


New High Court case on exclusion reconsiderations

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The High Court has recently considered the role of a governing board reconsideration panel in circumstances where an independent review panel had quashed its decision. In *R (LM) v an Academy Trust*, in which Browne Jacobson's public law team represented the trust, a judicial review was brought by an excluded pupil against a reconsideration panel when it upheld the headteacher's decision.

The pupil had been excluded for several instances of sexual misconduct which the governing body upheld on the basis that they were serious and readmitting the pupil to the school would cause serious harm, supported by the fact that the pupil did not accept that he had done anything wrong. At the GDC, the parents were represented by a barrister who cross-examined the headteacher at some length.

CCTV evidence

The IRP, by majority, quashed the decision of the governing body because the GDC had not thoroughly tested the evidence presented, had not given detailed reasons for their decision, the parents had only been able to review CCTV evidence just before the meeting and there was no risk assessment in place in relation to the pupil despite previous allegations relating to sexualised behaviour.

The Reconsideration GDC (RGDC), constituted by three different governors, reconsidered the decision on the papers, including everything the IRP had received, their minutes and letter, the statutory guidance and written submissions prepared by the parents. They accepted some of the criticism of the IRP but decided to uphold for a second time on the basis that the procedural issues did not detract from the rationale of the exclusion which was serious sexual misconduct.

The parents made a claim for judicial review on a number of grounds. These included that:

1. The RGDC's findings of fact were irrational and unclear.
2. The RGDC had acted irrationally and contrary to the statutory guidance in upholding without a risk assessment.
3. The RGDC acted unreasonably by not seeking further evidence of the authenticity of the pupil's statements and how they had been obtained.
4. The RGDC had acted irrationally in concluding that the exclusion was a last resort.
5. The RGDC had acted irrationally in not allowing the parent or the child to make oral representations to the RGDC.

The High Court rejected all of these grounds, dismissing the judicial review brought by the parents in full. The reasons for the Court's decision are useful given they cover a number of points that are frequently raised in exclusion meetings by parents.

On ground 1, the court held that the caselaw referred to did not assist them and the RGDC was a lay panel. It also did not start with a blank sheet of paper and was entitled to start with the headteacher's reasons and decide, based on the evidence, whether it agreed with those findings. That was the correct approach based on the statutory guidance and previous caselaw on exclusions.

Not a serious breach of the behaviour policy

The parents had sought to add in an extra point here that it was irrational for the RGDC to uphold the exclusion when it was not in fact a serious breach of the behaviour policy. The court refused to allow this as an additional ground, but also found that it was not irrational. In

this case the headteacher had submitted that an exclusion was justified because the behaviour was both serious and persistent and the RGDC was “fully entitled” to agree with the headteacher that the incidents were found to be proven to justify the exclusion.

Lack of a risk assessment

The court found that the lack of a risk assessment, as set out in KCSIE, was not a pre-condition for an exclusion and whilst the RGDC had been critical of the lack of a risk assessment, they were entitled to find that it did not undermine the exclusion. The parents’ argument here was specifically that the RGDC itself should have obtained a risk assessment. Posed that way, it raised a number of practical issues such as to who would undertake the risk assessment, if it was not to be done by staff at the school. The RGDC had been entitled to rely on the headteacher’s view on the risk that the child posed in the school.

The court rejected ground 3 on two points. Firstly, the criticism of the IRP had been about the authenticity of some of the pupil witness statements obtained and the RGDC had specifically looked at these and found that there was evidence of different pupil voices. Secondly, the RGDC did not accept some of the IRP criticisms and did not have to. What it had to do was give “conscious reconsideration” to whether the pupil should be reinstated. It had been proposed by the parents that given the criticism by the IRP, there was no other choice for the RGDC other than to reinstate the pupil, but there was no caselaw that suggested that, and the judge rejected it.

Not robust enough

On ground 4, relating to whether the exclusion was a last resort, the IRP had criticised the GDC for not being robust enough in its questioning on whether alternative provision was explored. The headteacher had spoken to other local schools about a managed move, but all had turned down the request. This ground was broadly that the action of the RGDC was so irrational no GDC could have made it and it fell far short of that threshold. The RGDC was not required to reject the headteacher’s account of alternatives in the absence of written evidence and it had found the headteacher’s evidence on this to be credible.

On oral submissions, the parents had been able to present evidence at both the GDC and the IRP meeting and had made written submissions to the RGDC. Evidence could have been given at the GDC by the pupil but the parents had instructed counsel who had cross-examined the headteacher at length and made submissions on their behalf. There had been no misunderstanding on the facts by the RGDC and there was no requirement to offer another opportunity for oral evidence.

No legal flaw

The court therefore found no legal flaw in the approach of the RGDC, even though the IRP had made serious criticisms of the GDC. The RGDC remedied the shortcomings of the GDC and had not made an irrational decision.

If you have any questions about the judgement or need [assistance with an exclusion](#), please let us know.

Key contacts



Philip Wood

Principal Associate

philip.wood@brownejacobson.com

+44 (0)330 045 2274

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