

# Exclusion appeal outcome aids clarity for schools

18 March 2025  Philip Wood

The recent decision by the Court of Appeal regarding the permanent exclusion of a student, TZB, from his secondary school has helpfully clarified a number of matters in relation to exclusions that regularly come up.

## Background

TZB, a 15-year-old student of black Caribbean heritage with special educational needs, was permanently excluded following incidents of assault. The GDC had upheld the decision of the headteacher, but the IRP recommended reconsideration on the basis of a number of matters. The GDC reconsidered the decision and upheld it for a second time.

The parent brought a challenge in the High Court on the basis that the headteacher had not properly considered the public sector equality duty (PSED) that applies to public bodies and the Governors' Disciplinary Committee (GDC) had given inadequate reasons.

The PSED is a requirement under the Equality Act 2010 that obliges public authorities, including schools, to consider how their decisions and policies might help to eliminate discrimination, advance equality of opportunity, and foster good relations between different people when carrying out their activities.

The High Court heard the case in 2023 and dismissed the challenge in full, with TZB's mother then appealing this decision to the Court of Appeal.

The Court of Appeal meticulously examined the application of the PSED and the reasoning of the GDC and, in the process, made observations that are likely to be helpful for schools.

## The headteacher's decision

In this case the headteacher had justified the exclusion on the basis of two assaults. The headteacher also provided the full behaviour record to the GDC for **two reasons**.

Firstly, this was provided to show the approach around the second part of the exclusion test (whether there would be serious harm in the child remaining in school). Secondly, the headteacher said that if the GDC was not happy with the justification being the two assaults, then she would rely on the previous behaviour record as a whole to show that there were "persistent" breaches of it.

The IRP criticised the school and said the basis of the exclusion was not clear and that, as set out in the exclusions guidance, it needed to either be serious *or* persistent and could not be both.

## The basis for exclusion

The Court of Appeal said this criticism by the IRP was puzzling, as the headteacher had been very clear what the basis for the exclusion was – two separate incidents for which the seriousness satisfied the first part of the exclusion test.

There was also nothing wrong with having a fallback position in terms of the behaviour as the headteacher had done. It would be "*artificial and misleading*" if a headteacher had to decide on one of these and it was "*simple prudence*" for a headteacher to have a fallback position.

Headteachers would need to make very clear in the exclusion letter that this is the approach that they were taking in relation to the decision.

The Court was also clear that the two-stage test for exclusion is just the starting point in terms of justification for a permanent exclusion.

## GDC role

It was confirmed that the GDC's role is not just one of a review of the headteacher's decision but has a substantive role in the process, and therefore can correct issues raised at this stage.

It's not uncommon for information to be presented to the GDC that the headteacher didn't have when they made their decision and it would make "*no sense*" if the governors had to reinstate were they to detect an error in the decision making, when the exclusion was fully justified.

## GDC reconsideration

The Court of Appeal agreed with the form of reconsideration following an IRP decision recently explained by the High Court in the case of XZY. This requires the GDC to reconsider the decision in light of the IRP's findings and decide whether its previous decision should be changed or upheld. New information can be considered, where relevant.

The GDC was not required to provide an explicit response to every single point that the IRP had made, even if it would be good practice and respectful to do so. Importantly though, the letter does need to cover the material points and allow a parent to understand why the decision has been arrived at.

## Public Sector Equality Duty

The Court downplayed the PSED's significance in individual exclusion decisions, noting that no claim for discrimination had been brought. This was a case that showed such a focus on the PSED in an individual exclusion decision was likely to be "*distracting and unhelpful*" and may risk the over-legalisation of the exclusion process.

Instead, the proper focus should be on what had happened, the relevant risk of harm to others, the features of the case (including any relevant protected characteristics) and support provided.

Taking the above into account, the Court of Appeal rejected the appeal on all counts, but it is likely to be a helpful decision for schools in setting out the expectations and help prevent the overly strict interpretation of the process and guidance that we sometimes see.

## Further information, support and guidance

Our team of specialist lawyers are experienced in supporting trusts and schools, fully understanding the process and pitfalls surrounding exclusions and advising on how characteristics like SEND and looked-after children should feature in decision making.

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