

# Judicial Review of school exclusion reconsideration dismissed on all grounds

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The recent case of *R (on the application of A Parent) v Governing Body of XYZ School* [2022] EWHC 1146 (Admin) provides some welcome and reassuring guidance to governing boards on the exclusion reconsideration process. It is a claim that should arguably never have been brought, given the Judge's view that the Claimant's submissions were essentially a challenge to the merits of the governing board's decision. Nevertheless, the case demonstrates the risk to schools in having exclusions decisions placed under the microscope, a risk which may only increase once the new statutory guidance on school exclusions comes into force. Although the claim was dismissed on all four grounds, there are some useful take-aways and suggestions for governing boards on how to reduce the risk of having decisions subsequently challenged in the courts.

## Key points to take away:

- Governing Boards should approach a reconsideration meeting by reviewing the material presented at the original hearing and consider whether or not its previous findings and decision should be changed or upheld in light of the Independent Review Panel's (IRP's) findings
- The same governors as those who made the original decision can carry out the reconsideration (but note that there may be some circumstances when this would be inappropriate)
- There is no requirement for a full re-hearing or to seek additional representations from the parties
- Statutory guidance can be departed from with good reason
- Schools should ensure risk assessments are updated as new information comes to light and that a pupil is invited to make representations prior to taking the decision to exclude to reduce the risk of a decision being subsequently challenged

## What were the facts?

A Pupil attended a co-educational, local authority-maintained school until his permanent exclusion aged 16. Five months prior to being excluded, he was accused by a 12-year-old female pupil (the Complainant) of serious sexual misconduct. Referrals were made to the police and an initial risk assessment was conducted, which advised that the Complainant should be kept apart from A Pupil.

Following receipt of further information by the police and upon being informed that A Pupil should not have contact with the Complainant, A Pupil was permanently excluded for a serious breach of the school's behaviour policy.

The governing board met and declined to reinstate A Pupil. An IRP reviewed the decision and recommended that the governing board reconsider their decision.

At the reconsideration hearing the same governors met and declined to reinstate A Pupil. A claim for Judicial Review of the reconsideration hearing was brought on four grounds.

## Ground 1 - The governing board's decision was affected by actual or apparent bias

The Judge reiterated the well-established legal position in respect of the high thresholds that must be reached in order for a Claimant to prove actual and apparent bias, and made clear that the original panel of governors can undertake the reconsideration. The Judge

commented that it would be difficult for an entirely new panel to assess the case entirely on the papers and that there are likely to be advantages in retaining the same panel because of its knowledge of the evidence and history. Nevertheless, the judge made clear that in some circumstances an entirely fresh panel may be appropriate, e.g. where an IRP found the original panel may be too partial to undertake the reconsideration.

## **Ground 2 - The governing board should have conducted a review of its earlier decision, instead of considering the matter “afresh”**

The Judge noted that the term ‘afresh’ has more than one meaning, and the statutory guidance on school exclusions is clear that there is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting (though there may be some circumstances where this is appropriate). If a governing board conscientiously address each of the IRP’s points in detail, analyses the evidence, and makes clear findings as well as taking a broader, overall view of the issues, it will have discharged its duty.

## **Ground 3 - In light of the IRP’s findings, the decision to exclude A Pupil could not be lawfully or rationally maintained by the governing board**

The IRP pointed to the absence of an up-to-date risk assessment and lack of representations made by A Pupil, which meant governors did not have sufficient evidence to satisfy itself that reinstating A Pupil would seriously harm the education or welfare of others at the school. The Judge noted that the School Exclusions Guidance does not require a risk assessment to be carried out before taking the decision to permanently exclude, and that other statutory guidance (notably Keeping Children Safe in Education) can be departed from if there are good reasons to do so, such as here where neither local authority was willing or able to carry one out. They further commented that A Pupil was given a number of opportunities to put his point of view across at various stages of the process. Despite these findings, it is still good practice for schools to ensure up-to-date written risk assessments are carried out wherever possible and that a pupil is invited to make representations prior to taking the decision to exclude. It will at the very least lead to reduced grounds on which a Judicial Review claim can be brought.

## **Ground 4 - The governing board unfairly pre-determined its decision**

The Claimant relied on email correspondence between governors prior to the reconsideration meeting in support of this ground. Whilst the Judge found that email exchanges between panel members were reasonable and reflected their initial thoughts, not their considered conclusions, governing boards should nevertheless remain cautious in exchanging views prior to an exclusions meeting.

## **Contact**



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