Neutral Citation Number: [2023] EWHC 1722 (Admin)

Case No: CO/3726/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 July 2023

Before:

JUDGE THOMAS CHURCH,
(sitting as a Judge of the High Court)

- -

Between:

THE KING	**Claimant**
(on the application of)	
TZA	
(anonymity order in place)	
- and -	
A SECONDARY SCHOOL	**Defendant**

- -
- -

Stephanie Harrison KC, Ollie Persey and Nadia O'Mara (instructed by **Just for Kids Law**) for the **Claimant**
Tom Cross (instructed by **Clyde & Co.**) for the **Defendant**

Hearing date: 21 February 2023

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Approved Judgment

This judgment was handed down remotely on 11 July 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Judge Thomas Church, sitting as a Judge of the High Court:

What this judicial review is about

1. This case is about a child who was excluded permanently from his secondary school shortly before his GCSEs. Although this case is all about him, and is brought by his mother, I am not going to use their names or their actual initials in this judgment. That is not intended to depersonalise them. It is because, as Deputy High Court Judge Clare Padley recognized when she made an anonymity order in these proceedings, the balance between their individual right to privacy and the public interest in open justice favours them remaining anonymous. I see no reason to disturb the anonymity order made by Deputy High Court Judge Padley. In accordance with DHCJ Padley's order I'll refer to the Claimant as **"TZA"** and her son as **"TZB"**. Because naming the school, members of its staff or its governors might allow people to work out who TZA and TZB are (what is sometimes called "jigsaw" identification), I won't use their names or initials either.

2. The important issues raised by this case are:

   i) How a Headteacher must discharge the Public Sector Equality Duty under section 149 of the Equality Act 2010 (the **"PSED"**) when deciding to exclude a pupil permanently from school who, like TZB, has protected characteristics;

   ii) How a Governing Body must go about deciding whether to reinstate a permanently excluded pupil with such characteristics; and

   iii) The standard to which a Governing Body's reasons are to be held in relation to a reconsideration of a previous decision following the recommendation of an Independent Review Panel to do so.

Factual Background

3. TZB was, at the relevant time, a 15 year old child of Black Caribbean heritage with special educational needs.

4. On 13 May 2021, the Headteacher of the Defendant secondary school (which I'll call the **"School"**) decided to exclude TZB from school permanently from 14 May 2021 (the **"Exclusion Decision"**). The Exclusion Decision was made because of what the Headteacher described as TZB's "wholly unacceptable behaviour".

5. The behaviour which the Headteacher relied upon was described in her letter informing TZA of TZB's permanent exclusion (the **"Exclusion Letter"**) as follows:

   > "On Wednesday 5 May, [TZB] initiated communication with a student. He texted the student concerning an interaction after school between the student and a friend of [TZB]'s.
   >
   > On Thursday 6 May, during lunch time through another student, [TZB] arranged to meet the student with whom he had been in contact via text the previous evening. Through the intermediary, he asked to meet the student in the boys' toilets. Once inside the toilets, [TZB], along with the intermediary, used significant physical violence towards the other student. Other students who were using the toilets at the time, witnessed this premeditated assault which involved [TZB] repeatedly punching the student in the body and head culminating in him kicking the student in the face whilst they were on the ground. Seeing two

> students physically assaulting another, bystanders put themselves at risk by intervening to stop [TZB] causing serious harm to the student.
>
> ….
>
> A short while later, after the whole school had been dismissed, at approximately 4:10pm a student who had earlier intervened to stop the assault in the boys' toilets left the school site, [TZB] and an outsider confronted the student near to the school. The outsider grabbed onto the student and shouted at them, asking whether they were 'involved'. [TZB] also physically grabbed the student's jacket and directed the outsider to assault the student. The outsider then punched the student in the face. Fearing for their safety and further attack, the student freed himself from the grip of [TZB] and the outsider, leaving their rucksack and jacket in the process. The student ran back to school to escape the danger and to inform staff. [TZB] and the outsider then made off with the student's jacket and bag."

6. The Headteacher found that TZB had been responsible for "two acts of physical violence towards members of the school community during two separate incidents on Thursday 6 May", which she found to amount to "a serious breach of discipline" and she decided, based on those incidents, that that TZB's continued presence in the School "would present an unacceptable risk to the welfare and education of others" (see the Exclusion Letter at pages [195] – [200] of the Supplementary Bundle).

7. A hearing before the Disciplinary Committee of the Governing Body of the School (the **"GDC"**) took place on 8 June 2021 (the **"initial GDC meeting"**). The GDC decided not to reinstate TZB (the **"Decision Not to Reinstate"**). TZA referred the matter to an Independent Review Panel (the **"IRP"**). With the support of Just for Kids Law, TZA made written submissions to the IRP arguing that the Exclusion Decision was unlawful.

8. Both the School and TZA were represented by counsel at the hearing before the IRP (which took place over two days, on 25 January 2022 and 11 March 2022). On 23 March 2022 the IRP issued its decision, which was to recommend that the GDC reconsider the Decision Not to Reinstate (the **"IRP Decision"**). The IRP Decision identified several concerns which the IRP had about the Decision Not to Reinstate.

9. The GDC accepted the recommendation in the IRP Decision and reconvened on 11 July 2022 to reconsider the Decision Not to Reinstate (the **"GDC reconsideration meeting"**). Its decision was to confirm the Decision Not to Reinstate (the **"Reconsideration Decision"**).

10. While this judicial review is of the Reconsideration Decision (and not the Exclusion Decision or the Decision Not to Reinstate), those earlier decisions are inevitable highly relevant to the issue of the lawfulness of the Reconsideration Decision.

11. There was a one day oral hearing of this matter before me, at which I had the benefit of eloquent and helpful oral submissions from Ms Harrison KC, counsel for the Claimant, and Mr Cross, counsel for the Defendant. I am grateful to them for the clarity of their submissions and the helpful way in which they approached the hearing. I reserved judgment.

The Claimant's Case in Summary

12. The thrust of the Claimant's case is that the Exclusion Decision was unlawful because the School failed to produce a written document which demonstrated that the Headteacher had had "due regard" to the PSED when deciding to exclude TZB

permanently, and the Reconsideration Decision was itself unlawful because the only lawful option open to the GDC (given the unlawfulness of the Exclusion Decision) was to reinstate TZB. I will refer to these arguments on unlawfulness in relation to the PSED as **"Ground 1"**.

13. The Claimant also challenges the Reconsideration Decision on the basis that it is inadequately reasoned (**"Ground 2"**).

14. It was explained that TZB had no wish to return to the School to continue his education, but that his permanent exclusion was nonetheless prejudicial to him as it remained on his record and it affected the way he felt about himself.

15. The Claimant sought, by way of relief:

i) declarations that:

a) the Governing Body of the School misapplied the PSED when reaching the Reconsideration Decision;

b) the Governing Body of the School gave inadequate reasons in its decision to uphold TZB's permanent exclusion;

c) the Headteacher of the School acted unlawfully in breaching the PSED when permanently excluding TZB; and

ii) an order quashing the Exclusion Decision.

The Defendant's Case in Summary

16. The Defendant says the Exclusion Decision was made based on clear factual findings by the Headteacher as to TZB's behaviour, which were open to her on the evidence before her. It says that her assessment that allowing TZB to remain at the School would seriously harm the education or welfare of others was open to her given her factual findings. The Defendant maintains that when making the Exclusion Decision the Headteacher was well aware of TZB's multiple protected characteristics, of the fact that pupils with such characteristics were over-represented among those permanently excluded from school, and of the likely consequences of permanent exclusion for TZB.

17. The School's case is that there is no legal requirement for the kind of contemporaneous or prior documentary evidence of the Headteacher's consideration of the PSED that the Claimant argued for. The School says that the Headteacher's evidence demonstrates that she considered these factors, and gave due consideration to the PSED, before reaching the Exclusion Decision (and not only after the decision was reached, by way of "rearguard" justification). The School's primary case is that the Exclusion Decision was lawful.

18. In the alternative, the Defendant argues that, even if there were shortcomings in the Headteacher's consideration of the PSED, because the statutory scheme requires the Governing Body to consider reinstatement whenever a Headteacher makes a permanent exclusion decision, the decisions of the Headteacher and the Governing Body are properly viewed as two parts of a single decision. The consequence of this is that any shortcomings there may be in a Headteacher's decision making are capable of cure by conscientious decision making by the Governing Body. The School maintains that even if the Headteacher did not give due consideration to the PSED,

the GDC did, and it was not bound to reinstate TZB due to any deficiencies in the Headteacher's Exclusion Decision.

19. With respect to Ground 2, the Defendant says that the Claimant seeks to set the bar for a lay public body giving reasons for its decisions far too high, and that the reasons given by the GDC for both the Refusal to Reinstate and the Reconsideration Decision are adequate.

The Relevant Law

The Statutory Exclusions Framework

20. Section 51A(1) of the Education Act 2002 (the **"Act"**) read with Regulation 21(2) of the School Discipline (Pupil Exclusions)(England) Regulations 2012, as in force at the material times (the **"Regulations"**) provides:

> "(1) The principal of an Academy in England may exclude a pupil from the school for a fixed period or permanently."

21. Regulation 23(3) of the Regulations provides that in certain circumstances, including where the principal decides to exclude a pupil permanently:

> "The principal must, without delay –
>
> (a) inform the relevant person, the proprietor and the local authority (and, in the case of a permanent exclusion, if applicable, the home local authority) of the period of the exclusion and the reasons for it; and
>
> (b) give the relevant person notice in writing stating the following matters –
>
> (i) the period of the exclusion and the reasons for it;
>
> (ii) that the relevant person may make representations about the decision to the proprietor and that, where the pupil is not the relevant person, the pupil may also be involved in the process of making representations, and an explanation as to how the pupil may be involved;
>
> (iii) the means by which representations may be made;
>
> (iv) where and to whom representations should be sent; and
>
> (v) where a meeting of the proprietor is to consider the exclusion, that the relevant person may attend and be represented at the meeting (at their own expense), and may be accompanied by a friend."

22. Regulation 24(2) of the Regulations provides that where the proprietor is informed under Regulation 23(3)(a) of the permanent exclusion of a pupil and in certain other circumstances, "the proprietor must decide whether or not the pupil should be reinstated".

23. Regulation 24(3) sets out how the proprietor must go about this task:

> "(3) In order to decide whether or not a pupil should be reinstated, the proprietor must –

(a) consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and persons working at the Academy (including persons working at the Academy voluntarily);

(b) consider any representations about the exclusion made to the proprietor by or on behalf of the relevant person or the principal;

(c) take reasonable steps to arrange a meeting at which the exclusion is to be considered for a time and date when each of the following persons is able to attend –

(i) the principal;

(ii) the relevant person (and, where requested by the relevant person, a representative or friend of the relevant person); and

(iii) where requested by the relevant person, a representative of the local authority (and, if applicable, the home local authority);

(d) allow each of the persons described in subparagraph (c)(ii) to attend the meeting and to make representations about the exclusion; and

(e) allow the person described in subparagraph (c)(iii) to attend the meeting as an observer., unless the proprietor gives that person permission to make representations."

24. Regulation 24(6) provides:

"(6) If the proprietor decides not to reinstate the pupil it must without delay –

(a) inform the relevant person, the principal and the local authority (and, if applicable, the home local authority) of its decision and the reasons for it in writing; and

(b) in the case of a pupil who is permanently excluded, give the relevant person notice in writing stating the following –

(i) that the exclusion is permanent;

(ii) that the relevant person may apply for the proprietor's decision to be reviewed by a review panel;

(iii) where the relevant person applies for a review, that the relevant person may require the proprietor to appoint a SEN expert to advise the review panel;

(iv) the role of the SEN expert in relation to a review;

(v) how an application for a review may be made and what the application must contain;

(vi) where and to whom to send the application and the date by which the application must be received;

(vii) that the relevant person may, at their own expense, appoint someone to make representations for the purpose of the review; and

(viii) that the relevant person may issue a claim under the Equality Act 2010 where the relevant person believes that unlawful discrimination has occurred, and the time within which such a claim should be made."

25. Regulation 25 sets out the procedure for the review by a review panel of a proprietor's decision not to reinstate an individual who has been permanently excluded. It provides:

> 25.-(1) Where the relevant person applies for a review, the proprietor must, at its expense-
>
> (a) make arrangements for the review of its decision not to reinstate a pupil who has been permanently excluded; and
>
> (b) if requested by the relevant person, appoint, for the purpose of that review, a SEN expert to provide impartial advice on how special educational needs may be relevant to the decision to exclude the pupil permanently.
>
> …
>
> (3) Where the relevant person wishes that a SEN expert be appointed for a review, the request must be made in writing to the proprietor with, and at the same time as, the application for a review.
>
> (4) In exercising its functions under these Regulations, the review panel must consider the interests and circumstances of the excluded pupil, including the circumstances in which the pupil was excluded, and have regard to the interests of other pupils and persons working at the Academy (including persons working at the Academy voluntarily).
>
> (5) In addition to the powers of the review panel under section 51A(4) of the Act (as modified), the panel may-
>
> (a) direct the proprietor to place a note on the pupil's educational record;
>
> (b) order that the proprietor is to make a payment to the local authority in the sum of £4,000 if, following a decision by the panel to quash the proprietor's original decision, the proprietor-
>
> (i) reconsiders the exclusion and decides not to reinstate the pupil; or
>
> (ii) fails to reconsider the exclusion within the time limit specified in regulation 26(1).
>
> (6) The review panel's decision is binding on the relevant person, the principal and the proprietor."

26. Regulation 26 sets out the procedure for reconsideration of a decision not to reinstate a permanently excluded pupil following a review. It provides:

> "26.-(1) Where the review panel-
>
> (a) recommends that the proprietor reconsiders a decision not to reinstate a pupil who has been permanently excluded; or

(b) quashes the proprietor's decision and directs the proprietor to reconsider the matter,

the proprietor, within 10 school days after notification under paragraph 19 of Schedule 1 of the review panel's decision, must reconsider the exclusion.

(2) When the proprietor has reconsidered its decision it must inform the relevant person, the principal and the local authority (and, if applicable, the home local authority) of its reconsidered decision and the reasons for it without delay…"

27. Regulation 27 imports a requirement to "have regard to" guidance given from time to time by the Secretary of State for Education when making decisions related to exclusion:

"27.In exercising their functions under section 51A(1) of the Act (as modified) or under these Regulations, the following persons and bodies must have regard to any guidance given from time to time by the Secretary of State-

(a) the principal;

(b) the proprietor;

(c) the review panel; and

(d) the SEN expert."

28. Regulation 28 sets out the standard of proof applicable to decisions relating to exclusion. It provides:

28. Where it falls to-

(a) the principal, in exercise of the power conferred by section 51A(1) of the Act (as modified);

(b) the proprietor, in exercise of its functions for the purposes of regulations 24 and 26; or

(c) the review panel, in exercise of its functions for the purposes of regulation 25,

to establish any fact, any question as to whether that fact is established is to be decided on a balance of probabilities."

The Exclusions Guidance

29. The guidance relating to exclusions which was current at all relevant times for the purpose of these proceedings was "Exclusion from maintained schools, academies and pupil referral units in England (September 2017) (the **"Exclusions Guidance"**), which was in September 2022 replaced by new guidance.

30. The Exclusions Guidance includes the following:

"6. Any decision of a school, including exclusion, must be made in line with the principles of administrative law, i.e. that it is lawful (with respect to the legislation relating directly to exclusions and a school's wider legal duties, including the European Convention on Human Rights and the Equality Act 2010); rational; reasonable; fair and proportionate."

….

21. The exclusion rates for certain groups of pupils are consistently higher than average. This includes: pupils with SEN; pupils eligible for free school meals; looked after children; and pupils from certain ethnic groups. The ethnic groups with the highest rates of exclusion are: Gypsy/Roma; Travellers of Irish Heritage; and Caribbean pupils.

22. In addition to the approaches on early intervention set out above, the Headteacher should consider what extra support might be needed to identify and address the needs of pupils from these groups in order to reduce their risk of exclusion."

31. The status of equivalent predecessor guidance was explained in *S, T and P v Brent LB* [2002] EWCA Civ 693 [2002] ELR 556 at [15]:

> "Appeal Panels, and schools too, must keep in mind that guidance is no more than that: it is not direction, and certainly not rules. Any Appeal Panel which, albeit on legal advice, treats the Secretary of State's Guidance as something to be strictly adhered to or simply follows it because it is there will be breaking its statutory remit in at least three ways: it will be failing to exercise its own independent judgment; it will be treating guidance as if it were rules; and it will, in lawyers' terms, be fettering its own discretion."

The PSED

32. The PSED is imposed upon public authorities by section 149 of the Equality Act 2010 which, in its material parts, provides as follows:

> "(1) A public authority must, in the exercise of its functions, have due regard to the need to –
>
> (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
>
> (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
>
> (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
>
> (2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –
>
> (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
>
> (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to –

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are –

age;

disability;

gender reassignment;

pregnancy and maternity;

race;

religion or belief;

sex;

sexual orientation."

PSED – the authorities

33. It is established that the PSED applies to the discharge of all a public authority's functions, including not only the formulation of policy, but individual decisions as well: see *Pieretti v London Borough of Enfield* [2010] EWCA Civ 1104; [2011] 2 All ER 642 at [26].

34. The leading authority on the PSED, which was relied upon by both parties, is *Bracking and ors. v Secretary of State for Work and Pensions* [2013] EWCA Civ 1345 (***"Bracking"***), a decision which was cited with approval by the Supreme Court in *Hotak v London Borough of Southwark; Kanu v London Borough of Southwark; Johnson v Solihull Metropolitan Borough Council* [2015] UKSC 30.

35. In paragraph [26] of *Bracking* Lord Justice McCombe reviewed the authorities on the PSED and distilled some key principles:

"26 (1) As stated by Arden LJ in *R (Elias) v Secretary of State for Defence* [2006] 1 WLR 3213; [2006] EWCA Civ 1293 at [274], equality duties are an integral

and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation.

(2) An important evidential element in the demonstration of the discharge of the duty is the recording of the steps taken by the decision maker in seeking to meet the statutory requirements: *R (BAPIO Action Ltd) v Secretary of State for the Home Department* [2007] EWHC 199 (QB) (Stanley Burnton J (as he then was)).

(3) The relevant duty is upon the Minister or other decision maker personally. What matters is what he or she took into account and what he or she knew ….

(4) A Minister must assess the risk and extent of any adverse impact and the ways in which such risk may be eliminated before the adoption of a proposed policy and not merely as a "rearguard action, following a concluded decision: per Moses LJ, sitting as a judge of the Administrative Court, in *Kaur & Shah v LB Ealing* [2008] EWHC 2062 (Admin) at [23-24]).

(5) These and other points were reviewed by Aikens LJ, giving the judgment of the Divisional Court, in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3158 (Admin), as follows:

i) The public authority decision maker must be aware of the duty to have "due regard" to the relevant matters;

ii) The duty must be fulfilled before and at the time when a particular policy is being considered;

iii) The duty must be "exercised in substance, with rigour, and with an open mind". It is not a question of "ticking boxes"; while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument;

iv) The duty is non-delegable; and

v) Is a continuing one.

vi) It is good practice for a decision maker to keep records demonstrating consideration of the duty.

(6) "[G]eneral regard to issues of equality is not the same as having specific regard, by way of conscious approach to the statutory criteria." (per Davis J (as he then was) in *R (Meany) v Harlow DC* [2009] EWHC 559 (Admin) at [84], approved in this court in *R (Bailey) v Brent LBC* [2011] EWCA Civ 1586 at [74-75].)

….

(8) Finally, and with respect, it is I think, helpful to recall passages from the judgment of my Lord, Elias LJ, in *R (Hurley & Moore) v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) (Divisional Court) as follows:

(i) At paragraphs [77-78]

> "[77] Contrary to a submission advanced by Ms Mountfield, I do not accept that this means that it is for the court to determine whether appropriate weight has been given to the duty. Provided the court is satisfied that there

has been a rigorous consideration of the duty, so that there is a proper appreciation of the potential impact of the decision on equality objectives and the desirability of promoting them, then as Dyson LJ in *Baker* (paragraph [34]) made clear, it is for the decision maker to decide how much weight should be given to the various factors informing the decision.

[78] The concept of 'due regard' requires the court to ensure that there has been a proper and conscientious focus on the statutory criteria, but if that is done, the court cannot interfere with the decision simply because it would have given greater weight to the equality implications of the decision than did the decision maker. In short, the decision maker must be clear precisely what the equality implications are when he puts them in the balance and he must recognise the desirability of achieving them, but ultimately it is for him to decide what weight they should be given in the light of all relevant factors. If Ms Mountfield's submissions on this point were correct, it would allow unelected judges to review on substantive merits grounds almost all aspects of public decision making."

(ii) At paragraphs [89-90]

"[89] It is also alleged that the PSED in this case involves a duty of inquiry. The submission is that the combination of the principles in *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 and the duty of due regard under the statute requires public authorities to be properly informed before taking a decision. If the relevant material is not available, there will be a duty to acquire it and this will frequently mean that some further consultation with appropriate groups is required. Ms Mountfield referred to the following passage from the judgment of Aikens LJ in *Brown* (para [85]):

'….the public authority concerned will, in our view, have to have due regard to the *need* to take steps to gather relevant information in order that it can properly take steps to take into account disabled persons' disabilities in the context of the particular function under consideration.'

[90] I respectfully agree…."

36. It was acknowledged in *R (KE & Ors) v Bristol City Council* [2018] EWHC 2103 (Admin) at paragraphs [50-52] that what the PSED requires is highly context specific:

"[T]he steps needed to comply with the duty do vary considerably with differing contexts … There is, by implication, a duty of inquiry upon any decision maker who must take reasonable steps to inquire into the issues, so that the impact, or likely impact, of the decision upon those of the listed equality needs who are potentially affected by the decision, can be understood. On appropriate facts, this may require no more than an understanding of the practical impact on the people with protected characteristics who are affected by the decision … However, it may require much more, including consultation. Context is everything."

37. The importance of context was reiterated by this court in *R (AD) v Hackney LBC* [2019] EWHC 943 (Admin) at paragraph [83]:

"What constitutes "due regard" will depend on the circumstances. Moreover, the "duty of inquiry" is an application of the *Tameside* duty on a public body to take reasonable steps to acquaint itself with the relevant

information necessary to enable it properly to perform the relevant function (*Tameside* at 1065). It will only be unlawful for a public body not to undertake a particular inquiry if it was irrational for it not to do so."

Analysis

38. This judicial review claim concerns the lawfulness of the Reconsideration Decision.

39. The Claimant argued that when carrying out its reconsideration, the GDC was bound to reinstate TZB because the underlying Exclusion Decision was itself unlawful due to the lack of prior or contemporaneous written evidence demonstrating the Headteacher's compliance with the PSED.

40. It was argued that since, under the Act, only the Headteacher had the power to exclude, this unlawfulness in the decision making of the Headteacher could not be "cured" by conscientious decision making by the GDC, whose powers extended only to deciding whether to reinstate (whether at the initial GDC hearing or when it reconsidered the matter following the recommendations of the IRP). It was also asserted that the GDC's own consideration of the PSED fell far short of what was required, and so was itself unlawful. This gives rise to the following question:

Is a Headteacher's decision permanently to exclude a pupil unlawful if it is not supported by documentary evidence created prior to the conclusion of the decision showing that the PSED was considered in the decision making? ("Question 1")

41. In the written and oral submissions in these proceedings, as well as before the IRP and the GDC on its reconsideration, much was made of the fact that the Headteacher did not say anything in her letter communicating the Exclusion Decision about her having considered the PSED. The Claimant's case was that documentary evidence created prior to, or contemporaneously with, the Exclusion Decision was required to demonstrate that the Headteacher had given the PSED due regard in the course of her decision making. This argument had been made before the IRP, which rejected it. Ms Harrison KC maintained that the IRP had misunderstood the Claimant's submissions on the PSED, and she persisted with the same argument before me.

42. It is accepted by the School that there is no such evidence, but the School says that no such documentary evidence is required.

43. Had there been contemporaneous or prior documentary evidence of the Headteacher's decision-making process, and had the Headteacher rehearsed her consideration of the PSED explicitly in her letter communicating the Exclusion Decision, that would clearly have been very helpful indeed, and it would probably have avoided this matter coming to court at all.

44. However, contrary to the case put by Ms Harrison KC on behalf of the Claimant, I am not persuaded that there is anything in the Act, in the Equality Act 2010, in the Regulations, or indeed in any of the authorities to which my attention was drawn, that imposes a specific requirement for documentary evidence of due consideration of the PSED (whenever created), or that requires specific reference to be made to consideration of that duty in the reasons given for the decision to exclude.

45. The legal requirement is simply that "due regard" is <u>in fact</u> paid to the PSED by the decision maker, and such due regard must (to state the obvious) precede the decision maker's conclusion of the decision, as otherwise it would amount to justification for the decision rather than the reasons for it.

46. As Lord Justice Aikens said in *R (Brown) v Secretary of State for Work and Pensions* [2008] EWHC 3156 (Admin), "while there is no duty to make express reference to the regard paid to the relevant duty, reference to it and to the relevant criteria reduces the scope for argument" and "it is good practice for a decision maker to keep records demonstrating consideration of the duty."

47. The answer to Question 1 is therefore "no": whether the Headteacher had "due regard" to the PSED before concluding the decision to exclude is, rather, simply a question of fact to be determined according to the evidence (whenever created, and in whatever form). This leads me to the next question that I must consider:

Was the GDC entitled to find that the Headteacher had considered the PSED prior to concluding the Exclusion Decision? ("Question 2")

48. The minutes of the GDC reconsideration meeting state:

> "The Panel noted the submissions from the School and the family and in particular the reference to the PSED requirement. The Panel were satisfied that there was written evidence that the requirements of the Equality Act had been considered by the Head prior to reaching her decision. The Panel were also satisfied that [TZB]'s SEN needs had been considered and that the School had done everything it could to support [TZB]. The Panel also considered all the points raised by the IRP and, having thoroughly reviewed all the evidence submitted to them, they agreed to decline to reinstate [TZB]."
>
> (See page [217] of the Core Bundle)

49. The reference to "written evidence that the requirements of the Equality Act had been considered by the Head prior to reaching her decision" indicates that the GDC may have been persuaded that it needed written evidence of the Headteacher's consideration of the PSED in order to conclude that she had indeed considered it. If it did then this was, for the reasons I have already explained, a misapprehension. However, to the extent that this amounts to an error of law it can't have been a material one, as it was an error that tended to favour the Claimant's case.

50. The reference to written evidence appears to be a reference to the minutes of the initial GDC meeting at which the Headteacher had given lengthy oral evidence about the circumstances of her reaching the Exclusion Decision. As such, it did not amount to prior or contemporaneous evidence, but it was nonetheless evidence that the GDC was entitled to consider.

51. The Claimant has argued that the statement in the minutes of the GDC reconsideration hearing that the Headteacher had at the initial GDC meeting stated that "she had considered these things at the time of the exclusion" was inaccurate, because the minutes of the initial GDC meeting say no such thing. They say instead (at paragraph [2.1]):

> "[the Headteacher] added that she had also considered the requirements of the Equality Act and was confident that [TZB] had not been treated any less favourably than any other student. A full and thorough investigation into the incidents had taken place and she was confident that, on the balance of probabilities, the incidents had happened as described by the School. She added that she was confident that the exclusion was legal, reasonable and procedurally fair. The School had put in place intensive support for [TZB]."

52. Ms Harrison KC submitted that this passage left open the possibility that the Headteacher had considered the Equality Act 2010 (and therefore the PSED) only post-exclusion, and possibly for the first time when giving evidence at the initial GDC meeting.

53. However, the minutes are just minutes: they are not a verbatim transcript of what was said at the hearing. It is not appropriate to parse the minutes as if they are legislation. As is clear from the witness statement of the Chair of the GDC, and as is adequately clear from the minutes of the initial GDC meeting and the reconsideration meeting when read together and as a whole, the GDC understood the Headteacher's evidence as being that she had complied with the Equality Act 2010. Since compliance can only be achieved by giving due consideration to the PSED duty prior to concluding the decision in question, the GDC was entitled to the interpretation that it put on her evidence.

54. While the authorities relating to exercise of the PSED rightly counsel caution in relation to evidence given after the event about how a decision maker reached their decision, that is not to say that it would be wrong in all circumstances to place weight on such evidence. The GDC had to assess the evidence before it and decide, in the light of the evidence as a whole, what evidence it could rely upon and what it could not.

55. A school Governing Body carrying out its role of considering whether to reinstate a permanently excluded pupil is not in the same position as a court reviewing a public authority's decision: the members of a governors' disciplinary committee can be expected to have considerable experience of the Headteacher through their interactions as governors. That experience is likely to have put the members of the GDC in an excellent position to form a view of the Headteacher's credibility and to assess the reliability of her evidence.

56. In assessing whether the GDC was entitled to give the weight that it did to the Headteacher's evidence on her decision making, I am entitled to consider all the evidence before me, including the witness statement of the chair of the GDC dated 11 January 2023 (at pages [326] – [369] of the Core Bundle).

57. It is adequately clear from the minutes of both the initial GDC meeting and the GDC reconsideration meeting that the GDC accepted the Headteacher's evidence about the factors she considered when reaching the Exclusion Decision, and it is adequately clear that they accepted that the Headteacher's consideration of the PSED had occurred before, and not after, conclusion of the Exclusion Decision. To do so was by no means unreasonable in all the circumstances.

58. The answer to Question 2 is therefore "yes".

Did the requirement to have "due regard" to the PSED import an obligation to make further inquiries into the likely impact of permanent exclusion on a Black Caribbean pupil with SEN? ("Question 3")

59. It is clear from the authorities cited above that what amounts to "due regard" is very much context dependent. As was said in *R (KE & Ors) v Bristol City Council* [2018] EWHC 2103 (Admin) at paragraphs [50]-[52]:

> "[T]he steps needed to comply with the duty do vary considerably with differing contexts … There is, by implication, a duty of inquiry upon any decision maker who must take reasonable steps to inquire into the issues, so that the impact, or likely impact, of the decision upon those of the listed

equality needs who are potentially affected by the decision, can be understood."

60. The context here is that the Exclusion Decision was an individual exclusion decision affecting a single pupil with known protected characteristics. The immediate practical impact of the exclusion on TZB was obvious, albeit that the full extent of the possible long term consequences for TZB's life chances, as explained in the evidence submitted on behalf of the Claimant in these proceedings, were less obvious.

61. The Exclusion Decision was made by the Headteacher of a large, ethnically and culturally diverse urban secondary school of approximately 1500 pupils, approximately 3% of whom identified as Black Caribbean, nearly 25% of whom identified as Black, and approximately 27% of whom identified as White. The school population, as one would expect, includes pupils with a wide variety of aptitudes, abilities and disabilities, and the School has a dedicated Inclusion Faculty. It is clear (and would have been clear to the GDC at the time of making both of its decisions) that the Headteacher was well aware both of TZB's ethnicity and of his special educational needs and the support that had been provided to him in this regard.

62. The Claimant presented substantial and compelling statistical evidence relating to the over-representation, both nationally and locally, of those with protected characteristics such as TZB's among those who are permanently excluded from school. Ms Harrison KC emphasised that issues of "intersectionality", or layering of disadvantage, meant that the impact on those who, like TZB, had multiple protected characteristics, was further amplified. She drew my attention to evidence of the severity of the potential impact on a permanently excluded child in the form of a "school to prison pipeline", with the dire implications that such a path has for the life chances of such a child.

63. The School didn't dispute this evidence. Neither did it claim that the Headteacher read this particular research before making the Exclusion Decision. However, its case was that (as was demonstrated by her evidence in her witness statement) the Headteacher was very well informed not only about TZB's own circumstances but also about the disproportionate representation of those sharing his protected characteristics among those permanently excluded from school, not only nationally but also locally (albeit that the School had a lower rate of overrepresentation than was the case in local schools generally).

64. While not binding on the GDC, or indeed on me, I note that the advice given by the Secretary of State in relation to the implementation of the PSED in schools cases is that "the duty only needs to be implemented in a light-touch way, proportionate to the issue being considered" (see paragraph [5.7] of *'Equality Act 2010 Advice for Schools'*). That is consistent with the approach taken in the authorities.

65. What was required of the Headteacher in the circumstances of this case was simply to ensure that she brought the matters which were, as an experienced leader in a diverse urban secondary school, already within her knowledge in relation to TZB's protected characteristics and the disadvantage experienced by those sharing those characteristics into her consideration of all relevant factors in the decision making process. In the circumstances, I am satisfied that the GDC was entitled to find that the Headteacher had complied with her duties under the Equality Act 2010 (including the PSED).

66. In the circumstances it was neither irrational nor *Wednesbury* unreasonable for the Headteacher to decline to undertake further inquiry to seek out the kind of research that the Claimant put in evidence, so it was not unlawful for her to do so: see *R (AD) v Hackney LBC* [2019] EWHC 943 (Admin).

67. The answer to Question 3 is therefore "no".

68. The GDC was not, therefore, bound to reinstate TZB on the grounds of unlawfulness in the making of the Exclusion Decision in this regard.

Did the GDC misunderstand the PSED? ("Question 4")

69. Because of the way that the statutory framework for permanent exclusions works, the Exclusion Decision was necessarily reviewed by the Governing Body (in this case in the form of the GDC which had been delegated the power to do so).

70. The GDC understood the nature of its role, which was not just to review the lawfulness of the Exclusion Decision, but also to carry out its own consideration of all the issues to determine whether TZB should be reinstated. This task involved the GDC factoring the PSED into its own decision making when deciding whether TZB should be reinstated. This was the case both in the context of its initial consideration and the Reconsideration Decision which is under challenge in these proceedings.

71. The Claimant has suggested that the GDC misunderstood what the PSED entailed. This is because in the minutes of the initial GDC meeting it is stated:

> "10.10 It was further agreed that the requirements of the Equality Act had been considered and [TZB] had not been treated any less favourably because of his SEN needs.
>
> 10.11 It was agreed, by a majority decision, that [TZB] met the criteria for exclusion and that the Head's decision was legal, reasonable and procedurally fair and that the exclusion was justified and agreed to decline to reinstate [TZB] to the School."
>
> See page 176 of the Supplementary Bundle).

72. Ms Harrison KC made two criticisms of this explanation: first, she took from it that the GDC had thought that the Headteacher's consideration of the PSED extended only as far as [TZB]'s special educational needs (and not his race), and second, she said that it showed that the GDC understood the PSED to be limited to issues of "less favourable treatment", whereas the PSED was much broader than that, involving all three limbs set out in Section 149(1) of the Equality Act 2010 (set out above).

73. I am not persuaded by these criticisms. The most obvious reading of the passage is the literal one: that the GDC considered that the requirements of the Equality Act had been considered. This would involve consideration of all three limbs. The more likely reading is that the second half of the sentence, about less favourable treatment, was intended to introduce a further point. In any event, what matters for the purposes of assessing the lawfulness of the Reconsideration Decision is what the GDC understood of the PSED when it made that decision. In the minutes of the GDC reconsideration meeting, the word "also" is used, consistent with my preferred interpretation above:

> "The Panel noted the submissions from the School and the family and in particular the reference to the PSED requirement. The Panel were satisfied that there was written evidence that the requirements of the Equality Act had been considered by the Head prior to reaching her decision. The Panel were also satisfied that [TZB]'s SEN needs had been considered and that the School had done everything it could to support [TZB]." (See page 217 of the Core Bundle).

74. Further, the statements in the minutes of the initial GDC meeting and the GDC reconsideration meeting as to what the GDC decided and why are very brief, but they must be read in the context of what the GDC had heard from the local authority's representative about how they should approach their task (see paragraph [6] of the minutes of the initial GDC meeting):

> "6.3 She confirmed that the exclusion was for a serious breach of the Behaviour Policy in which [TZB] had been involved in two acts of physical violence on 6th May 2021.
>
> 6.4 She added that Governors should also be clear that:
>
> 6.4.1 On the balance of probabilities, the incident happened;
>
> 6.4.2 The incident relating to the exclusion had been thoroughly investigated by the Head and witness statements circulated;
>
> 6.4.3 The severity of the incident warranted a permanent exclusion.
>
> 6.5 Governors should be clear that allowing [TZB] to remain on-site would seriously harm his education or welfare or that of others in the School.
>
> 6.6 She further commented that the Governors should take into account any extenuating circumstances such as family situation and whether [TZB] belonged to a group with disproportionately high levels exclusion, such as Special Educational Needs, Looked After Children, certain ethnic groups and Free School Meals. It was noted that [TZB] was at Stage K School Support on the School's SEN register at the time of the exclusion and was entitled to Free School Meals. [TZB]'s ethnicity is stated as Black Caribbean which is both a group highlighted by the DfE as having above average levels of exclusion and a group which is over-represented in terms of exclusion from [schools in the local authority]. Support provided by the School to [TZB] was outlined in the paperwork.
>
> Governors should also consider if the sanction was proportionate in light of the nature of treatment of other students."

75. It is apparent from the way that the GDC's decision tracks the local authority's representative's submission on how they should go about their task that they accepted this advice.

76. In undertaking its reconsideration of the Decision Not to Reinstate following the recommendation of the IRP, the GDC was required to review the material presented to the initial GDC meeting and to consider whether or not its previous findings and decision should be changed or upheld: *R (A Parent) v Governing Body of XYZ School v Borough of XYZ* [2022] EWHC 1146 (Admin) [2022] ELR 626 per Lang J at [87]. It is clear that this is precisely what the GDC did.

77. By the time of the Reconsideration Decision the GDC had had the benefit of further evidence and submissions on the PSED, including the evidence and argument presented at the hearing before the IRP. The GDC's consideration of the local authority's guidance and matters relevant to TZB's characteristics is confirmed in the minutes of the GDC reconsideration meeting (see page [215] of the Core Bundle):

> "It was also agreed that they had taken notice of the Local Authority's guidance on the student's characteristics. It was also agreed that the Board of Trustees received regular updates on the School's exclusion statistics

> and challenged them if any particular group was overrepresented in the exclusion data. [The chair of the GDC] further confirmed that in her capacity as Link Governor for Inclusion she had previously asked the School what support they and the LA provided for particular groups who were overrepresented in terms of exclusion statistics."

78. For these reasons I am not persuaded that the GDC misunderstood the PSED or its breadth. The answer to Question 4 is therefore "no".

Did the GDC give adequate reasons for the GDC Reinstatement Decision? ("Question 5")

79. The House of Lords explained the importance of adequate reasons being given for public law decisions in *R v Secretary of State for the Home Department ex parte Doody* [1994] AC 531:

> "I think it important that there should be an effective means of detecting the kind of error which would entitle the court to intervene, and in practice I regard it as necessary for this purpose that the reasoning of the Home Secretary should be disclosed."

80. In *South Bucks District Council v Porter (No. 2)* [2004] UKHL 33 [2004] 1 WLR 1953 Lord Brown said at [36] that reasons "must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues'" and "can be stated briefly", and "a reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

81. It has been established that the standard of reasons that may be required is context-specific, depending on the circumstances of the case: *R (Asha Foundation) v Millennium Commission* [2003] EWCA Civ 88 [2003] ACD 50 at [27] per Lord Woolf CJ.

82. The court should not approach decisions and reasons given by a committee of laymen (such as the GDC) expecting the same accuracy in the use of language which a lawyer might be expected to adopt: *R v Governors of the Bishop Challoner Roman Catholic Comprehensive Girls' School, ex p Choudhury* [1992] 2 AC 182, at [197E], per Lord Browne-Wilkinson.

83. The reasons for the GDC Reconsideration Decision are set out in the minutes of the GDC reconsideration meeting, but as I have said above, because they are about the GDC's reconsideration of its earlier decision, they must be read together with the reasons for that earlier decision that are set out in the initial GDC meeting minutes and the letter dated 8 June 2021 communicating the Decision Not to Reinstate. For these purposes its reasons cannot include what is said in the witness statements of the chair of the GDC or the Headteacher.

84. There was no obligation on the GDC to rehearse in its reasons for the Reconsideration Decision what it had said before in relation to the Decision Not to Reinstate. Neither was there any need for it to deal with every point raised before it. It had only to do what was outlined in *R v Secretary of State for the Home Department ex parte Doody* and in *South Bucks District Council v Porter (No. 2)* so that TZA and TZB could understand why the decision went against them, and so they could identify any potential errors in the decision, or the reaching of the decision, that they might wish to challenge.

85. There were two main issues before the GDC:

i) whether the GDC was bound to reinstate due to evidential deficiencies in relation to the Exclusion Decision; and

ii) whether, in light of the concerns identified by the IRP, it should reverse its earlier decision and reinstate TZB.

86. In relation to the first issue, while the reference to the GDC being satisfied "that there was written evidence that the requirements of the Equality Act had been considered by the Head prior to reaching her decision" indicates that the GDC might have wrongly considered that there was a requirement on it to be satisfied of that matter, it is adequately clear that the GDC accepted the Headteacher's evidence and decided, contrary to the Claimant's arguments, that the fact that it didn't amount to prior or contemporaneous written evidence didn't prevent it from relying on it. Having accepted that evidence, it was satisfied that the Headteacher had complied with the PSED, and it decided that it was not bound to reinstate TZB. To the extent that the possible misapprehension that written evidence was required involved an error of law on the part of the GDC this was not a material one because it would have had the effect of lowering the bar for the Claimant's challenge.

87. It is adequately clear from the GDC's reasons that they rejected the Claimant's arguments on the requirement for prior written evidence relating to the PSED, and why.

88. As far as the second issue is concerned, the concerns identified by the IRP were:

i) the GDC failed to test whether the permanent exclusion was for a "serious" breach or for "persistent" breaches of the School's behaviour policy (see paragraph [8.1]) of the IRP Decision);

ii) the GDC did not test what [TZB]'s status was in the school prior to exclusion, contrary to paragraph [14] of the Department for Education's guidance (see paragraph [8.2]) of the IRP Decision);

iii) the GDC did not ascertain why the Headteacher had not given the family an opportunity to present their case before the decision to permanently exclude was made, contrary to paragraph [17] of the Department for Education's guidance (see paragraph [8.2]) of the IRP Decision);

iv) in relation to the second incident relied upon by the School, that the GDC had not noticed the reference in the family's submission to the criminal case in respect of it having been dropped, and had not scrutinised it at the hearing or recorded it in the minutes was "unreasonable" (see paragraph [8.3]) of the IRP Decision);

v) it was "unreasonable" for the GDC to fail to test whether a review was undertaken (in accordance with paragraph 19 of the Department for Education's guidance) after each fixed term exclusion nor a formal assessment of TZB's social, emotional and mental health, and whether more could be done" (see paragraph [8.5]) of the IRP Decision); and

vi) the GDC failed to consider the fact that TZB was due to sit his GCSEs shortly after his permanent exclusion, which was relevant to the issue of proportionality, and which may have made a long fixed term exclusion more appropriate (see paragraph [8]) of the IRP Decision);

89. Ms Harrison KC cited various authorities to me about the importance of recommendations for reconsideration. They make it clear that recommendations of an independent review panel are to be treated seriously (see *R (CR) v Independent Review Panel of the London Borough of Lambeth* [2014] EWHC), and a Governing Body would need to provide good reasons for deciding not to follow them (see *R (AT and BT) (by their father and litigation friend CT) v London Borough of Barnet* [2019] EWHC 3404 (Admin)).

90. However, these have little relevance here because the GDC did follow the recommendation of the IRP that it reconsider whether to reinstate TZB, and having done so it conscientiously reconsidered matters. The requirement upon it to give reasons must be assessed in the context of the concerns that had been raised by the IRP, which I will now address in turn.

91. Concern i), is puzzling, since under the heading "Decision" in the minutes of the initial GDC meeting it is stated: "It was agreed that the incidents constituted a serious breach of the School's Behaviour Policy". In view of this clear statement, it wasn't incumbent on the GDC to explain this any further.

92. Concern ii) relates not to TZB's permanent exclusion, but rather to the situation prior to that exclusion. As such it wasn't necessary for the GDC to deal with that either.

93. Concern iii) is based on a misunderstanding on the part of the IRP about what paragraph 17 of the guidance says: it refers to giving an opportunity to the pupil, not the family, to present their case, and the GDC was aware that the School had taken a statement from TZB as to his account of events. As such, the GDC didn't need to address this specifically in its reasons.

94. Concern iv) is raised in the context of the IRP having accepted the School's finding that the second alleged incident did in fact occur. As such, the GDC was not required to address this concern specifically in its reasons.

95. Concern v) is adequately addressed by the GDC's explanation of the consideration it gave to the support afforded to TZB in the opening paragraph of page 2 of the GDC reconsideration meeting (see page [215] of the Core Bundle):

> "The Panel commented on the level of support provided to [TZB], he had been provided with support since the transition period in Year 6, this had been fully outlined in the pack submitted to the original GDC meeting. It was also noted that the Pastoral Support Plan dated 20 November 2020 had stated that 'both school and home have identified a marked change in his attitude this year as he is presenting increasingly more defiant'. It also stated: 'he had behaved dangerously putting others at risk and causing disruption.
>
> ….
>
> The Panel also commented that they had asked the family and the School if there was anything further that could have been done to support [TZB] and nothing further was identified."

96. In respect of concern vi), the fourth paragraph after TZB's name on the first page of the minutes of the GDC reconsideration meeting explains that the GDC had considered whether TZB would miss any examinations and was aware that arrangements had been made to allow TZB to take his exams.

97. For these reasons I am satisfied that the GDC's reasons are adequate to address the matters raised by the IRP when recommending that the GDC reconsider its earlier decision.

98. In terms of its reasons for deciding not to reinstate TZB, I am conscious that, while the reasons say that the GDC considered GDC's characteristics and had regard to the PSED, they do not explain how it came to weigh the PSED factors against those factors militating against reinstatement.

99. The PSED is intended to ensure that consideration of important equality considerations is "baked in" to the decision making of public authorities, but the PSED is a duty of process, rather than outcome. As long as the decision maker has "due regard" to the PSED in a way appropriate to its context, the PSED does not demand any particular result.

100. In *R (Baker & Ors) v London Borough of Bromley* [2008] EWCA 141 Lord Justice Dyson considered the PSED requirement to have "due regard" and what this meant for the task of the public authority decision maker:

> "What is *due* regard? In my view it is the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged racial group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing." See paragraph [31]

101. The passage from the speech of Lord Justice Elias in *Hurley & Moore v Secretary of State for Business, Innovation and Skills* [2012] EWHC 201 (Admin) cited above under *"PSED – the authorities"* makes clear that the public authority decision maker must be alive to the equality implications of a decision when putting them in the balance, and he must recognise the desirability of achieving them, but that it is up to him to decide what weight they should be given.

102. The "countervailing factors" that the GDC had to consider were substantial: it found at the initial GDC meeting that the violent incidents relied upon by the school had happened as alleged. It found that they amounted to a serious breach of the School's behaviour policy, and it found that allowing TZB to return to school could harm the education or welfare of others in the School (see paragraph 10 of the minutes of the initial GDC meeting at page 150 of the Core Bundle). It didn't resile from any of those findings on its reconsideration of the Refusal to Reinstate.

103. The GDC was entitled to give these countervailing factors weight in the balancing exercise it had to perform. It was, in all the circumstances, entitled to come to the conclusion that the balance favoured permanent exclusion. That was a matter for the GDC, and this court should not seek to substitute its own balancing exercise. In those circumstances, the absence of any further explanation of precisely how the balancing exercise was performed does not render its reasons inadequate.

Conclusion

104. For the reasons I have given this claim is dismissed.