coverley describes the loss of weight as "staggering". On 8 September, a review meeting was held and, on 11 September, ET was transferred to a hospital where she would be under the close care of Dr Coverley.

This unhappy episode has given rise to a number of specific allegations. Firstly, The Prospects Organisation ought to have notified Dr Coverley of the weight loss. Mr Biggs accepted that that was so and accepted that he, in the absence of Mr Hyland, should have ensured that it was done. This is partly administrative bungling but it also appears to have stemmed from a misunderstanding of the extent to which Dr Coverley wished herself to keep a close eye on the situation. The Prospects Organisation consulted ET's new GP when they should have been communicating with Dr Coverley as well. Secondly, Leigh House had given The Prospects organisation two copies of ET's discharge summary and one of them should have been passed on to her new GP when she was registered with him. That was never done, as was discovered when Dr Coverley contacted the GP on 4 September. One unfortunate consequence was probably that the GP did not contact Dr Coverley, whose name appeared on the summary as the key contact. This seems to have been an administrative error, compounded by Mr Biggs' understanding that the GP would have received a copy of the summary with her medical records. Thirdly, there is clear evidence that staff were told not to interact with ET or to allow her mental stimulation such as reading magazines or listening to the radio. There was a written instruction to that effect in the staff information messages diary on 8 September 1998, stating that it was on the instructions of Dr Coverley and signed by Mr Biggs. This is not what had been prescribed. The instructions were that, if ET was not eating and was weak, she was to have bed-rest and was not to exert herself *physically* and that she was not to be allowed to distract herself from eating at meal times. Our view is that Mr Biggs had misunderstood the instructions and, despite having reservations about his understanding, he had not sought clarification. We do not consider that The Prospects Organisation was deliberately trying a different and questionable strategy without authority. Happily this instruction was only in force for a short while. The notes suggest that ET was receiving stimulation before then. Fourthly, Dr Coverley said that ET had told her that there had been occasions on which meals had not been prepared for her but there is no supporting evidence and that allegation is too vague as it stands for us to accept it. Fifthly, Ms Antonia Hayman, a member of staff, described how Mr Hyland took told of ET's head and screamed at her for refusing to eat. Mr Hyland said that he was pleading with ET to eat and he denied shouting at her. Dr Coverley told us that ET had described Mr Hyland as a bully, that he shouted at her daily and that he had once shaken her to persuade her to eat. We are satisfied that there was the one occasion when Mr Hyland went further than he should have done, but we consider that it was done out of genuine concern for ET and frustration at his powerlessness to help her. It was not abusive conduct.

We bear in mind that The Prospects Organisation may not bear sole responsibility for the lack of communications and this is clearly not an instance when they were cutting themselves off from outside help because the GP was being involved by them. They were out of their depth. Nevertheless, our findings give rise to some serious concerns about the organisation's competence and Mr Hyland's judgement.

Incidents involving RE

RE, who is now aged 18, gave evidence to us. She is obviously intelligent - she was awaiting 'A' level results when she gave evidence - and she made some very acute observations. On the other hand, she has had a very troubled childhood, has been described as capable of being manipulative and we are concerned about the accuracy of her perception and description of events that took place while she was with the Prospects Organisation from November 1996 to May 1999. We also bear in mind in relation to the first three allegations that, while she was quiet and demure when giving evidence to us, RE had been in a secure unit before going to The Prospects Organisation and she told us that she had got angry on occasions when with the organisation and had sometimes used "high order" language.

The first allegation made is concerned with an event in December 1996, soon after she arrived. RE refused to do her Interdependence Programme work and curled herself up in a foetal position on the floor. She said that Mr Hyland came into the room, said that she was being pathetic and a "drama queen", picked her up and shouted in her face, whereupon she slapped herself in the face, hurting herself without him attempting to stop her, and at which he said "I suppose you are going to tell everyone that I did that, aren't you ?" Mr Hyland's account was that she was slapping herself while she was on the floor and he just lifted her up and did not shout at her. This is an event that occurred three and a half years ago and we are not sure that either account reflects fully what happened in a highly charged situation. We are not satisfied that it was inappropriate for Mr Hyland to pick RE up or even to hold her against the wall, if that is what he did. Nor are was satisfied that it was inappropriate for him to raise his voice if she was hitting herself.

We can say much the same about the second and third allegations in which it is said that Mr Hyland used abusive language, saying "If you were a bloke, I would hit you" and "If I wasn't the manager of a care home, I would hit you" and calling her "an evil manipulative bitch" and an evil git" and that he used sexualised language that we need not set out here. RE no doubt remembers such things being said because they shocked her. That may have been the intention and whether the language used was inappropriate depends very much on *exactly* what was said and the *exact* context, as to which we are not certain. On the other hand, Mrs Sue Yabsley, who was the head of the student services department of the sixth form college attended by RE and in whom RE confided, felt that RE was uncomfortable with the sexualised language and there may well have been an element of misjudgement in Mr Hyland's use of it.

The fourth allegation is that The Prospects Organisation unreasonably sought to control RE's contact with Mrs Yabsley at the end of May 1999. Mr Hyland's view is that they were justifiably concerned because RE tended to make inappropriately intense relationships with people and the relationship with Mrs Yabsley was undermining her relationship with the organisation. The Prospect Organisations' concern may have been genuine because they may have felt that RE was making unjustified criticisms of them to Mrs Yabsley with a view to enlisting her support against the organisation in a destructive way. It was plainly a difficult time as RE took a drug overdose on 1 June 1999. However, they did not handle the situation well, virtually instructing Mrs Yabsley to break off relations with RE and being very

cavalier with RE's academic career. They could have worked better with Mrs Yabsley.

The fifth allegation is that RE's letters were vetted and she was not allowed to make private telephone calls. Mr Hyland's view was that RE wanted her letters to her parents, with whom she had a tense relationship, looked at before they went. It may well be that that was the case sometimes and that RE did not make clear that there were other occasions when she wanted more privacy. On the other hand, we accept that there were times when she did feel her privacy was not being respected and we can also sympathise with her distaste at Mr Hyland's style of letter-writing. However, we are not satisfied that The Prospects Organisation deliberately sought to control her correspondence. The telephone issue is a more general concern that we shall consider later.

The sixth allegation is that Mr Hyland stopped her from taking a part-time waitressing job in a restaurant attached to a pub as a punishment for a prank. Mr Hyland said that he thought the job unsuitable and that he found her a job in a chemist instead. RE made the comment that her problem was with drugs rather than drink and that it was ironic that she should be allowed to work in a chemist rather than a pub, but it seems to us that Mr Hyland was entitled to take the view that the restaurant job was unsuitable and we are not satisfied that there was any connection between not allowing her to take the job and the prank, as has been perceived by RE.

Use of abusive language to SB

Written evidence was given by Ms Hayman that Mr Hyland called SB a "disgusting slut", "whore" and "fucking cunt". The context was that SB had absconded and Mr Hyland told Ms Hayman that he was using that language because that was how SB thought of herself and he was trying to work with her. She nonetheless considered the use of the language to be inappropriate. Mr Hyland denied using the language. In her oral evidence, Ms Hayman said that she could not remember the exact words used but she did remember that Mr Hyland was not calm and was shouting. There may be occasions when unpleasant language and a raised voice may appropriately be used but it depends very much on the context, the way they are used and the purpose for which they are used. Mr Hyland's lack of recollection may simply indicate that he does not remember anything untoward. On the other hand, we see no adequate reason to disbelieve Ms Hayman and we suspect that her reaction to the event indicates an element of misjudgement on Mr Hyland's part.

MN's absconding

MN absconded on a number of occasions between July and December 1991. He had a history of sexual abuse of other children. On 7 October he met two girls who subsequently telephoned to speak to him. No specific child protection enquiries were instigated following this incident. The Prospects Organisation have variously said that they were urging MN's placing authority to take appropriate action and that it was premature to initiate child protection action because MN was only subsequently registered as a sex offender. It is clear that there was some contact between The Prospects Organisation and the placing authority but the extent of it is unclear because The Prospects Organisation did not at the time make proper notes of any telephone

conversations. In any event, the relevant child protection area was in Somerset, where MN was accommodated and the young girls lived, rather than in London where MN's placing authority was. The fact that MN was not a registered sex offender was irrelevant, as The Prospects Organisation should have known. In our view, The Prospects Organisation ought to have made the local child protection team aware of the concerns about the young girls. On the other hand, the local police were aware in general terms of MN's presence and background and there does not appear to have been any reason for The Prospects Organisation to think that anything untoward had, or might have, actually happened when MN met the girls and there is no evidence that anything untoward did actually happen. This is an issue for advice and does not weigh with us in considering cancellation.

Sexual relationship between LT and MC

LT, a young girl, and MC, a young boy, started a sexual relationship when they were both 15. It is plain to us that, while the emotional relationship was allowed to develop, the sexual side of it was not condoned and the two young people were watched as closely as was consistent with their needs for privacy. LT and MC managed to evade staff on some occasions and LT was taken to hospital once to receive "the morning after pill" and she also had three pregnancy tests, but there is no evidence that staff were not doing all that could reasonably be expected of them. The Inspectorate take the view that The Prospects Organisation should have considered the termination of one of the placements and discussed the matter with the placing authority. It is unclear when the placing authority were told about the relationship, again because of the lack of proper records of telephone conversations, but it is plain that they were told because the relationship is mentioned in correspondence. No doubt, if The Prospects Organisation had been unable to manage the relationship it would have been necessary for them to consider whether one of the placements should be terminated, but we do not consider that the fact that there were some occasions when LT and MC were able to have sexual relations, or were able to claim to have done so, shows that the relationship was not being managed properly and we see no reason whatsoever to question The Prospects Organisation's judgement that the benefits to LT and MC of the relationship outweighed the practical problems for the organisation. In particular, they were satisfied that it was not an abusive or coercive relationship. There should, perhaps, have been a document recording in clear terms that that judgement had been made and communicated to the placing authority but we have no doubt that the judgement was made, that it was a reasonable judgement and that it was communicated to the placing authority at some time.

Use of abusive language to DOW

It is common ground that Mr Hyland called DOW a "selfish bastard" when she kicked him in the testicles. Mr Hyland accepts that he ought not to have said what he did. This is not a matter that we regard as significant so far as cancellation is concerned.

Supervision of AM

AM was constantly escorted by two staff throughout his placement from November 1998 to June 1999. It is not disputed that that was appropriate at the beginning but the opinion of his new social worker, who took over his case in April 1999, was that he

no longer required that level of supervision. She may well have been right, but The Prospects Organisation's judgement that he still required the supervision was, in our view, an honest judgement made in the light of their experience. He had harmed himself before his placement and the mere fact that he did not do so while closely supervised did not necessarily mean that he was not still a risk to himself.

Nor do we accept the more general allegation that The Prospects Organisation isolated the young people in their care to too great an extent. As Mr Hyland pointed out, their extreme behaviour could itself serve to isolate them from general society. A degree of isolation from their peer group was a part of the cocooning that was an important part of The Prospects Organisation's approach to the management of these difficult young people, but that was preliminary to reintroducing them to society. The evidence is that young people in their care did mix in the local community. The judgement as to when that should happen and the extent to which it should happen was no doubt not always an easy one. The Prospects Organisation may on occasions have been overcautious but that is difficult to judge, and the views of the young people themselves are not, in our view, likely to be a reliable guide on this issue, particularly when, as in the case of AM, they have come from an urban background and may well have found the countryside a bit quiet.

Physical restraint

The "crossover" method of restraint used within The Prospects Organisation was devised by Mr Hyland. A demonstration was arranged during the November 1999 inspection but the demonstrators were ten minutes late and the inspectors decided that they could not wait and so the demonstration never went ahead. However, there is no evidence that anyone has ever suffered more than a superficial injury when the method of restraint has been used and its appropriateness has not been seriously questioned.

What is said is that the staff did not know when it should be used and when it should not. We do not accept this. We do accept that there have been occasions when staff have been terminologically inexact when talking to inspectors or when giving evidence but our overall impression is that the staff were reasonably well trained only to use physical restraint as a last resort to avoid personal injury or serious damage to property. There have been a large number of physical restraints, reflecting the difficulties of the young people cared for by The Prospects Organisation, but the only alleged incidents of physical restraint being used when no restraint at all was appropriate have involved Mr Hyland himself.

Restraint of DAW

It is not in dispute that, on one occasion after DAW had absconded, Mr Hyland demonstrated to him that he was wrong to believe that he could defend himself against adults by overpowering him, using the "crossover" method of restraint. We accept Mrs Wendy Foreman's evidence that Mr Hyland did it twice and that DAW, who was young and of low intelligence, looked shocked and bewildered and we agree with her judgement that Mr Hyland's action was inappropriate. On the other hand, his actions were not intended to hurt DAW and, had he made DAW properly aware of

what he was going to do, it would at least have been arguable that it was a reasonable way of demonstrating his point.

Restraint of MG

This is potentially the most serious allegation in this case.

In late November 1999, Mrs Julie Clarke saw a mark on MG's neck, which appeared to her to be consistent with a mark left by a ligature as though he had tried to hang himself, and also bruises on his chest. MG declined to explain the cause. She said she had been told by another member of staff that Mr Hyland had grabbed MG's sweatshirt below the neck and had tightened it which was explained as necessary to see if MG could hold his temper under provocation. Subsequently, she was told, Mr Hyland said to MG that he would give him £30 to replace the sweatshirt and "we will see about a motorbike".

Mr Hyland did not deny that the incident had taken place. What he said was that MG was capable of considerable violence. He was taller than Mr Hyland but not particularly strong. The day before the incident in question, MG had bitten a member of staff. Mr Hyland was discussing that with him. MG got very angry and Mr Hyland took hold of his sweatshirt in order to protect himself him while talking with him and he managed to show MG that he could control his violence. He accepted that it was not a conventional method of restraint but said that in the circumstances it was better than the conventional method. It gave him sufficient control to stop MG hitting him more than once or twice but it still enabled MG to control himself rather than being totally overpowered. He accepted that MG's neck had been marked by the friction of the sweatshirt against the skin and that he had a pinch mark where he had first grabbed him. He did not accept that he had caused any other bruising. He argued that his actions had not been inappropriate and that the incident had been something of a turning point in the work with MG because, although he remained violent, he had been able to control himself. He accepted that he had apologised afterwards for the marks and had replaced the sweatshirt. He said that the motor bicycle was something that had been discussed before because MG, who had a history of taking vehicles without their owners' consent, was interested in mechanical things and the obtaining of one to be repaired and got working was not connected with the incident at all.

We are not satisfied that Mr Hyland's account is inaccurate or that his action was inappropriate.

Restraint of CB

Mrs Foreman told us of an incident when CB was restrained by Mr Hyland and ended up lying face up on a sofa being straddled by Mr Hyland which she considered was inappropriate and not in accordance with her training. She accepted that it was appropriate for CB to be restrained but, although she could not remember the incident with complete clarity, she did remember that the method was inappropriate. We accept that she felt uncomfortable about what was done but we do not accept that there was in fact anything untoward. As Mr Hyland said, there are occasions during a restraint when the person restraining unavoidably gets into an undesirable position.

That position has to be adjusted. We are not satisfied that any worse than that happened on this occasion.

Restraint of MN

This is the only allegation of an inappropriate method of restraint being used by a member of staff other than Mr Hyland. Mrs Clark witnessed the incident. It is clear that what was done and said during the incident was contrary to the training that staff had been given and for that reason we do not regard the incident itself as having any bearing on the issue of the issue of the cancellation of registration. Furthermore, the person concerned left The Prospects Organisation shortly afterwards. What is of significance is the way Mrs Clark's report of the incident was handled and this is one example of the lack of proper management reviews of incidents to which we shall refer later.

Insisting on seeing KL

Mrs Clarke told us of an occasion in September 1999 when Mr Hyland wished KL to go to his office to discuss the burning of a shower curtain and when KL refused, Mr Hyland came to her. Mrs Clarke thought that that was likely to provoke KL to violence and she talked to KL to try and prevent that happening, which worked. We accept her view that it was a misjudgement on Mr Hyland's part to come to KL's home but we also accept her view that Mr Hyland did not intend to provoke KL and that he spoke softly to her.

The conduct of Mr Hyland towards staff

Sexual harrasment

On 28 July 1998, an employment tribunal found Mr Hyland to have sexually harassed a member of staff, a fact that he had denied. We were told that the decision is being challenged on points of law but we do not consider we should go behind the finding of the tribunal who had the advantage of hearing both parties.

We also accept the evidence of Mrs Foreman that Mr Hyland made a very unpleasant comment to her, when telling her to remove lipstick she was wearing, and once also made a gratuitously offensive remark to her about a passer-by. We do not consider that to be inconsistent with her complimentary letter written when she resigned to move away with her husband or with her subsequently giving serious consideration to returning to the work because we accept that, while hurt by the incidents, she put them to one side and balanced them against the more positive aspects of her work. We also accept the evidence of Mr Howarth that Mr Hyland once said of another member of staff that he had to remind himself that he was her boss and the evidence of Ms Hayman that it always seemed to be young female members of staff on whom restraint techniques were demonstrated.

However, we are not persuaded that these matters are really germane to the issue of the cancellation of registration. There was a large staff group and, although the employment tribunal affair caused some divisions, this aspect of Mr Hyland's actions

did not, in our view, seriously disrupt the working of the staff to the disadvantage of the young people being cared for in the home. It may have been a cause of the high staff turnover in 1999 but the Respondents have not proved a substantial link. Miss Moore rightly suggested that evidence of sexual harassment of staff should make us consider whether there has been similar bullying of the young people. There is no evidence of sexual impropriety towards the young people. We have considered the evidence of bullying separately.

Use of unpleasant language

We accept that Mr Hyland used crude language when speaking to staff (save that we accept Mr Hyland's evidence that he did not do so in reference to his adopted daughter). However, the examples we have been given have mostly arisen in the context of criticisms of staff clothing that might be thought by the more disturbed young people to be sexually provocative or in the context of sexually provocative dressing by a young person. The comments were therefore not gratuitous, even though the language was tasteless. Their only relevance is that they have supported the evidence that he sometimes used similarly crude language to the young people.

Shouting and intimidation

There is evidence that Mr Hyland shouted at staff and was very forceful in his way of dealing with them. Some members of staff clearly found that difficult. On the other hand, they continued working despite it. It is difficult to judge whether his style was beyond the bounds of what is acceptable and we have insufficient evidence to conclude that the high staff turnover was attributable to it. In this regard, it is important that some members of staff, for instance Mrs Clarke who was one of the Respondents' witnesses, did not have problems with Mr Hyland (although she did say that he did not like constructive criticism). Again, Mr Hyland's style did not have a direct impact on the young people and we have considered separately the evidence of bullying them.

Relationship with the Inspectorate

Part of the problem in this case is that The Prospects Organisation and the Social Services Inspectorate have both regarded themselves as pre-eminent in their fields, have resisted challenges to their ways of thinking and have failed to engage in constructive dialogue with each other.

The major part of the blame for the lack of constructive dialogue lies with Mr Hyland. He is not just confrontational (which is not always a bad thing) but he has bombarded the Inspectorate with very large numbers of very long letters full of invective and unnecessary criticism. On occasions, he has preferred to pursue minor criticisms of the Inspectorate rather than address their legitimate criticisms of The Prospects Organisation and this approach has tended to obscure a number of perfectly reasonable points that he has made. On the other hand, the Inspectorate have invited some of the correspondence and criticism by failing adequately to deal with those of Mr Hyland's points that are reasonable.

The Inspectorate have expressed concern at the number of criticisms made of their reports. We agree with them that many of the criticisms are unfair or trivial and there are certainly examples which suggest that The Prospects Organisation have not understood the desirability of reports raising matters that might concern potential placing authorities and have exaggerated the likely impact of minor criticisms on such authorities. The organisation should not regard reports as potential advertising material that they have the right to control. On the other hand, the Inspectorate have not appeared sensitive to the need to avoid unjustified criticisms and slights that might unfairly damage the commercial viability of the organisation. The organisation is entitled to complain about such criticisms because they can have a very real impact in a way that similar criticisms of, say, a local authority would not.

The Inspectorate have also shown a remarkable reluctance to give Mr Hyland practical advice. Miss Moore submitted that the Inspectorate had an enforcement function and not an advisory one. We do not accept that distinction which, as Mr Hyland was quick to point out, is not even consistent with the Inspectorate's own statement of their functions. The Secretary of State's function in relation to voluntary homes is regulatory. On his behalf the Inspectorate must enforce standards but that seems to us to require them to advise as to what is acceptable where that is not clearly explained in legislation or written guidance and to persuade those running homes to comply with those standards. If Mr Hyland is told that some aspect of the running of a home is not acceptable and he cannot see why that should be or how he can do better, it seems to us to be perfectly proper for him to ask the Inspectorate for guidance as to what they expect him to do. In some circumstances, it would be appropriate for them to refer him to other sources of information but in others they ought to be prepared to give a straight answer.

One example arises in relation to the Inspectorate's complaint that The Prospects Organisation has not always reported to them significant events as required by regulation 19 of the Children's Homes Regulations 1991. It was plain to us that the parties differed as to what events had to be reported by virtue of regulation 19 and, at the adjournment in July we suggested that they work towards an agreed interpretation. On 9 August, Mr Hyland suggested that the Inspectorate explain their interpretation. On 11 August, an inspector replied by sending a copy of a letter previously sent to all homes which was not very specific. On the same day, Mr Hyland asked for a more specific list of examples. On 21 August, an inspector wrote to suggest that Mr Hyland exercise his own judgement and discuss any doubtful cases with inspectors when they arose. On 22 August, Mr Hyland rightly commented that that left them no further forward and he again asked for specific examples, pointing out that, if the Inspectorate did not have defined expectations, they would not be able to advise anybody enquiring about a doubtful case. On 25 August, another inspector responded in terms that were as vague as ever. On 31 August, Mr Hyland wrote again, outlining a number of scenarios and asking whether notification should be made in all those cases. On 7 September, the same inspector attempted to deal with some of the points raised but again fell back on the advice to ask if there was doubt. On 11 September, Mr Hyland tried again. On 15 September, the inspector at last came up with a list of nine scenarios, three of which would, in his view, clearly have required notification under regulation 19, three of which would probably not have required notification and three of which were in a "grey area". This sort of practical illustration seems to us to be helpful to those running homes who have been criticised for failing to comply with

regulation 19. It ought to be well within the capacity of an experienced inspector to give advice which enables those carrying on homes to have a reasonable degree of certainty as to what is required of them and to know the criteria by which they are being judged. Indeed, Mr Hyland's persistence in the present case is amply justified by the fact that, for reasons we shall explain later, the advice eventually given to him was plainly wrong.

This reluctance to give practical guidance seems to us to be linked to the Inspectorate's failure to give a clear ultimatum before recommending the cancellation of registration, to which we have already referred. To be effective, such an ultimatum would have had to be coupled with practical instructions as to what was required to avoid cancellation. Perhaps part of the problem is that the Inspectorate are used to dealing with the senior management of public sector authorities or large voluntary organisations and have difficulty in adapting to deal effectively with the unqualified director of a small voluntary organisation.

We do not consider that their task has been made any easier by the change in the practice of distinguishing in reports between "requirements" and "recommendations". We were told that a Minister had decided that the distinction should be abolished and that reports now contain only "recommendations". The old distinction was usually intended to differentiate between those matters required by law and those matters recommended as good practice. That distinction may have been open to criticism but in our view it is useful to have some distinction between those matters considered clearly to be required by law and those about which there is scope for debate or between those matters that are potential "cancellation issues" and those that are less important. It seems to us to be misleading merely to "recommend" action when it is likely that a failure to adopt the recommendation may lead to the cancellation of registration. The language used should leave no doubt as to the importance of doing what is suggested.

However, none of these criticisms of the Inspectorate implies that we do not consider that they have been acting in good faith. The Prospects Organisation is entitled to make official complaints, although we do not consider that that is a constructive way to build a relationship when a clear expression of disagreement would do. However, Mr Hyland was not entitled to write that "we can evidence a conscious decision … to attempt to mislead the Secretary of State" when The Prospects Organisation had no evidence to that effect whatsoever.

That comment was defamatory and illustrates all too well Mr Hyland's style of letter writing. He dictates long letters that are sent out without revision. They are often rambling and they frequently display a complete disregard for the feelings of the recipients. They are not calculated to promote friendly relationships or to persuade recipients to accept The Prospects Organisation's views on the matter in hand, even if those views can be extracted from the unnecessary verbiage around them.

The unsatisfactory correspondence no doubt formed part of the backdrop to the inspection in November and December 1999. Certainly the intention to make a formal complaint about Mr Bowker disrupted the first day. We do not consider the complaint to have been necessary or helpful. It is plain that Mr Hyland was unhappy with the Inspectorate. No doubt that feeling was well known throughout the

organisation. However, while the organisation may not have exerted themselves as fully as they might to have helped the inspectors, we are not satisfied that there was deliberate obstruction. There was no direct evidence of instructions to staff to be unco-operative and the inspectors accepted that they had been provided with all the documents without fuss and had spoken to many staff and to some young people. It was not suggested that Mr Hyland was not genuinely ill and for that reason unavailable. The inspectors may have had some grounds for suspicion about the organisation's attitude to the inspection but we do not accept that they were entitled to regard the grounds as substantiated and we consider that Mr Hart was wrong to reject Mr Hyland's subsequent offer to come to London and discuss the case.

The consequence of the Inspectorate's failure to discuss their findings with The Prospects Organisation was that their report to the Secretary of State was very one-sided. They ought to have been presenting conclusions drawn after taking account of The Prospects Organisation's comments. An opportunity to comment on factual accuracy was not enough at that stage and the failure to give proper particulars in the notice of proposal meant that the representations hearing could not possibly be regarded as a meaningful opportunity to comment on other issues before the Secretary of State made his decision.

Relationship with Somerset County Council

As the authority in whose area The Prospects Organisation has its homes, Somerset County Council has certain duties towards the children accommodated there. Apart from that, a number of other local authorities have sought advice from them about placing young people with the organisation and some have also communicated their concerns. In response to these matters, Somerset County Council drew up an advice note for authorities. They did not reach agreement with The Prospects Organisation as to its contents and The Prospects Organisation sought an order quashing the decision to publish it. On 21 December 1998, Dyson J dismissed the challenge (*Regina v. Somerset County Council, ex parte Prospects Care Services Ltd* [2000] 1 F.L.R. 636). We do not accept the submission that bringing those proceedings was in itself inappropriate. The organisation was concerned that comments in the advice note would discourage potential placing authorities from placing young people with them and the question of the power of Somerset County Council to publish the note raised some novel issues of law. Their judgement that the note was unfair to them is more questionable, but that is a slightly different issue. In any event, following that challenge, Somerset County Council and The Prospects Organisation appear to have settled down to a reasonable working relationship which reflects well on both parties.

Relationships with placing authorities

Gloucestershire County Council

The Prospects Organisation did not consider that it was in AJ's interest to be moved from the organisation's care to a multi-occupancy children's home, in view of his previous history of abuse. In accordance with a revised care plan, Gloucester County Council proposed moving him to a five person home nearer his home. When the time

for the move came, The Prospects Organisation applied, ex parte, on 30 June 1997 for a prohibited steps order to prevent the move. That application was plainly misconceived but the Recorder of Bristol, sitting in the High Court, issued instead an injunction restraining the authority from moving AJ. The Prospects Organisation meanwhile took steps to apply for judicial review of the county council's decision. The county council then arranged a review meeting, which took place on 21 July 1997. AJ attended the meeting and refused to return to The Prospects Organisation. His refusal brought an end to his placement. As one of The Prospects Organisation's grounds for applying for judicial review was that the county council had not properly consulted them and had failed to convene a review meeting at which they were represented, the fact that there had now been a review meeting led to the refusal of leave to apply for judicial review.

The bringing of unsuccessful legal proceedings was the one part of the reasoning in the notice of proposal to cancel the registration that was not adopted by the Secretary of State in his decision, but it has re-emerged as an issue in this appeal. We consider that the Secretary of State was right not to rely on it when making his decision. There may have been other approaches that The Prospects Organisation could have taken but we do not accept that the bringing of the legal proceedings was improper and, more particularly, we do not accept the argument that the mere fact that this sort of challenge was unprecedented shows that it was improper. The Prospects Organisation were seriously concerned about AJ's welfare, on arguable grounds, and they had an arguable case that they had not been consulted. It is true that their right to be consulted could arise only under section 22(4)(d) of the Children Act 1989 although, as Miss Moore conceded, it is difficult to see how an authority could properly not consider to be relevant the feelings of those who have been caring for a young person for some months. It is also true that the county council had an arguable case that The Prospects Organisation had been properly consulted. Even so, we do not consider it right to stigmatise the proceedings as vexatious.

Hampshire County Council

We accept that, at a meeting on 15 September 1998, Mr Hyland threatened to bring DOW to the county council's offices and leave her there if The Prospects Organisation's outstanding invoices were not paid by 18 September 1998. However, we do not believe that he intended the threat to be taken literally and the fact of the matter was that some £20,000 was outstanding due to an administrative error by the county council so that it is hardly surprising that Mr Hyland expressed himself forcefully.

We also accept that Mr Hyland's discussions and correspondence concerning DOW were antagonistic. They led Mr Stuart Ashley, a team manager, to form the view that Mr Hyland was not genuinely dedicated, in contrast to Mr Biggs whom he regarded as child centred and reasonably easy to deal with despite one contentious issue. Mr Hyland protests that it was his dedication that caused him to challenge the county council’s plans for DOW. That may well be right but a style that is aggressive is unlikely to be persuasive. On the other hand, it is right that we should record that Mr Ashley said that Mr Hyland had been frank and open when the complaint by DOW, to which we have already referred, was being investigated.

Brent London Borough Council

We have also already referred to the allegation that AM was too closely supervised. Brent London Borough Council were his placing authority. They decided that AM's needs should be assessed by a psychologist. The Prospects Organisation took the view that he should be assessed by a psychiatrist who was familiar with their way of doing things. Mr Hyland then bombarded the authority with letters. Some of The Prospects Organisation's points may have had some merit but they seem to us to have got lost among unnecessary criticism of those working for the authority. The assessment ended up being cancelled because the authority decided that The Prospects Organisation were not prepared to co-operate rather than on any of the grounds suggested by the organisation.

On 21 June 1999, AM's social worker arrived to take him to visit other homes. It is not disputed that she was kept waiting for some time. Mr Biggs made the point that social workers who had to travel long distances were often late and so young people were kept occupied until they actually arrived. In the present case, there was further delay because Mr Hyland and Mr Biggs then refused to let the social worker take AM by herself until written authority arrived from her superiors. There was a dispute before us as to how long the social worker had to wait and some doubt about her evidence was raised by the time recorded on the fax sent by the local authority making it clear that AM was to leave with her. We accept that Mr Hyland and Mr Biggs had genuine concerns because they believed AM required more supervision and there was a risk to the social worker if she was to be his sole escort. However, in this instance their judgement seems to have been wrong and we accept that they were too confrontational, although the evidence has not persuaded us that they were being deliberately obstructive.

Dudley Metropolitan Borough Council

BW was placed with The Prospects Organisation by Dudley Metropolitan Borough Council. His social worker considered that he had a good working relationship with the organisation until February 2000 when it was decided by the council that BW should be moved from The Prospects Organisation because of the Inspectorate's recommendation to the Secretary of State to cancel the organisation's registration. The Prospects Organisation resisted the decision to move BW, arguing that it was not in BW's best interests. Their view was in fact shared by BW's social worker. The plan originally had been that The Prospects Organisation would tell BW of the move because they would have to manage the behavioural consequences of the announcement. However, they did not do so while resisting the move and eventually his social worker travelled down in order to break the news, although, after further discussion, Mr Hyland eventually did it, making it clear to BW that the move was being made due to the Inspectorate's report.

This case illustrates the difficulties facing a placing authority when there is a threat of cancellation hanging over a children's home. The authority must have the welfare of the child as their paramount concern and have to balance their own judgement of the home against the view of the inspectors. It is difficult for an authority to go behind the inspectors' findings and we do not suggest that they should do so. Nevertheless, they may be entitled to take the view that, notwithstanding the inspectors' findings, it

will be better for a child to remain where he is rather than be moved. Unless some authorities take that view, a home may cease to be financially viable before an appeal is heard and there is a risk that a valuable resource for placing authorities will be lost in a case where an appeal would succeed. In this case, The Prospects Organisation suggest that the placing authority was wrong. It is pointed out that BW came to the organisation from a secure unit. He had been assaulting staff while with the organisation but the problem was being contained. He was then moved to another home. There, an assault against a member of staff resulted in the police being called and BW ending up in a secure unit again. It is not for us to judge whether or not Dudley Metropolitan Borough Council made the right decision. At the time, they were entitled to make the decision they did. Equally, it seems to us that The Prospects Organisation were entitled to argue forcefully against the decision. The problem in this case is, once again, the manner of The Prospects Organisation's resistance.

Conclusion

No local authority is forced to place a young person with The Prospects Organisation so that, if the organisation gains for itself a reputation for being impossible to work with, they will ultimately go out of business. There is no doubt that they can be difficult to work with. On the other hand, local authorities are not always right and ought to be able to cope with challenges. The Inspectorate wrote to every authority that has placed young people with The Prospects Organisation. We have heard complaints from only a few of them and even some of those with complaints have also spoken positively about The Prospects Organisation. Our view is that Mr Hyland is motivated by genuine concern for the young people in the organisation's care - we are not satisfied that decisions about the care of young people are motivated by commercial concerns as was suggested to us - but he does not understand how local authorities work and so does not challenge them in acceptable - and effective - ways. We have already mentioned his letter-writing style. We accept that he is also hectoring in his manner when dealing with some social workers face-to-face.

Pressure on young people

We have also been concerned by the evidence that young people have told their social workers that they felt they had to tell them what Mr Hyland wanted them to say. We are not satisfied that there was any direct bribery, but we do consider that, where there was a disagreement between The Prospects Organisation and a placing authority, the former made the disagreement plain to the young people and sought to persuade them that their plans were better. Young people should be involved in decisions about their future but we consider that The Prospects Organisation have sometimes put inappropriate pressure on young people who may have divided loyalties.

This may well not have been conscious but should have been avoided. Thus when BW was removed at fairly short notice, a number of staff gathered to say their goodbyes, which was quite appropriate, but were openly crying, which must have made it difficult for BW. We do not suggest that the management contrived this situation but it was also quite clear that they did nothing to suggest to staff that it would be better for BW if they tried to avoid showing their feelings to quite such an extent.

We do not accept that there was inappropriate contact by staff thereafter. In his new home, BW had telephone calls from young people still with The Prospects organisation. We accept that members of staff spoke to him first. They may well have expressed their regret that he had left but we do not accept that there was any improper pressure put on BW by them and, if there was, we certainly do not accept that it was encouraged by the management.

Management failings

Staff appointments

One member of staff, Mr Murray Ronnie, had been convicted of wounding and assault occasioning actual bodily harm and had been to prison some years before being employed by The Prospects Organisation. He was employed without the consent of the Secretary of State. It was plain from Mr Hyland's evidence that he genuinely did not realise that that was wrong. He was relying on advice given by NACRO before the homes were registered, which may have been right as far as it went. The true legal position is as follows. Regulation 3(2) of the Disqualification for Caring for Children Regulations 1991 provides that no person shall employ in a voluntary home a person who is disqualified under section 68 of the Children Act 1989 from fostering a child privately, unless he has disclosed to the Secretary of State the fact that that person is so disqualified and has obtained the written consent of the Secretary of State. Regulation 2(g) provides that a person is disqualified for the purposes of section 68 of the Act from fostering a child privately if he has been convicted of any offence mentioned in the Schedule. Paragraph 2 of the Schedule mentions "[a]ny offence involving injury or threat of injury to another person". It is therefore plain that Mr Ronnie could be employed in a voluntary home, but only if the Secretary of State's consent were obtained. The Prospects Organisation were in breach of the Regulations because they had not obtained his consent.

However, part of the blame for this state of affairs must lie with the Inspectorate. When the relevant home was being registered, they issued a form asking for details of all members of staff and asking whether each had been police-checked. In Mr Ronnie's case, the Inspectorate were told that Mr Ronnie had been police-checked, which was true. The suggestion has been made that The Prospects Organisation ought to have spelt out on that form what the result of the check was but we do not consider that they could be expected to answer on the form a question that was not asked. Plainly the form needs to be redesigned. There is no doubt that, had the form asked for details of any positive police-check, those details would have been supplied in respect of Mr Ronnie. We say that because Mr Ronnie's personnel file showed that The Prospects Organisation took some trouble to consider whether it was right to employ him in the light of his convictions and they reached a rational decision to do so.

Whether the Secretary of State would have given his consent to the employment of Mr Ronnie had he known the true facts and considered The Prospects Organisation's reasoning, we do not know but it is at least possible that he would have done so. The Prospects Organisation now know what the law is. They should have known before, but it seems to us that their ignorance is partly a product of the convoluted drafting

style of the Disqualification for Caring for Children Regulations 1991 which may be the reason that there is no reference to the Regulations in *The Children Act 1989 Guidance and Regulations: Volume 4 - Residential Care*, where most other relevant statutory instruments are set out in full, and they are to be found only in *Volume 8 - Private Fostering and Miscellaneous*. The failure to obtain consent for the employment of Mr Ronnie is not a matter that has weighed with us in our consideration of the cancellation of registration.

We were told that another personnel file showed that there had been a positive police check on a member of staff but did not reveal what the offence was. There is no evidence that it was one mentioned in the Schedule to the Disqualification for Caring for Children Regulations 1991 but, if the offence was not mentioned in the Schedule, that fact should have been recorded in the file. In the light of the way Mr Ronnie's case was approached, it seems to us to be unlikely that The Prospects Organisation would have employed a person with any conviction without giving the matter some thought but there ought to have been a proper record as there was in Mr Ronnie's file.

It is not in dispute that there were a number of occasions when staff commenced employment before police-check forms and references had been received. Mr Biggs said that those staff were always adequately supervised because they were always put on shift with someone of some seniority. We accept Miss Moore's point that that may not be enough because, over a long shift, there are likely to be times when the senior member of staff leaves the junior member of staff in a room with the young person and it does not take much of such access to start a process of grooming.

On the other hand, so far as police-checks are concerned, we recognise that there are delays, wholly beyond the control of an organisation carrying on a home, in obtaining results and we also recognise that it is unlikely that a person who has convictions will seek employment if he or she knows that police-checks are being carried out. This is because we would normally expect an employee who has falsely declared that he has no convictions in order to obtain employment working with children not only to be dismissed immediately but also to be reported to the police for possible prosecution for obtaining a pecuniary advantage by deception. Provided there is no "substantial and unsupervised access to children on a sustained or regular basis" (regulation 5(3) of the Children's Homes Regulations 1991 as amended), the employment of staff awaiting police-checks may be acceptable.

However, we find The Prospects Organisation's cavalier attitude to the lack of references to be inexplicable. If references are not received by post, a would-be employer can telephone for them. As a temporary measure, properly recorded telephone references will often be adequate and, indeed the point is made in the Warner Report that telephone references are often more accurate and revealing than written ones (*Choosing with Care*, HMSO, 1992, para. 4.43). Furthermore, the Warner Report disapproved of final interviews being conducted before references were obtained (ibid.). This has been one consistent theme through inspection reports and The Prospects Organisation have simply ignored the criticisms.

Staff training and supervision

Almost all training is done by The Prospects Organisation "in-house". This has a danger in that staff are exposed to a limited range of views. Also, as there is no proper training manual, it is impossible for inspectors to form any view as to the quality of the training. There is some reason to suppose that the training given is not related to formal guidance published by the Department of Health so that staff are not aware of the theory behind it. On the other hand, the staff from whom we have heard appear generally to have had a good idea as to what was expected of them and to have been competent. We have seen the files of a couple of the children and the entries of staff have reinforced that view.

Nonetheless, the inspectors have had some legitimate concerns. On several occasions, some considerable time elapsed before new staff were given restraint training and in the meantime they were expected to work with very challenging young people. Also, supervision sessions seem sometimes to have been erratic.

Staff turnover

We were told that 48% of staff resigned between 1 April and 31 October 1999. That is undoubtedly high but we do not find the bare statistic helpful. Some of the concerns to which we draw attention, including Mr Hyland's management style, may be factors but there may be other factors that have nothing to do with the way The Prospects Organisation functions and may be beyond their control. There are, of course, some members of staff who have been with the organisation for some years.

Continuity of care

The inspectors were also concerned about the number of carers experienced by young people. Thus, AK had 22 carers in 17 days and MG had 31 carers in 48 shifts. We accept that it is necessary for young people to be able to form relationships with those caring for them. The Prospects Organisation, however, have a deliberate policy of rotating staff among the young people to avoid "burnout". Each shift lasts for 24 hours. The changeover is at 3 pm so that staff are expected to be on duty for 8 hours one day, then be on call while asleep for 8 hours and then on duty for 8 hours the next day. The shift pattern requires full-time members of staff to work seven such 24-hour shifts in a three week period with one, two or four days between shifts. If night waking staff are required, an additional person is employed. The view is that the pressures of working with such difficult young people require that staff should not usually work with the same young people for consecutive weeks which mean that they will work with them for two or three shifts fairly close together and then be away for a while. On that basis, it is inevitable that, over a three-week period, a young person requiring two carers by day and an additional carer at night will have a considerable number of carers. Such a person would, in any event, require nine carers in a week.

The Prospects Organisation says that, within the policy of rotation of staff, it does try and match the carers to the young people, building on those relationships that work best. They also point out that young people have contact with staff other than their

immediate carers on any particular day because the homes are not isolated from each other.

We consider that the policy behind the rotas ought to be clearly set out in writing. We also consider that this is an issue that might usefully have been the subject of discussion between the Inspectorate and The Prospects Organisation. The Inspectorate first raised it in their report on the inspection of November/December 1999 and have never asked the organisation for any comment on it other than offering them the opportunity to comment on the factual accuracy of the figures, although it is fair to say that they also asked for some additional figures which The Prospects Organisation never supplied. The cancellation process was started before this issue had been fully investigated.

Management review of incidents

Following the November/December 1999 inspection, the Inspectorate wrote to The Prospects Organisation on 14 December 1999 asking them to conduct an urgent management review of an incident when AK was reportedly subjected to a period of restraint totalling four and a quarter hours. On the same day, Mr Hyland asked them for details of the incident. On 17 December 1999, the Inspectorate wrote saying that they were surprised that Mr Hyland required the detail and suggesting that he refer to the restraints log and cross-refer the incident to the additional record in AK's file. The response does not suggest a spirit of co-operation, although the explanation may be that the inspectors had failed themselves to note the date of the incident and so could not provide any helpful details. On the other hand, Mr Hyland then made very heavy weather of the issue by asking the Inspectorate to provide all sorts of details when, even if the restraint was not recorded as lasting continuously for four and a quarter hours, he should have been able to identify the incident, given that he had been told that it was recorded in the case records.

In any event, it became clear at the hearing that The Prospects Organisation had not held formal management reviews of any incidents in the sense required by the Inspectorate, though it was equally evident that the Inspectorate did not make clear what they meant by a "management review" or what they expected the records of such a review to contain. The senior management had drawn some conclusions as to the future care of AK from the lengthy incident in which he had been involved but they had not considered with all those who had taken part in, or witnessed, the incident whether there were any other lessons to be learned from it. Mr Hyland acknowledged that such reviews had not been a normal feature of the organisation's management systems. We were told that such processes would now be adopted.

There was also a failure properly to investigate and take action as regards an incident in the early hours of 1 January 2000 when Mr Ronnie was injured by one of the young people. There was a suggestion that he had behaved inappropriately. The Prospects Organisation did investigate the incident up to a point but did not complete the process when the young persons' placing authority removed her and refused to allow her to be further interviewed. Plainly they should have investigated the incident as far as they could and they should have made a clear decision as to what action should be taken. They in fact had a transcript of an interview with the young person which should have been sufficient for a management review. On the other hand, we accept

that the placing authority were not pursuing the matter as a child protection matter (because the young person had been moved), that Mr Ronnie was off work for a very considerable time and that the cancellation process meant that there were other things on Mr Hyland's mind.

Failure to implement care plans

The respondent relied on two instances when The Prospects Organisation had failed to ensure that education or life-story work records and action and assessment records had not been completed or, if the young people had not co-operated, had failed to bring that fact to the attention of the placing authority. We accept those criticisms and we accept that the failures were important. However, these appear to be fairly isolated incidents and we are not satisfied that care plans are routinely disregarded.

Failure to keep record of telephone communications

Managers' telephone communications with placing authorities and others were not properly recorded. We were told that this would be addressed.

Professional isolation

Neither staff nor managers have much contact with staff or managers from other children's homes. They do not have training with other organisations. In that sense, The Prospects Organisation is very isolated and, in the long run, that is unhealthy. The view of the organisation is that they are so different from others that they have nothing to learn from them. We doubt that that is true. There is, of course, some contact with professionals from placing authorities and others involved in the care of the young people. Furthermore, Mr Hyland's views are influenced by what he has read and there have recently been some contacts with universities with a view to having suitable courses established. To that extent, the isolation is not total, but we do have the impression that outside influences are more welcome if they are unlikely to be challenging.

Breaches of the Children's Homes Regulations 1991

Regulation 4(1)

The heading of regulation 4 of the Children's Homes Regulations 1991 is "[s]tatement of purpose and function of children's homes". Regulation 4(1) in fact requires a responsible authority to keep up to date "a written statement of the particulars mentioned in Part I of Schedule 1" for each home. Paragraph 1 of Part I of Schedule 1 requires there to be included in the statement "[t]he purpose for which the children's home is established, and the objectives to be attained with regard to children accommodated in the home". Paragraphs 2 to 15 require there to be included various practical details about the way in which the home is actually run. In our view, the heading of regulation 4 is unhelpful because the statement required is actually far broader than a mere statement of purpose and function and the use of that term has resulted in the Inspectorate and The Prospects Organisation talking at cross-purposes, because sometimes they use the term to describe the whole statement required by

regulation 4 and sometimes they refer to just that part of it required by paragraph 1 of Part I of Schedule 1.

The Prospects Organisation have complained that they are misunderstood by the Inspectorate to which the Inspectorate replies that that is because the statements of purpose and function for the homes are inadequate. The Prospects Organisation then say that the statements were regarded as adequate when the homes were registered and that the purpose and objectives of the homes have not changed, to which the Inspectorate reply that it must nonetheless be up-dated. In our view, the Inspectorate should acknowledge that, in the light of experience, the part of the statement required under paragraph 1 of Part I of Schedule 1 no longer appears to them to be as adequate as it did when the homes were first registered. They are entitled to change their view as to its adequacy and should be open about doing so, rather than talking about "up-dating". The Prospects Organisation, for their part, should acknowledge that their statements do not really explain the *purpose* and *objectives* of the homes and should rewrite that part of them. They have been provided during the hearing with copies of statements produced by other voluntary homes which should provide some guide as to what is required. They might start by identifying the class of young people who might be placed in the homes and then identify what the homes would aim to achieve with those young people. We are sure that they are capable of adding the further details required by paragraphs 2 to 15 of Part I of Schedule 1.

We consider that this is an issue upon which the inspectors could have explained more clearly what they wanted.

Regulation 7(5)

Regulation 7(5), as amended, provides:

> "The responsible authority shall ensure that a telephone is available for children accommodated in the home in a setting where it is possible to make and receive telephone calls in private"

This is most important because a young person is entitled to privacy and should be able to disclose sexual abuse if necessary. It is not disputed that in some cases the care plans for young people accommodated by The Prospects Organisation provided for the monitoring of telephone calls in the early stages of placements and that such monitoring was acceptable. What, however, is said by the Inspectorate is that in other circumstances young people often had access only to a telephone in an office and, although they could take it as far as an extension lead would stretch, they could not make or receive their calls in private. We accept that that was so. Furthermore, care records show that the telephone calls of at least one young person whose calls should not have been monitored were listened to by a member of staff and summarised in the records. This is unacceptable. The inspectors helpfully suggested to Mr Hyland that cordless telephones might be the answer. He, however, was concerned, quite reasonably, at the bills that might be run up by some of the young people. We were told that young people have now been provided with pay-as-you-go mobile telephones. The Inspectorate have not objected to that solution although it is pointed out that it was late in coming. We are aware that Childline cannot be telephoned free from mobile telephones but, nonetheless, we too consider mobile telephones to be an

acceptable solution to what is a real problem, because Childline can be called if a young person has credit and in an emergency the police can be called free of charge.

Regulation 19

Regulation 19 is another provision with a misleading heading: "Notification of significant events". In fact, the events that must be notified under paragraph (1) are only those set out in paragraph (2) which are:

"(a) the death of a child accommodated in the home;
(b) any conduct on the part of a member of staff of the home which is or may be such, in the opinion of the responsible authority, that he is not, or as the case may be would not be, a suitable person to be employed in work involving children;
(c) the suffering of serious harm by a child accommodated at the home;
(d) any serious accident involving a child accommodated at the home;
(e) any serious illness of a child accommodated at the home; and
(f) the outbreak in the home of any notifiable infectious disease to which the Public Health (Control of Disease) Act 1984 applies or disease to which provisions of that Act are applied by Regulation [sic] made under that Act."

There are many events that might be regarded as "significant" but which do not fall within regulation 19(2). This is illustrated by the advice given by the inspector on 15 September 2000 to which we referred earlier. Among incidents which he suggested would "clearly" fall within the scope of regulation 19 was the absconding by a young person who has been placed on the Sex Offenders Register and who is known to have had contact with a child or young person during that period of absence. Miss Moore made a valiant attempt to show that such an incident would fall within regulation 19(2)(c) on the basis that a young person absent from the care system inevitably suffers serious harm but we do not accept that submission. There is an obvious *risk* of serious harm to those with whom the absconder comes into contact and probably to the absconder himself but if the Secretary of State considers that such an absconsion must be notified under regulation 19, the regulation must be amended. Equally, we do not see how any of the situations (which we need not set out here) which the inspector said would "probably not" fall within the scope of the regulation could conceivably do so unless the event led to the suffering of "serious harm" by a young person accommodated in the home which would not obviously be the result of any of the three examples. For the same reason, we also cannot see why "a late return of a couple of hours by a young person from an authorised unescorted absence from the home" or "minor cuts or abrasions caused during [an appropriate] restraint", which were said to be in "the grey area", could fall within regulation 19. The third example in "the grey area", which suggests that a complaint by a young person against a member of staff which has been found to be *un*justified should be reported, does not appear to us to fall within the regulation - more specifically regulation 19(2)(b) - either.

The respondent relied on four particular instances where, Miss Moore submitted, there had not been notification. These all related to self-harm by LT. Two of them resulted in her being taken to hospital and two of them did not. The two incidents

where she went to hospital were notified to the placing authority by telephone and one of them was subsequently also reported in writing three weeks after the event. The other incidents were not reported to the placing authority at all. None of them was reported to the Inspectorate.

There is nothing in regulation 19 that requires notification to be in writing, although it seems to us that telephone notifications should be properly recorded and should usually be followed by written notification as a matter of good practice. (The Inspectorate issue a special form.) It also seems to us that The Prospects Organisation were entitled to take the view that the two less serious events did not result in LT suffering "serious" harm. That might also be arguable in respect of the two more serious incidents but one sensible approach to distinguishing between harm that is "serious" and harm that is not, is to consider whether it requires hospital treatment. On balance, we consider that the two more serious events did fall within regulation 19(2)(c) so that, not only was it necessary to notify the placing authority, but it was also necessary, under regulation 19(1), to notify LT's parents, the district health authority, Somerset County Council and the Secretary of State. That was not done, despite criticism in the April/May 1998 inspection report (para. 6.8) of a failure to report incidents of self-harm resulting in young people being taken to hospital.

We would add that, if the Secretary of State, or a placing authority, really wishes to be notified every time any young person inflicts any self-harm at all (bearing in mind that the incidents will in any event be recorded in the home's records), it would no doubt be good practice to comply with those wishes, whether or not the incidents properly fall within regulation 19. Indeed, a placing authority may quite reasonably wish to be told about events not falling within regulation 19. We agree with the Inspectorate's suggestion that, if there is doubt about the scope of regulation 19, those carrying on a home should ascertain the wishes of the authorities, but we do think that the authorities ought to be able to give clear guidance *before* events actually occur and we consider that a *registration* authority ought not routinely to require notification to them of incidents that are *clearly* not within regulation 19.

Regulation 22

Breach of regulation 22 did not form part of the Secretary of State's case against The Prospects Organisation but we mention the issue because it is another example of the Inspectorate wrongly criticising the organisation. In their letter of 5 July 1999, written following the March 1999 inspection, it was said:

> "Prospects must ensure that monthly visits are carried out by a person who meets the requirements of Regulation 22 by being not directly involved with the daily running of the home and inform SSI in writing that it is doing so."

That was repeated in the November/December 1999 report. In the letter of 5 July 1999, it was recorded that Mr Hyland had suggested doing the visits himself and the Inspectorate had written:

> "It was not clear that as managing Director with a significant level of day to day contact with residents, staff and outside agencies that you could be

> considered to be sufficiently independent of the day to day running of the home to perform this function adequately."

However, regulation 22 does not require the visitor to be independent if he is a member of the body carrying on the home. The purpose of the regulation is to ensure that those carrying on homes but not involved in the day to day running of them are kept abreast of what is going on and it makes it plain that that can be achieved by they themselves visiting the homes. An individual carrying on a voluntary home may either visit it himself or ask someone else to do so on his behalf and make reports. Where a body of persons carry on a voluntary home, the visits *must* be made by one of their number *or* an employee of that body who is not directly concerned with the conduct of the home (regulation 22(2) as amended). The report must be made to the body of persons carrying on the home. If a member of the body of persons visits, it does not matter if he or she is directly concerned with the conduct of the home. Accordingly, Mr Hyland *was* an appropriate person to carry out the visits and he had no-one to report to but himself. In fact he uses checklists of items to look at and it seems to us that those should be available both to the Inspectorate (to show that the visits have been carried out) and to appropriate staff (to take such action as may be required). We do not agree with the suggestion that they should, as a matter of course, be available to prospective placing authorities.

A local authority has the power (under paragraph 17 of Schedule 2 to the Children Act 1989) to appoint an independent visitor for a child it is looking after who is not being visited. Some voluntary organisations appoint independent people to visit their homes and report to the body carrying on the homes. However, visits carried out by such people are not to be confused with visits carried out under regulation 22.

Whenever the Inspectorate make an unjustified criticism based upon a failure to read the legislation, the authority of all their other advice is undermined.

Failure to implement inspectors' recommendations

Complaints procedure

The Inspectorate had some justifiable criticisms of The Prospects Organisation's complaints procedure. Those are now being addressed.

Smoking policy

The Inspectorate also had some justifiable criticisms of the practice as regards smoking which suggested that the policy was not being properly enforced. Also, there are questions about the policy itself insofar as staff are allowed to smoke in front of young people. There are obvious difficulties where staff work 24-hour shifts and the criticism really is that The Prospects Organisation has not thought hard enough about what the policy should be. That, too, is now being addressed.

Conclusion

We have accepted a number of the Inspectorate's complaints about The Prospects Organisation. Miss Moore rightly argued that we should not look at each one in isolation but should consider whether, taken together, they justify cancellation of the registration. We also consider that we must retain a sense of proportion. No organisation is perfect and we must balance the faults of The Prospects Organisation against their positive aspects and remember that they deal with particularly challenging young people. No individual is perfect and we must accept that misjudgements will be made from time to time. Furthermore, we do not consider that we should overlook the fact that The Prospects Organisation has not had the sort of final warning we would expect before a cancellation procedure is set in motion and the further fact that many of the criticisms emerged for the first time after the procedure had been started. We also bear in mind that some of the matters of concern, particularly those relating to staffing, are at least in part a product of the procedure itself because the effect of proposing cancellation is not only to cause young people to be removed so that staff are laid off but also to weaken the security of the remaining staff, making it more difficult to retain them and to recruit good replacements.

It is also important to consider the limited effect of registration. Voluntary organisations are not agents of the Secretary of State and those carrying on voluntary children's homes are not employees of the Secretary of State. They are not obliged to do things in the way the Secretary of State would wish so long as they comply with the legislation and take account of guidance. Furthermore, guidance is guidance and voluntary organisations are not obliged to adopt every recommendation completely. Whether a failure to follow what is conventionally regarded as good practice means that the conduct of a home is "unsatisfactory" is a matter of judgement and, in our view, voluntary organisations are entitled to a margin of appreciation. We deplore the relative professional isolation of The Prospects Organisation but we are not satisfied that it is currently having a significant detrimental effect on the organisation's care of the young people placed with them. We deplore some of Mr Hyland's conduct towards staff - and it would no doubt attract disciplinary action against him were he an employee - but we are not satisfied that it is currently having a significant detrimental effect on the young people.

However, we have identified a number of respects in which the conduct of the home is unsatisfactory and the welfare of the young people has been, or might have been, affected. There is no sanction we can apply other than upholding the Secretary of State's decision to cancel the registration. We must consider whether the breaches of the regulations and the other unsatisfactory elements of the conduct of the home justify that sanction. On balance, and with some hesitation, we have concluded that they do not. We consider that The Prospects Organisation should be allowed to continue the valuable work they do with young people. But it will be apparent from what we have said above that we also consider that there are some issues that they must address as a matter of some urgency.

Chief among these is Mr Hyland's letter-writing. Mr Hyland has many strengths. His commitment to particularly challenging young people excites admiration. However, writing is not among his strengths and we suspect that even he would admit that. The

lack of a coherent written statement of the real purpose and function of the homes and the lack of a proper training manual are two results of his inability to express himself in writing. He should recognise the need to collaborate with someone who can write. So far as his letters are concerned, the remedy may have to be more drastic. The Prospects Organisation is quite entitled to argue forcefully in what they see as the interests of the young people for whom they care. Public authorities may not be used to receiving forceful objections to their proposals but that does not mean that such objections are improper. However, Mr Hyland's letters go beyond what is acceptable. He needs to reflect on the disproportionate amount of time it must take to answer his more confrontational letters and the consequences of the unnecessary souring of relationships. Too ready a resort to formal complaints procedures distracts from the main purpose of the correspondence and it is arrogant of The Prospects Organisation not to care about how much inconvenience they cause to other authorities who also need to direct their resources to the care of children. Either he should carefully edit his dictated letters before they are posted or else someone else should write them. More than once during the hearing he suggested that he might take less of a central role in the organisation in the future. The organisation doubtless needs his drive and inspiration but there might be a lot to be said for bringing in someone else to have day-to-day charge of the organisation and correspond with the placing authorities. That, however, is a matter for Mr Hyland himself, as director of The Prospects Organisation, to consider.

We allow the appeal.

Mark Rowland
Christopher Wakefield
Frank Watts

Decision signed by the chairman on 20 October 2000 _________________________