

New case has implications for school exclusions and legal aid

26 February 2025  Philip Wood

A landmark High Court decision has recently shed light on the intersection of legal aid, human rights, and school exclusions. The case, *R (on the application of CWJ) v Director of Legal Aid Casework*, related to the decision not to grant exceptional case funding (ECF - legal aid) for legal representation in an Independent Review Panel (IRP).

The student, who was of Black Caribbean heritage with special educational needs and on free school meals, was excluded for alleged acts of physical violence. One of the grounds upon which ECF funding can be made available is where without it, the person's human rights would be breached.

Upholding the exclusion

The exclusion was upheld by the governing body and ECF was declined at the IRP stage. The IRP subsequently recommended reconsideration but the governors upheld for a second time. That decision was subject to a separate judicial review that was determined in 2023 and focused on the Public Sector Equality Duty.

The Court in this new case examined the challenges to the Director of Legal Aid caseworker's decision not to allow ECF at the IRP, being broadly that it had made a mistake to decline ECF and a challenge to the ECF guidance.

Dismissing the challenge

The Court ultimately dismissed the challenge, largely on the basis that the parent had not raised human rights nor discrimination at the IRP stage and refused permission on the claim about the ECF guidance.

No right not to be excluded

However, whilst confirming the previous caselaw that there is no right not to be excluded, the Court held that Article 6 (right to a fair trial) could be engaged where a parent is seeking to argue that their child was discriminated against under the Equality Act, because an IRP decision is binding on the parties and does have jurisdiction to consider discrimination.

Where discrimination is being raised at the IRP, ECF could follow. Each case would very much fall on its merits, with the Court noting that whilst it had found that Article 6 right could be engaged, it would not be relevant in every IRP, but neither would it never be.

What does this mean for schools?

We are likely to see more parent solicitors seek legal aid at IRP following this decision and therefore more explicit references made to discrimination and human rights too.

It's clear that parent groups see this decision as a way to increase levels of legal representation for parents at exclusion IRP hearings. Where human rights and discrimination are raised, it is important to get advice, as failure to consider them properly early on may lead to further challenge.

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