Browne Jacobson

School exclusions case confirms ‘substance over form’ is key

17 December 2024 Hayley O’Sullivan

Hot on the heels of the recently published case of R (LM) v an academy trust, helpfully summarised by Philip Wood, two new cases on exclusions have now been reported.

This recent flurry of case law is helpful and to some extent expected, given the steep rise in suspensions and exclusions over the last year.

In RWU, R (on the application of) v a governing body of an academy [2024] EWHC 2828 (Admin) Judge Fordham dismissed all four grounds of the claimant’s application for judicial review and set out some useful findings on how the courts will approach claimants’ criticisms of a school’s exclusions process. Schools should take comfort that the case confirms that courts are concerned with substance over form and that minor procedural and administrative errors will not lead to a decision being quashed by the High Court.

What was the background to this claim?

The Claimant was permanently excluded for persistent disruptive behaviour. The governors’ disciplinary panel (GDP) reviewed and upheld the principal’s decision. That decision was later quashed by an independent review panel (IRP) on grounds of irrationality because, in its view, relevant considerations had not been taken into account by the GDP.

Among the IRP’s criticisms they found that letters were missing, out of date guidance was cited, relevant records of reintegration meetings, pastoral support plans and child protection documentation were missing, policies and guidance were not to hand, there was no statement taken from the Claimant, deliberations were not recorded in the minutes and the claimant’s vulnerabilities were not sufficiently taken into account. A reconvened GDP met, addressed and considered the IRP’s comments but once again declined to reinstate.

“A victim of child criminal exploitation”

Three of the four grounds of claim related to the nature of the reconsideration undertaken by the GDP, with one of the key complexities centring around the particular vulnerabilities of the child being a victim of child criminal exploitation and the relevance of events that happened post-exclusion.

The judge dismissed the first ground finding that the school had taken the issue of child criminal exploitation into account when making its decision but that a positive European Court of Human Rights article 4 protection duty owed by the school had not arisen.

What can schools learn from this case?

1. **“Judicial review is not an exercise based on hindsight... The GDP’s decision was either lawful, reasonable and fair at the time and in the circumstances in which it was made; or not...”** The judge was quite clear that the court has to look through the prism of what a school knew or ought to have known at the time it makes its decision.
2. **The court should take “a straightforward, not a legalistic, nit-picking or a technical, approach to reasons and the way they have been expressed”.** Whilst governor deliberations should be recorded, observations, thoughts and reflections in those deliberations should not form the basis for an application for judicial review, again confirming that ‘clumsy expression’ should not detract from a panel’s key findings.
3. **“Decision letters must be read fairly and as a whole”.** The judge focused on the substance of the GDP’s decision letter and the

record of that discussion to decide whether the reconvened GDP had fulfilled its obligations.

4. **“The decision letter needs to be read in context and written to an informed audience”.** One argument put forward by the claimant was that there wasn’t enough detail in the principal’s decision letter on the serious risk of harm the student would present if they were reinstated. However, the court noted that the description of the permanent exclusion test (as set out in paragraph 11 of the statutory exclusions guidance) was set out within the letter.

In addition, the application of the test was expressed orally at the GDP reconsideration hearing and at the beginning of the principal’s report for that hearing and this was sufficient.

How can schools avoid claims being brought against them?

Whilst this case is clear that minor errors should not detract from the main substance of decisions, schools can help mitigate against the risks of claims being brought by tightening up their procedures and avoiding errors that give prospective claimants ammunition for bringing claims.

Schools should put together clear and comprehensive evidentiary packs for a governors’ review meeting. Governors should ensure they have all relevant evidence and information and ask for any paperwork that they feel might be missing, ask probing questions and be conscious that the record of the meeting and their deliberations along with their decision letter will be subject to close scrutiny.

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