Neutral Citation Number: [2024] EWHC 2828 (Admin)

Case No: AC-2024-LON-003129

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

Friday, 8th November 2024

Before:
FORDHAM J

- -

Between:
THE KING (on the application of RWU
(by his litigation friend LTA))

Claimant

and
A GOVERNING BODY OF A ACADEMY

Defendant

and
LONDON BOROUGH OF SOUTHWARK

Interested Party

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Nicola Braganza KC, **Ollie Persey** and **Harry Harris**
(instructed by Bindmans LLP) for the **Claimant**
Leon Glenister (instructed by Stone King LLP) for the **Defendant**
The **Interested Party** did not appear and was not represented

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Hearing date: 24.10.24
Draft judgment: 1.11.24

- -

Approved Judgment

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FORDHAM J

FORDHAM J:

Introduction

1. This is a case about a permanent exclusion from school (PEX), and reconsideration by a governing body's disciplinary panel (GDP), after an independent review panel (IRP) has quashed the GDP's previous non-reinstatement decision. The case raises questions about Child Criminal Exploitation (CCE); about the intensity of review; and about the legal relevance of post-decision events. Using acronyms (I have used four already) is intended to avoid repetition and assist flow. So is the use of my labels "Adherence" and "Retro-Reasons" (explained at §§5 and 56 below).

2. This was an expedited rolled-up hearing, directed by Hill J (18.9.24). Rolled-up hearings are familiar: see the Administrative Court Judicial Review Guide 2024 at §9.2.1.5. They mean no decision is made as to arguability or permission-stage bars (§§9.1.3-9.1.6); the case is instead listed as to permission and substance together, and the parties prepare as for a substantive hearing (§9.2.1.5). Sometimes, rolled-up hearings are a bad idea and inappropriately sidestep the permission-stage filter. Sometimes, they are a good pragmatic response, where parties' positions on all issues are reserved. There may be urgency, as in this case. Or it may be that permission-stage bars are best deferred for informed consideration at a hearing and in the round. This case was prepared by everyone at speed and I am grateful for the assistance the Court received. Mr Glenister says high standards of procedural rigour apply to expedited rolled-up hearings. I agree. But these fit with overarching values like the interests of justice and the public interest. Appropriate rigour allows room for justified flexibility.

3. Hill J made an anonymity order in respect of the Claimant (RWU) and his parents. This was both a withholding order and a restricted reporting order (Guide §7.12.3), based on clear justification and strict necessity (§7.12.5). The parties were agreed, and I was satisfied, that – to secure their practical effectiveness – these protections needed to be extended to the name of the school ("the Academy") and the Claimant's brother. I made that extended order at the start of the hearing.

4. I am granting various permissions. One was the uncontroversial permission for the Claimant's skeleton argument to exceed 25 pages (Guide §20.3.1). I deferred, for consideration after hearing all the arguments, each party's contested application for permission to adduce post-decision evidence. I did the same regarding the Claimant's application for permission to amend, opposed on grounds of delay. Deferral protected everyone's position and prejudiced nobody. I now grant permission for all of the evidence, being able to evaluate its legal relevance in analysing the substantive issues. I grant permission to amend. The claim was lodged (17.9.24) after a letter before claim (22.8.24) and letter of response (10.9.24). The one-day hearing was fixed for 24.10.24. The new ground was identified in the Claimant's skeleton argument (9.10.24) and in an application to amend with the draft amended pleading (11.10.24). It is in the interests of justice: to consider this additional closely linked point; which arises out of relevant policy guidance to which each party drew attention; which calls for no further evidence; which was properly notified and articulated; and which has caused no prejudice. This is justified flexibility. Finally, I am granting permission for judicial review for all four grounds. They cross the modest threshold of arguability and attract no permission-stage bar. On the required permission-stage question I cannot say of any of them that – if there were a

public law error as alleged – it is one highly unlikely to make a substantial difference to the outcome (Guide §6.3.5). All of which means I can focus on the substantive legal merits. But, before I get there, I am going to undertake a detailed explanation of the legal and factual context. That is necessary to then understand the issues, how the arguments are put, and how I deal with them. It is also appropriate in this anxious case. In response to this judgment in draft, Mr Glenister invited me to clarify what I mean by "anxious". I mean it is a case with troubling features.

The Four Stages

5. The relevant decision-making involved four stages. These are governed by s.51A of the Education Act 2002; the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 (SI 2012/1033); and policy guidance issued by the Department for Education (September 2023) on Suspension and Permanent Exclusion from Maintained Schools, Academies and Pupil Referral Units in England (the "Guidance"). The application of s.51A to an academy and its principal is by virtue of reg.21. Other policy guidance documents will be encountered below. The Academy had its own Behaviour Policy (September 2023) and a Safeguarding and Child Protection Policy (May 2023). The Guidance is "statutory guidance" in that the Principal, the GDP and the IRP are all statutorily required, in exercising their relevant functions at the four stages, to "have regard to" it (reg.27). It is common ground that the public law Adherence duty (as I will call it) is applicable. By the Adherence duty, I mean a public authority's familiar public law duty to follow policy guidance absent good reason for departure: see eg. R (A Parent) v XYZ School [2022] EWHC 1146 (Admin) at §54.

6. Here are the four stages. Stage (1): The Principal of the Academy decided to impose PEX (18.1.24). That stage was governed by s.51A(1) and reg.22. Stage (2): The GDP was convened and held a hearing on 18.3.24, deciding not to reinstate the Claimant. This stage was governed by s.51A(3)(b) and reg.24. Stage (3): The IRP was convened and held a hearing on 13.5.24, deciding on 29.5.24 to quash the GDP's non-reinstatement decision and direct reconsideration. This stage was governed by s.51A(3)(c) and reg.25. Stage (4): The GDP reconvened, holding a further hearing on 17.6.24, and decided not to reinstate the Claimant (24.6.24). That stage was governed by s.51A(3)(b) and reg.26. The GDP's Stage (4) decision is the target for judicial review. I will describe the functions at these four stages (§§7-18 below) and what happened at each stage (§§28-51 below). I have used the word "hearing" to describe meetings of the GDP and IRP. They were not formal or judicialised processes. But relevant persons are heard, questioned and permitted to ask questions. That has included evidence from the family, with representations made and questions asked by an advocate acting on the family's behalf.

The Stage (1) Function: The Principal and PEX

7. The Guidance speaks (at p.8) of standards of behaviour in schools such that children and young people are protected from disruption and are in a calm, safe, and supportive environment that brings out the best in every pupil; and that PEX will sometimes be necessary as a "last resort" to maintain this environment. It says Principals should consider the pupil's views before deciding to exclude (§4). It says PEX decisions are to be made alongside a school's duty to safeguard and support children and their duty to provide an education (§23). The Guidance says this (at §16):

> ***The government trusts headteachers to use their professional judgement based on the individual circumstances of the case when considering whether to exclude a pupil.***

The Guidance provides that a PEX decision involves two limbs – which I will call Limb [i] and Limb [ii] – both of which need to be satisfied (§11):

> ***the decision to exclude a pupil permanently should only be taken [i] in response to a serious breach or persistent breaches of the school's behaviour policy; and [ii] where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others such as staff or pupils in the school.***

It is common ground that Limbs [i] and [ii] are framed as necessary preconditions, but that there remains an "overall" decision as to whether PEX is appropriate.

PEX and the Needs and Interests of the Pupil

8. Questions relating to the needs and interests of the pupil facing PEX, including questions of support, welfare, safeguarding and protection are obviously relevant when the local authority discharges its statutory duties as to the provision of education, following PEX. But they are relevant to all decisions by Principals, GDPs and IRPs concerning PEX and reinstatement. Sometimes, PEX may have as its rationale protection of the pupil: see Limb [ii] (allowing the pupil to remain in school "would seriously harm the education or welfare of the pupil"). That is not this case. This case illustrates the position where considerations about support, welfare, safeguarding and protection of the pupil facing PEX can point against PEX and must factor into a balanced evaluation, viewed against the education and welfare of others at the school.

9. In principle, considerations about support, welfare, safeguarding and protection of the pupil facing PEX can inform Limb [i], illuminating the nature and implications of a breach or breaches of the school's behaviour policy. They can inform Limb [ii], informing whether – in light of available support interventions – remaining in school would seriously harm others. They can inform the overall question as to the appropriateness of PEX, including its proportionality, as a last resort and striking an appropriate balance. All of this must fit alongside questions about protections for the education of other pupils and the welfare of other pupils and staff, reflected in Limb [ii]. PEX decisions are a last resort decision to be made alongside a school's duty to safeguard and support children (Guidance §23). In the GDP's consideration (and reconsideration) of reinstatement, the relevance of the protection of the pupil is reflected in reg.24(3) (§11 below). In the IRP's review of the GDP's non-reinstatement decision, the relevance of the protection of the pupil is reflected in the Guidance at §§211-212 (see §14 below). The importance of considering mental health conditions in the context of PEX is emphasised in the DfE policy guidance Mental Health and Behaviour in Schools (November 2018) at §3.15.

10. Alongside this, there is the recognised importance of school as a protective environment. As the Guidance says (§58):

> ***education is an important protective factor, providing a safe space for children to receive support, be visible to professionals and realise their potential. When children are not in school, they miss the protection and opportunities it can provide, and become more vulnerable to harm. Headteachers should balance this important reality with the need to ensure calm and safe environments for all pupils and staff, so should devise strategies that take both of these aspects into account.***

As the Home Office Guidance on Criminal Exploitation of Children and Vulnerable Adults (October 2023) explains, one of the factors that may heighten a person's vulnerability is being excluded from mainstream education.

The Stage (2) Function: GDP Consideration of Reinstatement

11. Here are reg.24(2) and (3):

> ***(2) The [GDP] must decide – (a) whether or not the pupil should be reinstated; and (b) where it considers that the pupil should be reinstated, whether the pupil should be reinstated immediately or by a particular date. (3) In order to decide whether or not a pupil should be reinstated, the [GDP] 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 [GDP] by or on behalf of the [parent of the pupil], the Principal, the social worker or the virtual school head.***

12. The Guidance says: that the GDP "must consider both the interests and circumstances of the … permanently excluded pupil, and that of other pupils, staff, and the school community" (§114); that it must consider any representations made by or on behalf of all relevant parties, including "the parents or the pupil if they are over 18 years old" and "the pupil's social worker if the pupil has one" (§115); that "when establishing the facts in relation to a … permanent exclusion [the GDP] must apply the civil standard ie. on the balance of probabilities" (§117); that, in light of its consideration, the GDP "can either [a] decline to reinstate the pupil; or [b] direct reinstatement of the pupil immediately or on a particular date" (§118); and that the GDP should ensure "clear minutes" of the hearing "as a record of the evidence that was considered" and a "record of discussion" which states "clearly how the decisions have been reached" (§122).

13. The Guidance then says this at §124:

> ***In reaching a decision on whether a pupil should be reinstated, the [GDP] should consider whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair. This should consider the welfare and safeguarding of the pupil and their peers, the headteacher's legal duties, and any evidence that was presented to the governing board in relation to the decision to exclude.***

It is common ground that §124 – "whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair" – identifies the question which the GDP is to ask when it is considering reinstatement. It follows that "establishing the facts" and applying "the civil standard" – which a judicial review court may also need to do – are to be understood in this light. This reinforces the primacy of headteachers who make PEX decisions using "their professional judgement based on the individual circumstances of the case" (Guidance §16: §7 above).

The Stage (3) Function: Review by an IRP

14. The role of the IRP is to review the GDP's decision not to reinstate the permanently excluded pupil (Guidance §200), applying the civil standard of proof to questions of fact (§202), and having regard to any present SEN expert's views (§210) and any present social worker's representations (§§211-212). Here are §§211-212:

> ***211. Where a social worker is present, the panel must have regard to any representation made by the social worker of how the pupil's experiences, needs, safeguarding risks and/or welfare may***

be relevant to the pupil's permanent exclusion. 212. Where a [Virtual School Head] is present, the panel must have regard to any representation made by the social worker of how any of the child's background, education and safeguarding needs were considered by the headteacher in the lead up to the permanent exclusion or relevant to the pupil's permanent exclusion.

15. By s.51A(4), there are three decisions which the IRP can make (Guidance §203):

(4) On an application [for a review of a decision of the governing body of the school not to reinstate a pupil] the review panel may – (a) uphold the decision of the responsible body, (b) recommend that the responsible body reconsiders the matter, or (c) if it considers that the decision of the responsible body was flawed when considered in the light of the principles applicable on an application for judicial review, quash the decision of the responsible body and direct the responsible body to reconsider the matter…

Quashing based on "the principles applicable on an application for judicial review" is encapsulated in the Guidance as asking whether the GDP's decision is "lawful, reasonable and procedurally fair" (p.59) and as whether there is any "illegality, irrationality and procedural impropriety" (§§206, 227-228). These are the recognised global heads of grounds for judicial review. Recommendation (s.51A(4)(b)) is where these criteria for quashing (s.51A(4)(c)) have not been met, but where the IRP considers GDP reconsideration of reinstatement appropriate. Specifically, a recommendation is for appropriate cases where "procedural flaws have been identified" which "do not meet the criteria for quashing" (§229).

16. When the IRP quashes and directs reconsideration of reinstatement, it can direct that a £4,000 payment be made if no reinstatement is made or offered (Guidance §§214, 231, 260-261: §18 below), reflecting s.51A(6)). Guidance §231 countenances that this payment is appropriately imposed even in a case of a process or reasons error which is subsequently cured on a conscientious reconsideration (Guidance §259). That may be because it is simply reflecting the reallocated burden for educating the pupil. No question was raised or argued in the present case about the £4,000 or its rationale.

17. The Stage (3) position as to "new evidence" is as follows (Guidance §§207-208):

207. New evidence may be presented to the [IRP] … 208. In deciding whether the [GDP]'s decision was flawed, and whether to quash the decision not to reinstate, the [IRP] must only take account of the evidence that was available to the [GDP] at the time of making its decision not to reinstate. This includes any evidence that the [IRP] considers would, or should, have been available to the [GDP] and that it ought to have considered if it had been acting reasonably.

What the GDP had, or "should" have had, available may be informed by what question the GDP asks (Guidance §124: see §13 above).

The Stage (4) Function: GDP Reconsideration of Reinstatement

18. The Guidance says this at §§258-261 and 264:

Guidance on the governing board's duty to reconsider reinstatement following a review. 258. Where the panel directs or recommends that the governing board reconsider whether a pupil should be reinstated, the governing board must reconvene to do so within ten school days of being given notice of the panel's decision… 259. It is important that the governing board conscientiously reconsiders whether the pupil should be reinstated, whether the panel has directed or merely recommended it to do so. Whilst the governing board may still reach the same conclusion as it first did, it may face challenge in the courts if it refuses to reinstate the pupil, without strong justification. 260. Following a direction to reconsider, unless within ten school

days of receiving notice of the panel's decision the governing board decides to reinstate the pupil, an adjustment will be made to the school's budget in the sum of £4,000 if the panel has ordered this. In the case of an academy, the school will be required to make an equivalent payment directly to the local authority in whose area the school is located. This payment will be in addition to any funding that would normally follow a permanently excluded pupil. 261. If the governing board offers to reinstate the pupil within the specified timescale but this is declined by the parents, no budget adjustment or payment can be made. The governing board must comply with any direction of the panel to place a note on the pupil's educational record. … 264. The reconsideration provides an opportunity for the governing board to look afresh at the question of reinstating the pupil, in light of the findings of the IRP. There is no requirement to seek further representations from other parties or to invite them to the reconsideration meeting. The governing board is not prevented from taking into account other matters that it considers relevant. It should take care to ensure that any additional information does not make the decision unlawful. This could be the case, for example, where new evidence is presented, or information is considered that is irrelevant to the decision at hand.

It is common ground that when a GDP reconsiders reinstatement after a quashing and direction, it is again undertaking its supervisory review of the Principal's PEX decision (see §13 above).

Four Supervisory Reviews

19. Standing back, what all of this means is that there are no fewer than four supervisory reviews. At Stage (2), the GDP considers whether the Principal's Stage (1) PEX decision was lawful, reasonable, and procedurally fair (§13 above). At Stage (3), the IRP considers whether the GDP's Stage (2) decision was flawed applying judicial review principles (§15 above). At Stage (4), the GDP reconsiders whether the Principal's Stage (1) PEX decision was lawful, reasonable, and procedurally fair. On judicial review, the High Court asks whether the GDP's Stage (4) decision was flawed applying judicial review principles. All of this, in a context where the Stage (1) decision engages the Principal's "professional judgement based on the individual circumstances of the case" (§7 above).

The Five Suspensions

20. I turn to the relevant facts. Everything I say at §§21-27 below is supported by evidence that was before the GDP on the reconsideration of reinstatement (24.6.24). I deal separately with some distinct matters to which separate considerations apply (§§31-37 below).

21. The Claimant had started at the Academy in Year 7 in September 2020, aged 11. After 3 years at the school, he started Year 10 in September 2023 aged 14. Then, after the autumn half-term in Year 10 – and within 5 weeks between 31.10.23 and 5.12.23 – he was suspended 5 times. The Behaviour Policy explains that, at the point of a sixth suspension within a year, the Principal will consider PEX for persistent breaches of the Behaviour Policy. The last 3 of these 5 suspensions related to incidents which occurred while he was being parented at home only by his father, while his mother was visiting Nigeria (18.11.24-26.12.24). The references to failing in the RR are to non-compliance with the Reintegration Room, a supervised room within the Academy for students who have failed to follow the Behaviour Policy.

    (1) The Claimant was suspended (31.10.23) for 3½ days for swearing at a member of staff. He had been given a detention after failure to follow a simple request to move seats, after being given a warning and a countdown. When he received the

detention, he repeatedly said to the member of staff "fuck off man". When the member of staff spoke to him to say that he needed to pack up, he continued to say "fuck off man".

(2) The Claimant was suspended (15.11.23) for 1 day after he and two other students jumped the Year 7 playground gate during lesson time and ran away from the Academy. They were seen by a member of staff and the CCTV was viewed.

(3) The Claimant was suspended (28.11.23) for 1 day after he arrived at school seemingly under the influence of drugs. When searched he was found to have a lighter and a vape (both prohibited under the Academy's Behaviour Policy). He failed in the RR, repeatedly falling asleep.

(4) The Claimant was suspended (29.11.23) for 2 days for bringing the Academy into disrepute. He had been involved in an incident outside of school, during the school day, and in school uniform, which resulted in the police bringing him to school. The police were called to a local tower block after they had received calls of a group of students throwing roof tiles off of the balcony and smoking cannabis. One roof tile almost hit a resident. No cannabis was found but some students had lighters and other cannabis paraphernalia.

(5) The Claimant was suspended for 4 days (5.12.23). The previous day, he failed in the RR and had been placed outside the Principal's office. The Principal spoke to him for 10-15 minutes in the office to see what the issue was and to run over the Pastoral Support Plan (PSP) which had been set up (on 1.12.23). He was outside the Principal's office between 10:00am to 3:30pm when he did not write a word and slept at least twice despite the Principal prompting him a number of times.

<u>The MASH Referral</u>

22. The Academy's responses and previous actions are important because one of the key questions in this case at Stages (2) to (4) and in this Court is about support interventions by the Academy, and whether sufficient time had been allowed before the "last resort" of PEX. The Academy made a MASH (Multi-Agency Support Hub) referral on 29.11.23, after the incident which led to the third suspension. MASH referrals are addressed in the Academy's Safeguarding Policy, which also describes Early Help (additional help where the needs of a child are beyond the level of support provided by universal services). MASH referrals are "safeguarding" referrals where a child is considered to be "at risk of harm". The referral was made by the Deputy Head of Year, due to the concerns regarding the Claimant being brought by the police, his friendship group outside school, possible drug misuse and the Claimant's parents finding it very difficult to manage his behaviour at home. The MASH referral was picked up within the local authority by Family Early Help (FEH) and a family early worker (FEW) was assigned.

23. There was follow-up to the MASH referral. After the Claimant was absent on a number of days in the second week of the new term in January 2024, the Head of Year emailed the FEW (15.1.24) to check whether they were working with him. The FEW's email response (15.1.24) was that "the case was stepped up to Social Care given the safeguarding concerns" and that a social worker (SW1) had been allocated. There was then further follow up between the Head of Year and SW1. The Head of Year made contact with SW1 and, having been asked by the SW1 for an update regarding the

Claimant's engagement at school, emailed (16.1.24) to tell SW1 that he had advised the Claimant's mother to call the police and report him "missing", adding that:

> ***Unfortunately, in the past, [the Claimant] has been collected by the police from a building where he was with a group of boys that were smoking cannabis and throwing pieces of the tile at residents. We are worried that [he] may still be spending his time with this group rather than coming to school.***

There was further follow up on the day of the PEX (§§26-27 below).

The Pastoral Support Plan (PSP)

24. The PSP is referenced in the fifth suspension (§21(5) above). It was set up on 1.12.23. PSPs are described in the Academy's Behaviour Policy. A PSP is a structured and coordinated 16-week school intervention designed to support students at risk of PEX. They are used for students who have received a set number of negative behaviour points or suspensions and who are not responding to other forms of intervention. They are created with the involvement of key staff, parents or carers, the student and any other relevant professionals. Targets are set for a student, using information obtained from their teachers, and are reviewed every 4 weeks. They provide a tailored and structured form of intervention which is regularly reviewed so that progress can be checked and changes can be made. When the Claimant's PSP was set up on 1.12.23, an initial meeting took place that day. The attendees included the Claimant, his father and the Academy's Designated Safeguarding Lead (DSL) [together with "RGO"]. The recorded reasons for the PSP were persistent absence from school, including an attempt at running away from school; lack of proactive work in and out of lessons in order to ensure success, the Claimant having shown great work in the past, but having recently shown a lack of interest which had impaired his work in lesson; and poor conduct outside of school, which could be dangerous to himself and would jeopardise his professional success. The Claimant's targets under the PSP were: (a) to come to school every day; (b) not to go to RR; and (c) to engage in lessons.

Other Actions

25. The picture regarding support and interventions by the Academy is completed by the following. The PSP recorded the following previous school interventions: Ambition Centre; Football Journeys (Year 9); FutureMen (Year 9); and Khulisa group counselling (Year 8). Football Journeys is a programme where students from different postcodes work together on video projects around what type of person they are in the community and then meet up to play football. FutureMen is a programme specifically tailored for young men at risk of potential gang involvement, criminal activity or criminal exploitation and the Claimant was "profiled" to participate. Khulisa is a programme to prevent PEX brought in for students matching a similar "profile" to the Claimant. In addition, the Claimant had been offered, but had refused, further counselling. The Academy had offered to work with Southwark SAFE task force, with paperwork sent for the parents to sign so that the Claimant could join. The Claimant's father had consented to the referral to FEH and SAFE taskforce. Football Journeys and the SAFE Taskforce are described in the Academy's Behaviour Policy as examples of pastoral interventions. Arrangements had been made for the Claimant to participate in the MVP programme, an internal gap year programme at the Academy involving top year 13 pupils acting as mentors for younger pupils, and the Claimant was on the waiting list for this from November 2023. Home visits had been carried out from November 2023 onwards.

The Day of the PEX (18.1.24)

26. When the Claimant did not arrive on time for school on 18.1.24, the Academy contacted his mother who said he had left home at 8am. He arrived at 09:30. Later that morning, the Head of Year emailed SW1 (at 11:18) to say:

> ***We've been given a bit more information on [the Claimant]: - Mum was concerned about [him] sneaking out of the house and returning at 4:30am on numerous occasions. There is a friend that lets the group enter a building where they smoke weed and use canisters at the same time. (I'm interpreting this as NO [nitrogen oxide] canisters). This has been shared in videos on snapchat but we have not seen it. Some students are from our school, but many are not. Today he arrived at 9.30am. [His] Pastoral Support Manager, had a good conversation with him in order to support him coming to school on time.***

27. Several members of staff reported that the Claimant smelt strongly of cannabis. He originally refused to allow his blazer to be searched. His father and mother were contacted by the Assistant Principal for Behaviour (APB). The Claimant's mother came into the Academy. There was a discussion and then a physical altercation between mother towards son. That was de-escalated. The Claimant indicated that he had drugs in his possession and was found to be in possession of a bag of cannabis in a foil packet, rizla papers, a lighter, a vape and £270 in cash. Drugs are banned under the Academy's Disciplinary Policy, as are lighters and vapes. The Claimant was asked about the cash and said he was holding it for a friend to buy a jacket. When she was then asked about the cash, the Claimant's mother stated that she had given him the money for a jacket. The DSL became involved at lunchtime and an email from the DSL to SW1 (at 14:51) records the following. First, that the DSL had earlier called SW1:

> ***to discuss what had happened and the incident between [the Claimant] and his mother. I discussed the seriousness of the breach of the Behaviour Policy and the potential outcome, and requested that the social worker conduct a home visit later in the day to check on well-being, which was agreed.***

Secondly, that the APB had called the Academy's SSO (safer schools officer) at the local police station:

> ***to inform her, and discuss whether we could return the cash given potential safeguarding concerns of not doing so given our concern of CCE.***

Following those conversations with SW1 and the SSO, the cash was returned to the Claimant's mother, and it was agreed that the police would be visiting the Claimant's home to follow up on the drugs which had been found.

Stage (1): PEX by the Principal

28. It was in these circumstances that the Principal made his decision to impose the PEX. In the decision letter (18.1.24) the Principal wrote (the paragraph numbering is mine):

> ***[1] As we discussed when we met earlier today, [the Claimant] has been permanently excluded as a result of persistent breaches of the school's behaviour policy, such that allowing him to remain at [the Academy] would significantly risk harming the education and welfare of others at [the Academy]. [2] As you know, before today [the Claimant] had been suspended from the Academy five times this academic year. Today he unfortunately took the decision to bring a Class B drug onto the school site; an illegal act and clear violation of the schools behaviour policy. He was also in possession of a lighter, a vape, a grinder, tobacco, rizla and £250. As you are aware, due to the severity of this we have reported this matter to the police. As this behaviour would have***

> ***led to a suspension, in line with the Academy's behaviour policy I took the decision to permanently exclude [the Claimant]. A full outline of the behaviour which led to this decision will be included in the Permanent Exclusion report. [3] Following the … Guidance: "A decision to exclude a pupil permanently should only be taken: in response to a serious breach, or persistent breaches, of the school's behaviour policy; and where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others in the school". I deem that [the Claimant's] behaviour represents persistent breaches of the school's behaviour policy…***

Child Criminal Exploitation (CCE)

29. I am pausing in the narrative to address two topics. The first is CCE. As has been seen, the DSL's email to SW1 on the day of the PEX decision (18.1.24) refers to the conversation between the ABP and the SSO about "our concern of CCE" (see §27 above). CCE and County Lines have featured strongly in the grounds for judicial review. Here is how these are described in the Academy's Safeguarding Policy, including what the Academy should do in a "possible CCE case", the involvement of the DSL, and "referring to appropriate agencies":

> ***Child Criminal Exploitation (CCE). CCE is where an individual or group takes advantage of an imbalance of power to coerce, control, manipulate or deceive a child into any criminal activity in exchange for something the victim needs or wants, and/or for the financial or other advantage of the perpetrator or facilitator and/or through violence or the threat of violence. The victim may have been criminally exploited even if the activity appears consensual. CCE does not always involve physical contact; it can also occur through the use of technology. CCE can include children being forced to work in cannabis factories, being coerced into moving drugs or money across the country (county lines), forced to shoplift or pickpocket, or to threaten other young people. Some of the indicators of CCE are: children who appear with unexplained gifts or new possessions; children who associate with other young people involved in exploitation; children who suffer from changes in emotional well-being; children who misuse drugs and alcohol; children who go missing for periods of time or regularly come home late; and children who regularly miss school or education or do not take part in education. Any possible CCE case will be shared with the DSL with a view to referring to appropriate agencies following the referral procedures.***
>
> ***County Lines. Criminal exploitation of children is a geographically widespread form of harm that is a typical feature of county lines criminal activity: drug networks or gangs groom and exploit children and young people to carry drugs and money from urban areas to suburban and rural areas, market and seaside towns. Key to identifying potential involvement in county lines are missing episodes, when the victim may have been trafficked for the purpose of transporting drugs. Like other forms of abuse and exploitation, county lines exploitation can affect any child or young person (male or female) under the age of 18 years; can still be exploitation even if the activity appears consensual; can involve force and/or enticement- based methods of compliance and is often accompanied by violence or threats of violence; can be perpetrated by individuals or groups, males or females, and young people or adults; and is typified by some form of power imbalance in favour of those perpetrating the exploitation. Whilst age may be the most obvious, this power imbalance can also be due to a range of other factors including gender, cognitive ability, physical strength, status, and access to economic or other resources.***

30. There is a list of common characteristics of child exploitation in the Home Office's Child Exploitation Disruption Toolkit. There is a similar list in the DfE statutory guidance Keeping Children Safe in Education (September 2023) at §48. That guidance explains that CCE is one of the forms of "extra-familial harm" (at §23) and emphasises multi-agency working (at §107). The Home Office Guidance on Criminal Exploitation of Children and Vulnerable Adults explains that CCE "is a form of modern slavery" and "as such, if you are a designated First Responder for the National Referral Mechanism (NRM), you must … refer any child you suspect of being a potential victim of modern slavery to the NRM". Police forces and local authorities are each designated First

Responders. The Home Office Guidance says, in relation to schools and other organisations, in the case of any child who they think may be at risk of "county lines exploitation", the DSL makes a safeguarding referral to the responsible local authority. It is for the local authority's social services to consider, with safeguarding partner agencies, whether any further actions are necessary to protect the child. What is said in the Academy's Safeguarding Policy fits with what is said about CCE and County Lines in the Modern Slavery Statutory Guidance issued pursuant to s.49 of the Modern Slavery Act 2015 at §§9.32 to 9.45. The Modern Slavery Statutory Guidance addresses NRM referrals: see §§9.19 and 9.36; and R (TDT (Vietnam)) v SSHD [2018] EWCA Civ 1395 [2018] 1 WLR 4922 at §33(1). It explains that the approach to child offenders continues to recognise and promote safeguarding children as the primary objective, to see the child first and the offender second; that all work by professionals should be child-centred and child-focused. It says this (at §9.35):

> ***If anyone has concerns that a child may be a victim of [CCE] they should be referred to Local Authority Children's Social Care, who will decide within 24 hours what action to take including (where there is reasonable cause to suspect that a child is suffering or is likely to suffer significant harm) whether to, convene a strategy discussion. A timely assessment based on the needs of the child will then take place within 45 days. The full assessment may take the form of a section 47 enquiry, or an assessment under section 17 of the Children Act 1989. Where the child is unaccompanied there will be additional responsibilities under s.20 of the Children Act 1989 …With cases of CCE, it is important that Local Authorities consider the wider context and extrafamilial threats when safeguarding children…***

Three visits to A&E

31. The second topic, in my pause in the narrative, are some distinct matters. These are: visits to A&E; knife-possession incidents; the Doncaster arrest and subsequent steps. They are distinct matters because each of these raises particular considerations about fresh evidence and hindsight. I will take each in turn. There is evidence before me about three visits to A&E by the Claimant, at each of which he was observed by medics to have suspected knife wounds, and the follow up which took place. Reliance was placed on these incidents in the Claimant's grounds for judicial review and skeleton argument. I will need to address how they fit in.

    (1) On 21.12.23 the Claimant attended A&E with what was suspected by medics to be a knife wound, as a consequence of which A&E made a referral to the local authority. This description is taken from a Pre-Sentence Report (PSR) for a youth court hearing on 7.10.24, written by a Youth Justice Service Officer:

    > ***[A] referral [to the local authority] in December 2023 was made by Kings College Hospital after [the Claimant] attended alone with an injury to his thumb which did not match the story he provided. The injury resembled a knife wound. A Section 17 assessment was completed, and the family were referred to the YJS Turnaround Project that is a voluntary preventative intervention. The family initially agreed to the Turnaround Programme but later declined the support.***

    (2) On an unspecified date in March 2024 (put after 18.3.24 in the agreed chronology) the Claimant attended A&E for a second time, with what was again suspected by medics to be a knife wound, and A&E again made a referral to the local authority. This is taken from the PSR (7.10.24):

    > ***In March 2023 there was another referral received from Kings College Hospital after [the Claimant] attended A&E with a laceration to his right thigh. Again, [his] story did not***

> ***match his injury and the injury resembled a stab wound. Another Section 17 Assessment was carried out and in May 2024 [the Claimant] was placed on a Child In Need plan.***

(3) On 5.4.24 the Claimant attended A&E for a third time, again with what was suspected by medics to be a knife wound, and A&E again contacted the local authority. This has been described in a witness statement (17.9.24) by the Claimant's mother. The agreed chronology says this:

> ***5.4.24. C returned home with an injury to his hand. C taken to hospital, doctors informed C's [social worker] they believed injury possibly knife wound.***

Reference is made in the documents to a Child in Need Plan initiated by the local authority. The agreed chronology dates this at around 1.7.24. The PSR says it was initiated in May 2024, after the third A&E incident. It was not put in place following the MASH referral; nor after the January 2024 liaison.

32. I have had to consider whether, and if so how, evidence of these A&E incidents is legally relevant to this judicial review claim. The first A&E incident pre-dated the Principal's Stage (1) PEX decision (18.1.24). The second and third pre-dated the IRP's Stage (3) hearing (13.5.24). At that hearing, the IRP needed to have regard to any representation made by an attending social worker "of how the pupil's experiences, needs, safeguarding risks and/or welfare may be relevant to the pupil's permanent exclusion" (Guidance §211: §14 above). By now, a new social worker (SW2) had taken over since the third A&E referral (5.4.24). The IRP was told that SW1 had been invited to the GDP hearing (18.3.24) but had not attended. SW2 made a statement at the IRP hearing (13.5.24) which is summarised as follows in the Claimant's pleaded judicial review grounds:

> ***The Claimant's social worker [SW2] made a statement to the IRP, emphasising that she was concerned that the Claimant was at risk of extra-familial harm in the community and that the Claimant had attended A&E twice in the last six months in relation to injuries which health professionals suspect may have been linked to youth violence… [S]he noted that she was curious as to whether this risk had been taken into account when the Claimant presented at the Academy with cannabis, and "whether there could have been more curiosity into what was going on with [the Claimant] at the time in relation to his attendance to A&E with suspected youth violence."***

33. No dates or details of the A&E visits and injuries were given by SW2 to the IRP. In fact, there had been three not two. SW2 spoke of possible curiosity at the time when the Claimant presented at the Academy with cannabis. That was the date of the PEX (18.1.24). Under the Guidance (§208: §17 above), one question for the IRP would be whether this was evidence which "should" have been available to the GDP which it ought to have considered "if it had been acting reasonably". The IRP had to consider what to make of this. It asked whether "at any stage" the Academy had been made aware of these injuries and A&E visits. The Principal answered, saying no, he did not believe they were. This was not contradicted. SW2 had explained that the local authority's arrangements with the family were consent-based and that sharing "confidential" information needed the mother's consent. The IRP asked whether it (the IRP) could be told about the injuries sustained. It was told that the Claimant's mother "did not consent" to this. When the GDP held the hearing for the reconsideration, the family provided no further detail and their advocate did not focus on this aspect. In the light of these features, the A&E incidents – in my judgment – have no direct legal relevance to the lawfulness of the impugned GDP decision. I return to this at §52 below.

Two Knife-Possession Incidents

34. Next, there is evidence before me of two knife-possession offences by the Claimant. These led to convictions and sentences in the youth courts. Reliance was placed on these incidents in the Claimant's grounds for judicial review and skeleton. It has not been suggested that there were CCE circumstances which provided a defence to these prosecutions; nor that there was punishment in contravention of Article 26 of the European Convention on Trafficking (no punishment for compelled involvement in unlawful activities). The first incident came in the period after the Principal's Stage (1) PEX decision, when the Academy made arrangements for a "managed move" to another Academy ("the MMA"). That managed move was terminated by the MMA, who emailed the Academy (26.2.24) referring to "an arrest over [the Claimant] being found in possession of a Rambo knife". This is taken from the PSR (7.10.24):

> ***On 22.02.2024 [the Claimant] was arrested in the community for possession of a weapon. [The MMA] was made aware of this and issued a 'failed managed move' due to concerns associated with bringing the school reputation into dispute.***

On 9.7.24 the Claimant was sentenced by the youth court to a 4 month referral order, following conviction for possession of the Rambo knife in a public place on 22.2.24. Information about this incident was available to the Academy and the GDP at the time of the Stage (2) consideration of reinstatement (18.3.24), because of the cancelled managed move. The knife possession was disregarded by the GDP. Perhaps unsurprisingly, this was not criticised by the family or its advocate for the Stage (2) consideration by the GDP, nor at Stage (3) before the IRP, nor on the Stage (4) reconsideration by the GDP.

35. The second incident was on 26.8.24 when the Claimant was arrested at the Notting Hill Carnival for possession of a hunting style knife in a public place. On 7.10.24 the Claimant was resentenced by the youth court, this time to a 9 month referral order, following conviction for possession of the hunting style knife on 26.8.24. This was the sentencing hearing for which the PSR was written. This second incident post-dates the Stage (4) impugned decision (24.6.24). In the light of these features, the knife-possession incidents can in my judgment have no direct legal relevance to the lawfulness of the impugned GDP decision (see §52 below).

The Doncaster Arrest and Subsequent Steps

36. Next, there is evidence before me of an arrest in Doncaster (29.7.24) and what the police and local authorities did after that arrest. Again, reliance was placed on these incidents and events in the Claimant's grounds for judicial review and skeleton argument. On 19.8.24 the local authority – as designated First Responder – made a referral to the NRM on the basis that the Claimant is a potential victim of CCE. I have described the responsibilities applicable to that step (see §30 above). The NRM referral was reported on 22.8.24 at a Child in Need Plan review meeting. By now there was a new social worker (SW3) who told that meeting:

> ***a NRM (National Referral Mechanism) application has been made as we believe [the Claimant] is a victim of child criminal exploitation. [SW3] explained that following [the Claimant's] arrest in Doncaster on [29.7.24], we are doing a Child Protection Inquiry to understand whether [the Claimant] is likely to be experiencing significant harm, and whether an Initial Child Protection Conference might help establish support going forward.***

The allocated detective from the Criminal Exploitation Team (CET) explained that:

> ***police are running a modern slavery investigation as well as a criminal exploitation investigation for [the Claimant]; this is not investigating [him] as a criminal but is actually as a victim, and is to keep [him] safe. This is to consider any adults in [his] life that are not safe and thinking about putting in a CAWN (Child Abduction Warning Notice) which would make it harder for them to be together. Zainab will be serving the 40 year old man arrested in Doncaster with [the Claimant] and peers with CAWN.***

37. On 30.8.24 the NRM made a positive reasonable grounds decision. Those are decisions addressed in the Modern Slavery Statutory Guidance, made where there is a reasonable suspicion that the person is a victim of human trafficking: see TDT at §33. On 9.9.24 an initial Child Protection Case Conference was convened due to the increasing concerns about the Claimant's safety in the community. It was recorded that a Section 47 Child Protection Enquiry had been initiated following the Claimant being "arrested with four other young people for aggravated burglary and possession of weapon in Doncaster", "after he had been driven there by an adult male from London". Children's Services reported that they were "concerned that there was increasing evidence" that [the Claimant] was a victim of CCE. The CET detective said:

> ***It is very clear that child trafficking is involved in this case. [The Claimant] and the other young people were taken from London to Doncaster in order to get some gain from an unknown individual. The person who drove them appears to be a victim of circumstance and a long-term drug user who was either paid or encouraged to transport the boys. The boys were given weapons in Doncaster. It was pure chance that there were no individuals in the property because it could have been a blood bath.***

The chair of the Case Conference said this:

> ***From reading the information that has been available, to me, [the Claimant]'s behaviours, these activities, started triggering while he was in school, which led to him not attending school and being excluded. We could argue that perhaps the school could have dealt with the matter differently. But then we have to think about the other children that attend the school too, and how this situation if it did get worse, would have affected the other children and the risks that could have been brought to them. I am not saying what the school did was right or wrong. However, we know that there have been implications, and the implications are very high for [the Claimant] and his family if things do not change. I am worried about [the Claimant's] safety within the community, despite the support he receives from his parents and the professional network.***

On 18.9.24 there was an updating Core Group Child Protection Plan meeting. All of this post-dated the Stage (4) impugned decision (24.6.24). In the light of this, these matters can in my judgment have no direct legal relevance to the lawfulness of the impugned GDP decision (see §52 below).

Stage (2): Consideration by the GDP

38. Returning to the narrative, this is what happened at Stage (2). The GDP hearing was convened on 18.3.24. The GDP was comprised of a governor appointed as Chair of the GDP and two other Governors, assisted by a clerk and a note taker. The hearing was attended by the Principal, the APB, the Claimant, his mother and the local authority's Senior Education Welfare Officer (SEWO). As the IRP was later told, SW1 was invited but did not attend. There was a bundle of documents. The GDP deliberated and reached its decision. This was communicated by decision letter. It referred to the PEX "for persistent breaches of the Academy's Behaviour Policy"; satisfaction that the Principal

had "acted within his legal powers"; consideration of the interventions the Academy had put in place to support the Claimant; consideration of special needs, disability and protected characteristic (the Claimant being of Black African heritage); consideration of the £270 cash and the mother's explanation that she was its source; the GDP's satisfaction as to "the fairness of the procedure"; its satisfaction that PEX was a last resort; and this conclusion:

> ***Having considered the representations made by all parties, and the interests and circumstances of [the Claimant], and others in the Academy community, the panel concluded that, based on the evidence presented to them, [the Claimant] had persistently breached the Academy's Behaviour policy. They are satisfied that [the Principal's] decision to exclude [the Claimant] was lawful, reasonable, and fair.***

Stage (3): Review by the IRP

39. This is what happened at Stage (3). The IRP hearing was convened on 13.5.24. The IRP was comprised of a lay member and Chair, a Governor member and a headteacher member, assisted by a clerk. The hearing was attended by the Claimant, his mother, his legal representative and his social worker (SW2); by the Principal, the GDP Chair and the GDP's clerk; and by an SEN expert. There is a full 36-page record of the IRP hearing; together with a 3-page record of the deliberations and decision. These are then combined to form a Decision Document (29.5.24).

40. The following points relating to the IRP hearing are taken from the Claimant's pleaded judicial review grounds (at §§30, 32):

> ***[U]pon questioning of the Principal by the IRP members, it became apparent that: (i) Three suspension letters were missing from the bundle, and the two that were in the pack before the IRP had not been before the GDC; (ii) The Principal had incorrectly cited out of date guidance, and had also done so erroneously (with reference to the wrong paragraphs), and this had not been challenged by the GDC; (iii) The paperwork for the PSP was not before the GDC; (iv) CPOMS [Child Protection Online Monitoring System] records were not before the GDC; (v) Records as to the reintegration meetings were not before the GDC; (vi) There was no contemporaneous statement taken from the Claimant, or indeed no statement at all, before the GDC; (vii) There was no independent evidence for the fourth suspension before the GDC; (viii) There was no evidence as to the MASH referral before the GDC; (ix) The Principal did not consider the Claimant to be a vulnerable student at the Academy; (x) The Principal averred that there were 'no concerns' that the Claimant may have been involved in criminal activities, and that 'criminal exploitation was not raised'.***
>
> ***Upon questioning of the Chair of the GDC, it was clarified that: (i) There were no formal minutes taken of the GDC's deliberation; (ii) It was not clear that the GDC had challenged each breach of the behaviour policy, which was particularly vital in light of the fact that the Claimant was being permanently excluded for persistent breaches of the behaviour policy; (iii) That none of the Governors present for the GDC meeting queried why there was no evidence taken from the Claimant; (iv) That the GDC had not reviewed the Academy's Safeguarding Policy, nor the Keeping Children Safe in Education Guidance 2023.***

41. In applying judicial review principles, the IRP found no "illegality". It was satisfied that the GDP acted within its legal powers, followed the applicable laws and regulations and made a decision within the scope of its authority. The IRP found that there were no equalities issues: the Academy showed due regard to the Claimant's protected characteristics in the context of the PEX and met its duties under the Equalities Act 2010. The IRP said that – insofar as it could see – the Academy had followed its own policies and guidance. As to the five suspensions and the events of the day of the PEX, the IRP

recorded that it found – applying the balance of probabilities – that the Claimant had persistently breached the Academy's Behaviour Policy and that he was responsible for the breaches which were alleged. As to procedural impropriety, the IRP said it was satisfied that the GDP's consideration was not "so procedurally unfair or flawed that justice was clearly not done".

42. The IRP's reasoned decision said this about "irrationality":

> ***Irrationality: Did the governing board rely on irrelevant points, fail to take account of all relevant points, or make a decision so unreasonable that no governing board acting reasonably in such circumstances could have made it?***
>
> ***[1] This was specifically challenged by the Appellant and was considered by the Independent Review Panel in depth in any event. The Panel considered the issue of irrationality and whether the decision to permanently exclude [the Claimant] was reasonable and rational. The Panel was content that on the balance of probabilities the evidence as presented by staff members and which was accepted by the GDC was the likely version of events which happened on 18th January 2024. The IRP did not however accept that the decision taken to permanently exclude was rational or reasonable and in coming to this conclusion considered the following:***
>
> ***[2] The IRP considered the family's submission that the timeline of suspensions was very short and that they questioned whether enough pastoral support and intervention work was considered and given enough time to be effective given the timeline presented from the first suspension to the sixth. The governors on their own admission focused mainly on the last incident and took the other incidents which the suspensions relied on at face value as they were not challenged by the family, and the governors were clear that they felt enough intervention had been put in place. The IRP were content that a MASH referral was in place. However, the governors did not have in front of them any reintegration meeting notes and did not ask for them and the governors did not have in front of them the PSP and did not ask for it. The IRP was concerned that the PSP did not have a list of current interventions to support [the Claimant].***
>
> ***[3] The IRP found that whilst some intervention had been put in place in the short period of time however, at a crucial period of time where the child appeared to be going through some form of crisis, the PSP is put in place with no form of meaningful pastoral support that is detailed, and the governors did not question it, they did not see the reintegration meeting notes and they did not robustly probe in relation to this therefore the IRP found it unreasonable that they concluded that enough had been put in place. The IRP would note that [the Claimant] had not been given a trusted adult which could have been a supportive measure.***
>
> ***[4] The IRP looked at the independent evidence available to the governors and was concerned that most were edited from emails meaning that paragraph 181 of the Statutory Guidance was contravened. No independent evidence was supplied for suspension four and independent evidence supplied for suspension two did not mention defiance or bringing the school into disrepute. The IRP found it irrational that the governors were so willing to take the Head of Year and Principal's outline at face value with such a lack of independent evidence which also included a lack of suspension letters, just because the family did not contest it.***
>
> ***[5] The family's submission that the school had contravened paragraph 4 of the Statutory Guidance with the lack of the pupil's voice throughout the pack was discussed by the IRP. The IRP accepted [the Principal] had spent an amount of time on the 18th January with [the Claimant] in order to feel that he had taken into consideration [the Claimant]'s voice within that incident. [The Principal] conceded that it would have been better to have asked [the Claimant] to write a statement. [The Claimant]'s voice is lacking in all the other incidents with no statements in the pack.***
>
> ***[6] The IRP was concerned that the governors did not make enquiries into why there were no statements from [the Claimant] but relied on the fact that [the Claimant] did not want to extend his voice on the matter in their meeting.***

> ***[7] The IRP discussed whether [the Principal] and the governors had taken [the Claimant]'s vulnerability to child criminal exploitation enough into consideration and, in hearing the social worker's timeline and the school's understanding that Mum had concerns of peers and not others, accepted that the school had taken child criminal exploitation into consideration at the time when [the Principal] made his decision and by the governors at the GDC. The IRP found there was not enough curiosity around [the Claimant]'s background, needs and circumstances from the governors which would have enabled them to come to a reasonable conclusion on [the Claimant]'s needs and whether they had been fully met.***
>
> ***[8] The Panel were satisfied that the governing board did not rely on irrelevant points but found that the governors failed to take account of all relevant points and in doing so made a decision so unreasonable that no governing board, acting reasonably in such circumstance would have made.***

43. This is what the IRP added in the context of "procedural impropriety":

> ***Considering safeguarding concerns around substance misuse and child criminal exploitation had been raised in the circumstances of this case the IRP were concerned that the governors did not have to hand the school's Safeguarding Policy, the Keeping Children Safe in Education Guidance 2023, the Behaviours in Schools Guidance and the DfE Statutory Guidance on Suspension and Exclusion 2023 which would have supported them in meeting their Statutory decision…***
>
> ***The Panel balanced the interests of the excluded pupil against the interests of all the other members of the school community and determined that they had concerns about the needs of [the Claimant] and questioned whether his background and vulnerabilities had been given enough consideration by the governors to come to a fair and reasonable judgement when balancing interests.***

44. The IRP said this about payment of the £4,000 (§16 above):

> ***If the governing board fails to meet within the specified time frame or decide not to reinstate the student, the Review Panel under Section 51(A) of the Education Act will order that a readjustment payment of £4,000 be made to the Local Authority of the Academy (this amount is in addition to any funding that would normally follow an excluded pupil).***

Finally, the IRP's decision set out the entirety of the contents of Guidance §§258-268.

Relevancies and Reasonableness

45. I will pause the narrative again, to address a legal point. The basis for an IRP quashing and direction is that the GDP's decision was "flawed when considered in the light of the principles applicable on an application for judicial review" (s.51(4)(c) of the 2002 Act). The headline question posed by the IRP (§42 above) asked whether the GDP had relied on irrelevant points or failed to take account of relevant points or made a decision so unreasonable that no governing board acting reasonably in such circumstances could have made it. As Lang J identified in R (A Parent) v Governing Body of XYZ School [2022] EWHC 1146 (Admin) at §55 – citing the Divisional Court (Leggatt LJ and Carr J, as they then were) in R (Law Society) v Lord Chancellor [2018] EWHC 2094 (Admin) [2019] 1 WLR 1649 at §98 – the test for "unreasonableness" (as irrationality is "more accurately described") involves two aspects: (a) whether the decision is outside the range of reasonable decisions open to the decision-maker; and (b) whether there is a demonstrable flaw in the reasoning which led to the decision. An example of (b) is where relevant considerations have not been taken into account. That makes the decision unreasonable, but not because the outcome is said to be outside the range of reasonable decisions. There can be cases where aspects (a) and (b) are both present. In the present

case, the IRP was identifying species (b). It was saying that the decision needed to be quashed as unreasonable because relevant considerations had not been taken into account by the GDP. This is the judicial review principle which operates to "ensure that all relevant considerations are taken into account": R (Talpada) v SSHD [2018] EWCA Civ 841 at §64. The Claimant's pleaded grounds for judicial review and skeleton argument encapsulate the IRP's quashing decision as follows: "the IRP concluded that the GDP failed to take account of all relevant points, and in doing so had made a decision so unreasonable that no governing board acting reasonably in the circumstances would have made". This matches the IRP's decision at [8] (§42 above).

Stage (4): Reconsideration by the GDP

46. The GDP reconsideration hearing was convened on 17.6.24. The GDP was comprised of the chair of Governors and one of the Governors who had been on the GDP previously, and a Governor who had not; assisted by a clerk and a note taker. The Chair and clerk had attended the IRP hearing. It is common ground that it was not required in law to convene a differently constituted panel and it was not required to conduct "a complete re-hearing" at which all relevant evidence was given from scratch: see A Parent at §§85-87. The reconsideration hearing was attended by the Principal, the APB, the Claimant, his mother and the SEWO. There was no social worker in attendance. There was a new bundle of fuller documents. The Claimant was given two opportunities to speak. The GDP deliberated and reached its reconsideration decision. There are an 11-page record of the hearing, 3-page minutes of deliberations, and 3-page decision letter.

47. Key points made on behalf of the family, at the GDP reconsideration hearing, raised matters including: (a) the adequacy of interventions and support by the Academy, their monitoring and the time allowed for them to work; (b) the indications that the Claimant was "a pupil with emotional and wellbeing needs", having "social, emotional and mental health needs"; (c) the risk of exploitation and whether safeguarding was taken into consideration; and (d) the Claimant having "been remorseful about his negative behaviour". The Claimant's representatives have filed a witness statement from the representative who attended the hearing for the family as advocate and raised those and other points. Insofar as it is factual, I have put this alongside the documents. But I have to form my own views about the legal merits of the GDP's impugned decision, in the light of the issues raised and the written and oral submissions. I will put to one side the advocate's expressed views in the witness statement, about the merits and legal merits.

The Deliberations

48. In order to assist an understanding of the grounds for judicial review and my analysis of them, I will set out the record of discussion emphasised in the Guidance §122 (albeit not repeated at §265). The grouping and paragraph numbering is mine:

> ***[1] Chair: [Clerk] could you please give a summary on what we need to consider?***
> ***Clerk: Essentially we're looking at if the decision was lawful, reasonable and rational.***
> ***Governor 1: Where is the IRP report?***
> ***Clerk: The school should have it and the Chair should have it.***
>
> ***[2] Clerk: If we look at the areas that were highlighted. I've got a list of seven items. Can we indicate if these have had been met?***
> ***1. To include all returns and suspension letters. Chair: Yes. In the Pack.***
> ***2. To include the PSP and review the actions. Chair: Yes.***

3. Each of the 5 suspensions and final decisions around the PEX to have full email statements. Chair: Yes and [the APB] spoke through them in the hearing.
4. Include CPOMS and any follow up CPOMS. Chair: Yes. In the Pack and discussed.
5. The Principal to speak about variation rates. Chair: Yes. In the Pack and discussed.
6. Reference to directions. I'll do that in in the letter.
7. Print out the relevant policies. Chair: Yes, has been done by [the Note Taker] and they were available on the table and were referenced at the start of the hearing.

[3] Chair: We're satisfied that we've met all the areas that were highlighted by the IRP. In light of the additional info, we need to consider whether the decision is lawful. I don't think it was ever not lawful, it was a disciplinary incident that that the school had the right to exclude for. The panel is satisfied that that the Principal acted within his legal powers to exclude.

[4] Clerk: Do you feel as a panel it was reasonable? Did [the Principal] take into consideration [the Claimant]'s circumstances and was it adequate?

[5] Chair: We heard about lots of interventions plus the daily check-ins. The strongest part of [the Principal]'s submission was that [the Claimant]'s behaviour would affect the wellbeing of the other students.

[6] Governor 1: My concern is now the speed. Did they allow enough time for any of the interventions to sink in. There were a lot of breaches but was there enough time for the interventions to sink in?

[7] Chair: The PSP should be a 16 week programme which was issued at the end of November and [the Claimant] was excluded in the second week of January.

[8] Governor 2: The IRP is fair to say despite the concerns that the governing body did act unreasonably. I question, have we heard enough from the young person. I'm at 51% to reinstate and 49% to exclude.

[9] Chair: There were two managed moves discussed. One was the move to [a school in South London] which wouldn't have been able to commence until after Easter. But there was the move to [MMA] that did happen but failed for numerous reasons.

[10] Governor 1: I'm torn and have a lot of respect for [the Principal] and totally correct in what he's articulated. However, what is the best situation for the child right now? My biggest concern is time and not allowing time for interventions to kick in. I don't think we've had a clear picture of this child's mental health.

[11] Governor 2: I'm not convinced that we looked into this child's mental health. We've still not been provided with evidence for the advocates' claims.

[12] Chair: As a panel you can only make a judgement on the info that has been put in in front of you. You can only deal with factual evidence that should've been given to you. Then you have to look at that. What is the additional info that you feel you should've had?

[13] Governor 2: Well the advocate repeated points from the IRP.

[14] Clerk: Was there any other info/evidence you should ask for? It reasonably could be here so we're going to ask for it.

[15] Governor 1: He has complex emotional needs and I've seen no evidence of this.

[16] Chair: Much of this was introduced at the IRP. The original exclusion was made available at the time and the paper was inadequate.

[17] Clerk: Have you got enough evidence to determine if he should come back or not.

[18] Chair: The IRP found that that our decision was irrational.

[19] Clerk: They probably said that as you failed to consider other information such as the suspensions. Now this has been included and considered, are you satisfied with what has been presented? This means they should consider what is in the best interest of the child at all times.

[20] Chair: The advocate said there had been no "Team around the Child" meetings. This was the first time this this has been referenced.

[21] Clerk: The school can say we made a MASH referral. Once [the Principal] has made that referral it's up to those agencies to fulfil the request.

[22] Chair: Are we coming down to the decision that it was a reasonable decision?

[23] Clerk: I agree that the point [Governor 1] made regarding timing is inadequate, however I think there has to be a clear demonstration that you've looked at all the points fairly.

[24] Chair: The first decision was flawed and the IRP called us out and asked us to go through it again. We've done so and not missed anything. Everybody had a chance to speak and voice their opinion.

[25] Governor 2: It's a huge escalation in behaviour from being defiant to then bringing cannabis into school along with a grinder, lighter and money.

[26] Clerk: The SEND code of practice says persistent breaches of the behaviour policy is not always related to special needs but can be due to home life. It doesn't always mean the behaviour is education related.

[27] Governor 2: What is in the child's best interest today?

[28] Chair: He's better off in a school than at home with revision guides.

[29] Governor 1: We don't just have a duty to him but to the other students as well.

[30] The SEND code paragraph 6.21 states: "Persistent disruptive or withdrawn behaviours do not necessarily mean that a child or young person has SEN. Where there are concerns, there should be an assessment to determine whether there are any causal factors such as undiagnosed learning difficulties, difficulties with communication or mental health issues. If it is thought housing, family or other domestic circumstances may be contributing to the presenting behaviour a multi-agency approach, supported by the use of approaches such as the Early Help Assessment may be appropriate. In all cases, early identification and intervention can significantly reduce the use of more costly intervention at a later stage."

[31] Chair: The school made the referral to MASH very quickly.

[32] Governor 2: There was more than one agency involved and the school did do a good job at raising this.

[33] Chair: I am very much in favour of upholding to exclude. I believe he is a danger to others in the school. [I] was looking to hear any contrition or admission of fault by himself and not just on his behalf by the advocate, but he wasn't really engaged, he was foot tapping and looking away. He said he wanted to be at [the Academy] but didn't act like it.

[34] Governor 1: He behaved like a difficult child but they had the help of an advocate and he didn't take the opportunities to speak on behalf of himself at all.

[35] Chair: We therefore agree that after seeing all the evidence, we believe it was lawful, reasonable and rational and was a last resort and it's our decision to uphold the decision.
Clerk: Yes.

> ***Governor 2: Yes.***
> ***Governor 1: Yes.***

49. I record that it formed no part of this claim for judicial review that the clerk said at [1], and the Chair repeated at [35], "lawful, reasonable and rational" instead of "lawful, reasonable and procedurally fair"; and that there was no separate consideration given to procedural fairness.

The Decision Letter

50. In order to assist an understanding of the grounds for judicial review and my analysis of them, I will set out GDP Stage (4) decision letter written to the Claimant's parents. This is the impugned decision in these proceedings. Again, the numbering is mine:

> ***[1] Following the recommendation of the Independent Review Panel (IRP) held on Monday, 13th May 2024, the governors met on Monday 17th June 2024, to reconsider their decision to decline the reinstatement of [the Claimant] to the Academy. The Governors' Disciplinary Panel consisted of the same governors who sat on [the Claimant]'s original exclusion panel. I am writing to inform you of their decision.***
>
> ***[2] The governors gave lengthy and careful consideration to the IRP's direction but concluded to uphold their original decision. As such, they agreed that [the Claimant] should not be reinstated to the Academy. The reasons for the governors' decision are set out below.***
>
> ***[3] In coming to their decision, the governors considered additional information which was not available to them during the original governors' review meeting, and which the IRP felt could have and should have been available. The additional information included: [the Claimant]'s PSP (Pastoral Support Plan); notes from suspension reintegration meetings; additional statements from previous suspensions and the exclusion; relevant information from CPOMS (Child Protection Online Monitoring System); additional information from [the Principal] on the exclusion variation rates in the Academy; and copies of all relevant Academy policies.***
>
> ***[4] The governors considered all the additional information provided alongside all the previous information presented at the original governors' review meeting. They also noted [the family's advocate's] additional oral representations on behalf of the family.***
>
> ***[5] Having reviewed the additional statements relating to [the Claimant]'s previous suspensions, listened to all the oral presentations, and read the behaviour logs in the exclusion pack, the governors were satisfied that [the Claimant] had persistently breached the Academy's Behaviour Policy. The veracity of the additional information presented by Academy staff was not challenged by any party at the meeting. [The Claimant] was asked directly whether any of the claims made by school staff were untrue or if there were some things he disagreed with, to which he replied, no.***
>
> ***[6] The governors reviewed [the Claimant]'s PSP, the notes from some suspension reintegration meetings, and some additional information from CPOM, and they were satisfied that Academy staff had made considerable efforts to provide [the Claimant] with support to improve his behaviour. However, it was [the family's advocate's] view that although the Academy may may have put certain support interventions in place, they were not given adequate time to have an impact before [the Claimant] was excluded.***
>
> ***[7] The governors discussed [the family's advocate's] submission at length but felt that the timing of [the Claimant]'s exclusion was not chosen by academy staff; it was ultimately dictated by [the Claimant] bringing drugs onto the Academy site. The governors felt that this final incident was a serious breach of the Academy's Behaviour Policy, and in light of [the Claimant]'s previous misconduct, it was not unreasonable for [the Principal] to issue the exclusion.***

[8] The governors also considered [the family's advocate's] submission that [the Claimant] may have special educational needs (SEN) which Academy staff have failed to identify and support. They were also guided by the SEND Code of Practice when discussing the matter. The SEND Code of Practice, paragraph 6.21 states: "Persistent disruptive or withdrawn behaviours do not necessarily mean that a child or young person has SEN. Where there are concerns, there should be an assessment to determine whether there are any causal factors such as undiagnosed learning difficulties, difficulties with communication, or mental health issues. If it is thought housing, family, or other domestic circumstances may be contributing to the presenting behaviour, a multi-agency agency approach, supported by the use of approaches such as the Early Help Assessment, may be appropriate. In all cases, early identification and intervention can significantly reduce the use of more costly intervention at a later stage".

[9] The governors felt that there might be issues in [the Claimant]'s "family or other domestic circumstances" which may have been a causal factor in his behaviour and required exploring beyond the ability of Academy staff. The panel noted that [the Claimant]'s behaviour became more challenging when you left the country for a period. Academy staff evidenced that they adopted a multi-agency approach by referring their concerns around [the Claimant]'s possible underlying issues to Southwark's Multi-Agency Support Hub (MASH) for further support.

[10] In conclusion, it is a principal's first priority and duty to create and maintain a safe learning environment with high standards for all pupils to thrive, achieve, and enjoy. To this end, the government gives headteachers the power to exclude a pupil from school on disciplinary grounds. The governors are satisfied that, having considered and reconsidered [the Claimant]'s exclusion, [the Principal] has used this power fairly, reasonably, and as a last resort.

[11] For the reasons set out above, it was agreed that [the Claimant] should not be reinstated. The decision was unanimous. We appreciate that you will be disappointed with the outcome, but we wish [the Claimant] well in the future.

51. I record that it formed no part of this claim for judicial review that the letter mistakenly referred at [1] to the GDP as having been the same. Nor is it said that there was a mismatch of impermissible elaboration in the decision letter, by comparison with the record of deliberations. The Deliberations at [1] recorded that the Clerk would be dealing with the letter. The signatory was the Chair. I do not have – and in the circumstances did not need – evidence as to how the decision letter was drafted or who approved it. I do have evidence from all three members of the GDP. To a large extent, this is making points on what is shown in the record of deliberations, which is unnecessary. What remains is what I am calling Retro-Reasons.

Hindsight and Fresh Evidence in Judicial Review

52. I will now turn to my analysis of the issues. I will start with some points about the principled orientation of the judicial review Court, and the approach to 'fresh evidence'. I have already recorded a number of conclusions about fresh evidence which has no direct legal relevance: see §§33, 35 and 37 above. I want to say a little more about why that is.

53. The principled starting point is that judicial review considers an impugned decision against the information which was, or should have been, available to the decision-maker at the time the decision was taken. Put in terms of fresh evidence, in judicial review proceedings it is generally inappropriate for parties to seek to rely, and advance arguments based on, information which was not available to the decision-maker. This was not controversial in the present case. So I can leave it with two references: R (Bancoult) v Secretary of State for Foreign & Commonwealth Affairs (No.2) [2008] UKHL 61 [2009] AC 453 at §131; and Kenyon v Secretary of State for Housing Communities and Local Government [2020] EWCA Civ 302 at §28. What this means is

that the strong starting point is that judicial review is not an exercise based on hindsight. That would undermine its secondary, supervisory nature. It would not be fair to public authority decision-makers. It would be "rolling" judicial review. If post-decision events or changes in circumstances call for fresh decisions, that can be addressed in the relevant framework of legislation, rules and policy guidance.

54. Fresh evidence can be legally relevant in judicial review. Reference may properly be made to information which ought to have been known; to information which it is said would have been elicited upon a reasonably sufficient enquiry; to matters which it is said could have been raised had there been a consultation or fair hearing. All of this is recognised in the Guidance itself at §208 (§17 above), in the context of the IRP itself applying judicial review principles. Examples of fresh evidence are that reference may properly be made to matters which show a mistake of fact; or which show procedural unfairness; or which show the non-materiality of alleged public law errors. Or fresh evidence may identify events which make a claim academic. They may inform the discretion as to remedies. Sometimes the claim is of breach of a duty and the remedy being sought involves considering the updated picture. Sometimes, there is a special question of precedent or objective fact – an example is age assessment cases – involving a substitutionary decision on all available evidence. Sometimes, it can be appropriate for evidence to be adduced as to the impact and implications of an impugned decision or measure, and illumination may even come from post-decision events. These are illustrative, not exhaustive. The upshot is that the legal relevance of fresh evidence which was not before the decision-maker – including evidence as to post-decision events – will always depend on close regard to the nature of the legal issues.

55. Returning to the present case, I have to apply conventional public law principles to determine the issues in this claim for judicial review of the GDP's impugned decision (24.6.24). This cannot be based on the hindsight of the Doncaster arrest of 28.7.24, the NRM referral of 19.8.24 or the NRM positive reasonable grounds decision of 30.8.24. The GDP's decision was either lawful, reasonable and fair at the time and in the circumstances in which it was made; or not.

The Intensity of Review and Retro-Reasons

56. In essence, Ms Braganza KC (and her team) submitted as follows. The intensity of review in the present case depends on the profundity of the impact of the decision, just as is seen in community care cases: R (KM) v Cambridgeshire County Council [2012] UKSC 23 [2012] PTSR 1189. In order to understand the impact of the decision, the Court is properly assisted by all the evidence. That includes concerns expressed by the police and local authority about the implications for the Claimant of PEX. This is relevant and permissible fresh evidence to assist in identifying impact. But even leaving aside fresh evidence, the context and circumstances, the questions about safeguarding and vulnerability, the importance of education and the protective environment of education and school (§10 above), all call for a higher intensity of review. That does not change the applicable legal principles, but it does heighten the scrutiny which the judicial review court will bring to bear in applying those principles. It also qualifies the "benevolence" with which the court might, in other contexts, be prepared to read a decision letter. Finally, it heightens the caution with which the court approaches Retro-Reasons. By "Retro-Reasons" I mean witness statement evidence put forward as elucidatory of a reasoned decision, by a challenged decision maker, but which may run the risk of being

subconsciously self-defensive: see eg. R (Guilin) v Food Standards Agency [2024] EWHC 614 (Admin) at §94.

57. I accept that the context and circumstances, the questions about safeguarding and vulnerability, the importance of education and the protective environment of education and school, are all factors which point in favour of a relatively exacting intensity of review. They do, however, need to be put alongside the evaluative judgment at the heart of a PEX decision and the needs and interests of others who could be affected. What I accept is that, without changing the applicable legal principles, the impact and implications for the pupil facing PEX does tend to increase the scrutiny which the judicial review Court will bring to bear. I also think it tends to qualify the breadth of the "benevolence" with which the court will read a reasoned decision. Finally, I think it does tend to heighten the caution with which the court already approaches Retro-Reasons. When "anxious scrutiny" was first introduced at common law in human rights cases, it had a lot to do with the scrutiny of reasons: see R v SSHD, ex p Bugdaycay [1987] AC 514, 534A and R v SSHD, ex p Brind [1991] 1 AC 696, 757B-C. The implications of PEX for the Claimant were and are highly significant. The judicial review Court, always remembering that it is applying conventional standards of review, can and in my judgment should look with special care at the GDP's decision and reasons. I agree with Mr Glenister, whose essential response is that this does not mean the Court will adopt a legalistic, technical or nit-picking approach to the expression of the reasons in the decision letter or points made in the record of deliberations. This analysis does not require post-decision "impact" evidence. But if it mattered, I would have accepted that post-decision evidence may sometimes bring home, illustratively, the practical importance and implications of PEX and GDP decisions.

58. All of which leads to my answer to the agreed issue as to how the Court should approach the GDP's decision letter (24.6.24). My answer is: with close scrutiny, with reduced benevolence, and with a heightened reluctance to allow any resort to Retro-Reasons; but always taking a straightforward, not a legalistic, nit-picking or a technical, approach to reasons and the way they have been expressed.

The Article 4 "Positive Obligation" Ground of Review

59. This is one of the four grounds for judicial review. The issues are (i) whether the GDP failed to construe the PEX test compatibly with the Article 4 positive obligation, because (ii) there were clear indicators that the Claimant was at risk of harm from CCE. The Claimant's case on this ground for judicial review came into clear focus in the written and oral submissions. There are three steps.

60. The first step is a legal point about the relevance, to a PEX decision, of the Article 4 positive obligation. This was the essence of Ms Braganza KC's submissions. By virtue of s.6 of the HRA (read with ECHR Article 4), relevant UK public authorities owe a positive obligation to take appropriate measures within the scope of their powers to protect an identified individual in respect of whom they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion of a real and immediate risk of having been, or being, trafficked or exploited: see TDT at §§14-18. This is an important protection duty. Where the circumstances are such as to trigger the protection duty, it could not be lawful for a designated First Responder to refuse to make a referral to the NRM: see TDT §§33-36. True it is that the Principal and the GDP are not designated First Responders. But they are relevant public authorities with a role to play. Where the

Article 4 protective duty is triggered in relation to a pupil facing PEX, that does not necessarily mean that PEX is unlawful or unreasonable as a response. It is the state as a whole which has to protect. But a Principal, and a GDP, need to recognise the duty and consider it. Especially because of the importance of school as a protective environment for a person vulnerable to modern slavery including CCE. That means the test for PEX must be interpreted and understood as if it said:

> ***the decision to exclude a pupil permanently should only be taken [i] in response to a serious breach or persistent breaches of the school's behaviour policy; and [ii] where allowing the pupil to remain in school would seriously harm the education or welfare of the pupil or others such as staff or pupils in the school; and [iii] having regard to any protection duty owed to the pupil by reason of Article 4 ECHR.***

61. I have been unable to accept this submission in light of its reach. I can agree that the PEX decision should only be taken "compatibly with a duty owed by the school to the pupil by reason of the Human Rights Act 1998". I would also agree that the GDP could not fail to reinstate if, by the time of its consideration or reconsideration of reinstatement, an HRA duty was owed by the school to the pupil. For his part, Mr Glenister creditably drew my attention to the Convention-compatible approach to policy guidance illustrated by R (South Gloucestershire) v South Gloucestershire Schools Appeal Panel [2001] EWHC 732 (Admin) at §49. Here, it would be a more direct route: a statutory duty under the HRA. If – and I emphasise if – there were a protection duty owed by the school, then it must not be contravened. In the same way, by reference to Article 2, the Academy could not lawfully order someone to leave a school building, knowing that they faced the imminent prospect of being murdered at the school gates. So, if the "appropriate measures" within the scope of a public authority's powers involved an Article 4 duty on a school not to impose PEX, then that would become the statutory duty of the school. Ms Braganza KC is right to recognise that the Article 4 protection duty, where it is triggered, does not necessarily place such an obligation on a school. Where I could agree with her, on a case-specific basis, is that there may be cases where the same circumstances which would trigger an Article 4 protection duty have become an obviously relevant consideration, to which regard must be had by a school in making the PEX decision.

62. The second step came into focus at the hearing. Submissions were being made about whether the Article 4 obligation arose. I was given the Article 4 positive obligation formulation: appropriate measures within the scope of the public authority's powers to protect an identified individual in respect of whom they are aware, or ought to be aware, of circumstances giving rise to a credible suspicion of a real and immediate risk of having been, or being, trafficked or exploited. I asked whether "circumstances giving rise to a credible suspicion of a real and immediate risk of having been, or being, trafficked or exploited" are to be evaluated objectively by a judicial review court. This proved controversial. Ms Braganza KC says, citing Begum v SSHD SC/163/2019 [2023] HRLR 6 at §218, that "credible suspicion" is for objective evaluation by the Court. Mr Glenister says Begum, like MS (Pakistan) [2020] UKSC 9 which it cites, is distinguishable as an appeal in which there was said to be a breach of a directly-applicable obligation, not a disregarded relevant consideration. I will proceed for now on the basis that the judicial review Court could look objectively at the trigger test. But I emphasise that this cannot be an exercise in hindsight. The Article 4 positive duty is to protect an identified individual in respect of whom a public authority "is aware, or ought to be aware" of circumstances giving rise to a credible suspicion of a real and immediate risk of the

individual having been, or being, trafficked or exploited. The Court has to look through the prism of what the Academy knew or ought to have known.

63. Which brings me to the third step. Ms Braganza KC says the circumstances of the present case mean that the Article 4 positive protection duty had been triggered by the time of the PEX decision (18.1.24), and certainly by the time of the impugned GDP decision (24.6.24). That is because of the clear indicators of the risk of harm from CCE. At the start of Year 10, the School had a 14 year old who was doing extremely well academically and had a bright future. He had already been "profiled" by the Academy as being in a cohort at risk. After half-term, within those 5 weeks, there was a rapid deterioration. His behaviour changed abruptly. There was his non-attendance and his lateness. There were the 5 incidents leading to the suspensions. He was observed to be under the influence. He was repeatedly observed unable to stay awake. He had come into contact with the law enforcement authorities, including in the fourth incident (29.11.24). All of this coincided with his mother being abroad, which was the loss of a key protective factor. He was with the truancy group (15.11.23) and the group at the tower block rooftop (29.11.23). He had a new life outside school. By the time of the PEX, the Academy was itself advising his mother to report him as a missing person; and she reported that he frequently stayed out at night until 4am. All of these are clear indicators of CCE risk, in line with the School's Safeguarding Policy and all the other relevant policy guidance (§§29-30 above).

64. Then there were the events of 18.1.24 itself, when the Claimant appeared at school with a bag of drugs and a large amount of cash. There were conflicting stories about the cash, and the question of the cash needed to be probed further. The Claimant was observed to be distressed, anxious and agitated. All of this then came into sharp focus, because one of the key bases for the IRP's quashing and direction for reconsideration was that the GDP had not enquired adequately into aspects as to the Claimant's background, needs, circumstances and vulnerabilities. That included the concerns of the social worker, articulated verbally at the IRP (13.5.24) about extra-familial concerns, with associations with grooming and risk of influence from others, and attendance at A&E associated with injuries caused in relation to youth violence. It is not a question of whether adults were known or even suspected to be involved in the Claimant's life and activities, though the events of 23.7.24 (the arrest in Doncaster) are legally relevant as a compelling illustration of the continuum on which the Claimant was recognisably heading. The point is that the Claimant was plainly at risk of CCE, being at risk of exploitation in circumstances of an imbalance of power, to coerce, control, manipulate or deceive. Whether it is an objective evaluation by the Court, or whether it is a secondary review, the Court should recognise that the circumstances known to the Academy were such to trigger the Article 4 positive protection duty. Since the duty was not recognised by the GDP, the impugned decision cannot stand, and the claim for judicial review must succeed.

65. I am unable to take that third step with Ms Braganza KC. I cannot accept these submissions. On this part of the case I agree with Mr Glenister. The Academy was alive to the issue of CCE and was right to have concerns. The IRP was satisfied that the Academy had taken CCE into consideration at the time of the Principal's decision and the GDP's original consideration. The Academy's CCE concern was flagged up to the police on the day of the PEX decision (18.1.24). But it was never suggested to – or even argued before – the GDP at Stage (2) or the IRP at Stage (3) or the GDP at Stage (4) that there was a positive Article 4 duty; still less such a duty owed by the Academy. The MASH referral (29.11.23: §22 above) was about risk of harm, due to the Academy's

concerns regarding the Claimant being brought by the police, his friendship group outside school, possible drug misuse and the Claimant's parents finding it very difficult to manage his behaviour at home. There were the drugs and the cash, and the Academy raised these promptly with the social worker (SW1) and the police. The Academy was not told – in the follow-up to the MASH referral – about the first A&E visit. The Academy's staff identified the drugs and the cash to SW1 and to the police, and had discussed these. The police and the social worker were content that the cash be returned to the mother, because she had explained that she had given the cash to the Claimant. Pausing there, and bearing in mind what is said about probing, it is relevant to note that the mother has given fresh evidence in a witness statement to this Court – with a statement of truth – that the cash did come from her for the jacket. Putting that to one side, that is what she confirmed at the time. SW1 and the police were not concerned about that answer. There was the truancy episode, with other pupils. And there was the rooftop episode with others of similar age.

66. If Ms Braganza KC's legal logic were correct, it would mean that the local authority and the police owed a protection duty, based on the circumstances known to them, to make an NRM referral which – given the applicable threshold – would have led to a reasonable grounds decision. Neither the local authority nor the police considered that a CCE positive obligation threshold had been crossed. Nor did they think it was crossed when the GDP was first dealing with the case; nor when the IDP was dealing with the case; and nor when it was back in front of the GDP. Neither the local authority nor the police told the Academy that the duty was triggered. There was the MASH referral; and there was the local authority Child in Need Plan. SW1 knew more about the Claimant's circumstances than did the Academy. The Academy was entitled to act with the other authorities and to share the information, especially given that the local authority and police are the designated First Responders. No NRM referral was made until 19.8.24, after the impugned decision and after the particular red flag related to the Doncaster arrest. To the police and local authority, that changed the picture and triggered action. Only by an impermissible exercise of hindsight – based on subsequent events – could it be concluded that an Article 4 positive protection duty arose at 18.1.24 or 24.6.24. There was, in my judgment, no Article 4 trigger requiring appropriate measures within the scope of public authority powers to protect the Claimant as a person in respect of whom the Academy "was aware, or ought to be aware" of circumstances giving rise to "a credible suspicion of a real and immediate risk of having been, or being, trafficked or exploited". Still less was it unreasonable for the Academy not to identify such circumstances. That means the claim on this ground cannot succeed whatever is the position in relation to steps 1 and 2. I did not need to take up the parties' offer of further written submissions on step 2. The Article 4 ground for judicial review therefore fails.

<u>The "Lawful Reconsideration" Grounds of Review</u>

67. The other three grounds for judicial review are linked points about the nature of the reconsideration undertaken by the GDP, reflected in its reasoned decision and the record of its deliberations, viewed against what in law was required of it. There are three topics.

    (1) The first topic is about reconsideration after a quashing pursuant to s.51A(4)(c), as distinct from a recommendation (s.51A(4)(b)). Here, the agreed issues are whether the GDP made a mistake of fact that its prior decision had not been quashed; and, if so, whether such a mistake was a material mistake of fact, such that the GDP

undertook an inadequate and circumscribed reconsideration. This has been a pleaded ground for judicial review from the start.

(2) The second topic is about Limb [ii] of the test for PEX (Guidance §11). Here, the agreed issue is whether the GDP misunderstood or misapplied the test of whether the Claimant remaining at the Academy would "seriously harm" the education or welfare of the pupil or others. This has been a pleaded ground for judicial review from the start.

(3) The third topic is about the description of reconsideration in the Guidance at §259, as reflected in the IDP's directions. Here, the agreed issue – if permission to amend were granted – is whether the GDP misunderstood and misapplied §259 of the statutory guidance. This is the new ground for which I have granted permission to amend.

Reconsideration after Quashing

68. Ms Braganza KC says this. An IRP quashing with a direction for reconsideration pursuant to s.51A(4)(c), is deliberately and materially distinct from an IRP recommendation pursuant to s.51A(4)(b). Quashing results in "nullification" of the GDP's decision: see A Parent at §33. That is not the position in a recommendation case. Reconsideration after a quashing and direction is, in turn, materially distinct from reconsideration after a recommendation. The IRP's quashing and directed reconsideration needed to be reconsideration "afresh". All of the issues needed to be considered "afresh"; not just the issues which had led to the quashing. This is reinforced by §259 of the Guidance, which speaks of "conscientious" reconsideration, with "strong justification" for maintaining any non-reinstatement. The quashing meant there was an expectation of reversal of the previous decision. That expectation of reversal is supported by the IRP's reasoning; and by the imposition of the £4,000 adjustment. True, the GDP was not required to convene a freshly-constituted panel with different decision-makers. True, the GDP was entitled to consider all the evidence previously considered, though no regard should be had to the GDP's previous decision (18.3.24). That previous decision was flawed, tainted and nullified. The material error of fact – applying E v SSHD [2004] EWCA Civ 49 [2004] QB 1044 – is seen in the impugned decision letter (§50 above). That is the relevant source to see the GDP's actual approach. The decision letter's opening phrase at [1] refers to a "recommendation" by the IRP. That is a plain error. There was no recommendation. The decision letter also referred at [2] to the GDP concluding "to uphold their original decision". In law, there was no "original decision" to consider or uphold. It had been quashed. These descriptions cannot simply be airbrushed out. Further, the decision letter makes no reference to the decision having been "quashed"; and it makes no reference to consideration "afresh". The error of fact is that the previous decision had not been quashed. The error was material, because the GDP picked up where it left off. The GDP conducted a reconsideration by review, not a reconsideration afresh. None of these concerns are answered by the record of deliberations (§48 above). They contain no reference to quashing or to consideration afresh. There is no ambiguity. And, in light of the standard of scrutiny and the risk of self-defensiveness, the Court should not permit the Retro-Reasons which claim there was consideration "afresh" and which try to explain the references to "recommendation" and the phrase "uphold their original decision". The GDP's decision should be quashed by this Court for material error of fact.

69. I have been unable to accept these submissions. The quashing by the IRP of the GDP's original non-reinstatement decision meant that the decision had been set aside and did not in law subsist as a lawful discharge of the GDP's statutory decision-making function. It meant that there needed to be a reconsideration "afresh". The GDP would be reconsidering – afresh – whether the Principal's PEX decision was lawful, reasonable and procedurally fair. In the present case, there did not need to be a rehearing of all the evidence 'de novo', and there did not need to be a panel of three new individuals, as Ms Braganza KC rightly accepts. Where there is a quashing, after a decision applying judicial review principles, what matters is for the GDP "to look afresh at the question of reinstating the pupil, in light of the findings of the IRP", which is how the Guidance puts it (§264). What quashing does is to require reconsideration afresh.

70. The decision letter has two mistakes in its opening at [1]. It speaks of "the recommendation of the IRP held on Monday 13 May 2024". It also speaks of "the same governors". The IRP decision letter also had a mistake. At one point, it used the phrase "when an IRP directs or recommends a pupil's reinstatement", when it must have meant "when an IRP directs or recommends reconsideration of a pupil's reinstatement". Decision letters must be read fairly and as a whole. The GDP's decision letter spoke, correctly, at [2] of the IRP's "direction". The existence of a "direction" is not consistent with thinking this was only a "recommendation". It was the "direction" to which the GDP is described at [2] as having given "lengthy and careful consideration". The decision letter said at [7], having now considered all the new and additional information, the GDP "felt that … it was not unreasonable for [the Principal] to issue the exclusion". The conclusion at [10] was that the GDP was "satisfied that, having considered and reconsidered [the Claimant's] exclusion, [the Principal] has used this power fairly, reasonably, and as a last resort". That was the question for the GDP to reconsider, afresh.

71. The record of the hearing opened with the Chair stating:

> ***We were directed by the [IRP] to reconsider our decision.***

There is no reference to "recommendation" in the record of the hearing. There is no reference to "recommendation" in the record of discussion. There is no reference to the GDP having chosen to reconsider, anywhere. The closest is the Chair's reference to the IRP having "asked us" to go through it again (at [24]). But even that was said in the context of the "directions" (at [1]) and the "need" to reconsider (at [3]). Guidance §259 does not assist on the "quashing" point, because it is a paragraph drafted to apply to a recommendation case, as Mr Glenister points out. In the record of deliberations at [1], the clerk tells the GDP that it is looking at whether "the decision was lawful, reasonable and rational". The Chair says at [3] "we need to consider whether the decision is lawful". The "need" is because it is reconsideration afresh, including lawfulness, even though no issue relating to lawfulness had troubled the IRP. As the chair put it (at [24]):

> ***The first decision was flawed and the IRP called us out and asked us to go through it again. We've done so and not missed anything.***

72. The phrase "uphold their original decision" – read fairly and in context – is a reference to the GDP maintaining the same outcome, having reconsidered its decision. The substance is clear. In the Guidance the language used is reconsidering whether the pupil should be reinstated (§§258-259). The Guidance also speaks of a reconsideration leading to the GDP deciding "to reach the same conclusion as it first did" (§259). That is what

happened here. The substance of the decision letter focuses on the Principal's decision, whose lawfulness, reasonableness and procedural fairness needed to be reconsidered afresh. So did the record of discussion. I have focused on the substance, in the decision letter, and in the contemporaneous record of discussion. There was in my judgment no error of fact, still less a material error of fact, about the first decision not having been quashed with a direction for reconsideration. I reach this conclusion without any resort to Retro-Reasons.

Reconsideration and Limb (ii)

73. Ms Braganza KC says this. The test for PEX involves the preconditions of the two Limbs [i] and [ii], with an overall evaluative decision. True, the GDP's role involved considering – and reconsidering afresh – whether the Principal's PEX decision was lawful, reasonable and procedurally fair (Guidance §124). But that meant the entirety of the Principal's decision, including as to Limb [ii] and serious harm. The impugned decision letter is the relevant source to see the GDP's approach. There is no reference in it to Limb [ii] or to serious harm; there is no explanation or identification of what serious harm – to whom – made the Principal's PEX decision lawful, reasonable and procedurally fair. Instead, the GDP simply "deferred" to the Principal in relation to serious harm. It is unclear whether any harm – or serious harm – is said to be to the Claimant, other pupils or staff. In fact, the Principal's original Stage (1) decision letter and the GDP's original Stage (2) decision also failed to explain or identify the "serious harm" which supposedly justified the PEX decision. True, the IRP did not include this as a criticism in its Stage (3) quashing decision. This aspect needed engagement and reconsideration, afresh. References to risk and danger, to severity and impact, do not grapple with Limb [ii]. None of this is answered by the record of deliberations, which does not reflect the GDP grappling with the question of serious harm. Revealingly, in the Defendant's solicitors' pre-action letter of response, the point is made that "this alleged failure was not raised by the IRP therefore any subsequent need to specifically reconsider it by the Defendant cannot be criticised". That acknowledges that this aspect was not addressed. The GDP's decision should be quashed by this Court for, unlawfully or unreasonably, failing to address a key component of the PEX test.

74. I have been unable to accept these submissions. The GDP was not reconsidering afresh the Principal's decision to impose PEX. It was reconsidering afresh the lawfulness, reasonableness and procedural fairness of the Principal's decision. In particular, the GDP needed to make sure it was putting right what the IRP had identified having gone wrong the first time. That is why the decision letter at [3] is listing all the information now available and considered; and at [4] is recording regard having been had to that previously missing material. That was important, for reconsideration in light of the IRP's findings (Guidance §264). The GDP was also addressing the principal points being made on behalf of the family at the hearing. The family's representative was able to put questions to the Principal, and it was open to the family to contend that there was no serious harm, or that "deference" to the Principal's view about serious harm was wrong.

75. The decision letter needs to be read in context, and written to an informed audience. The test for PEX, including Limb [ii], had been set out expressly in the original PEX decision letter (18.1.24): §28 above. It was also set out expressly by the Principal in his opening oral statement at the GDP reconsideration hearing, it having also been set out expressly at the beginning of his report for that hearing (17.6.24). In the decision letter, the

Principal had said that the Claimant's PEX was as a result of persistent breaches by the Claimant of the school's Behaviour Policy:

> ***… such that allowing him to remain at [the Academy] would significantly risk harming the education and welfare of others at [the Academy].***

That was the decision to whose reasonableness the GDP was referring, in the decision letter, and to whose lawfulness and reasonableness the discussion was referring. In his written report for the GDP reconsideration hearing, the Principal stated:

> ***In the case of [the Claimant] I took this decision due to the severity of his actions and the impact upon the wider school community… [The Claimant's] actions represent persistent breaches of the school behaviour policy. Allowing him to remain at the academy would seriously harm the education or welfare of pupils or others in the school. His behaviours including attending the academy under the influence of drugs, persistent and disruptive behaviour and the possession of drugs on the school site.***

76. At the GDP reconsideration hearing, the Principal told the GDP orally:

> ***To sum up my point I believe the actions the school has taken have been proportionate. [The Claimant] is a risk and allowing him to remain here is a risk to the wellbeing of other students in the school and that is why we took the decision. When suspensions were ramping up, work was undertaken to help [him]. The severity of the incidents in particular the last incident were risking the wellbeing of the other students in the school…***
>
> ***It does come to a point when he becomes a risk to others. His behaviour is spiralling; this is a massive risk to the students…***
>
> ***What we are discussing today is not easy and none of us want to be here by choice. We all want [the Claimant] to go on and do well but this is also about the other students in the school. You cannot bring drugs into school, you cannot be continuously defiant. Have we followed the policy? Yes. Have we offered support? Yes. Have we considered the specifics of the child? Yes. Would I do it again? Absolutely. If [the Claimant] is to return to [the Academy], we will do everything we can to reintegrate him but [his] returning here will have a negative impact on others.***

77. In the record of discussion at [5] the Chair said that "the strongest part" of the Principal's submission was that the Claimant's behaviour "would affect the wellbeing of the other students". The Chair recorded at [33] the belief that the Claimant "is a danger to others in the school". Governor 1 said the Principal was "totally correct in what he's articulated" at [10]; adding at [29]: "We don't just have a duty to [the Claimant] but to the other students as well". The decision letter says at [10]:

> ***In conclusion, it is a principal's first priority and duty to create and maintain a safe learning environment with high standards for all pupils to thrive, achieve and enjoy. To this end, the government gives headteachers the power to exclude a pupil from school on disciplinary grounds. The governors are satisfied that, having considered and reconsidered [the Claimant's] exclusion, [the Principal] has used this power fairly, reasonably and as a last resort.***

The GDP was addressing Limb [ii] and, in the "deference" to the Principal, was asking the substantive questions about lawfulness and reasonableness, in the context of an exercise of "professional judgement" (Guidance §16). Again, I have focused on the substance, in the decision letter, and in the contemporaneous record of discussion. There was in my judgment no public law error as to reconsideration and Limb [ii]. Again, I reach that conclusion without any resort to Retro-Reasons.

Reconsideration and Guidance §259

78. Ms Braganza KC says this. The Guidance at §259, embodied within the IRP's decision document, required that the GDP "conscientiously reconsiders" reinstatement and that it have a "strong justification" for any decision not to reinstate. This is statutory guidance. These standards are justiciable duties to which the Adherence duty applies, there being no identified good reason for departure. Conscientious reconsideration called for a rigour whose reasonable outcome was necessarily reinstatement. No justification, still less "strong justification", has been identified. The key concerns which had been raised were not analysed, not probed, not bottomed out and not put to bed. They were left hanging. There was the point about support and interventions, which the PEX interrupted, these having been given insufficient time to take effect. In particular, there was the PSP with its 16-week time-frame. This, after the IRP spoke of a child in "crisis" for whom it was unreasonable to say enough support was in place. There were the points about the circumstances of the five suspensions. There were the points about the Claimant's voice, with his remorse being brushed aside on the basis of comments about how he presented at the hearing at [33] and [34]. There were the points about the Claimant's mental health and complex emotional needs, about which Governors 1 and 2 were so concerned in the deliberations at [10], [11] and [15]. All of which linked to deficiencies identified by the IRP as to the previous decision. These were left unanswered in the deliberations, as were the "issues" mentioned in the decision letter at [9]. The GDP did not grapple with them, the deliberations read as though there is a whole chunk missing in the middle, and the chair simply moves the deliberations to a conclusion at [22] and [33]. This is a breach of the public law Adherence duty.

79. I have been unable to accept these submissions. The starting point is that the GDP was considering its quashed decision "afresh" and lawfully considered both Limbs of the test, which is why this new ground for judicial review is linked to the other reconsideration grounds. Mr Glenister is right to caution against this new ground being used as a backdoor route to an unpleaded global challenge based on unreasonableness or legally inadequate reasons. He reminds me of the features pleaded under this new ground: the short timescale of events; the rapid decline of the Claimant's behaviour; the CCE indicators and risks; the lack of evidence on mental health and needs; the inadequacies in the support in place. But, whether by reference to those points or the further matters emphasised in Ms Braganza KC's oral submissions, I can find no public law breach of Guidance §259. Consideration afresh compatibly with public law standards can sensibly be described as needing to be done "conscientiously". The second part of §259 is a warning about what "may" happen on judicial review, which would have been more directly expressed had it been intended to impose a statutory policy-based Adherence duty obligation. The compliance with public law standards provides the necessary justification. Its strength is a function of the case-specific IRP findings for quashing, against which the decision is being reconsidered.

80. There are dangers in seeking judicial review on the basis of observations made in deliberations, where individual members of a panel are airing their thoughts, reflecting, and listening to each other. It is clear that the GDP thought about the deficiencies in relevant information which had been exposed by the IRP and addressed by the provision of that information; and the GDP thought about the key points that had been raised on behalf of the family.

81. The timing for interventions to work was an identified concern, and the biggest concern of Governor 1 (at [10]). In particular, there was the PSP (1.12.23) with its 16 weeks and its targets (a) to come to school every day; (b) not to go to RR; and (c) to engage in lessons (§24 above). The PEX came after the events 6 weeks later. This featured at the hearing and the Chair identified the point clearly in the deliberations at [7]. The GDP knew why and in what circumstances it had been interrupted, and this principal point was identified in the decision letter at [6] and answered at [7]. The GDP thought about the Claimant's voice, and Governor 2 asked whether they had heard enough from him at [8]. But the Claimant had been given two chances to speak. He had confirmed that the allegations regarding the six incidents were correct (decision letter at [5]) and the GDP was satisfied as to the persistent breaches. The point about remorse had come only as a submission from the family's advocate, as the Chair pointed out (at [33]). The points that Governor 1 and 2 raised about "mental health" and "serious emotional needs" were that they had heard this raised by the advocate but had seen no evidence of it (see [10]-[11] and [15]). The Chair and Clerk referred to the evidence provided and asked about seeking more (at [12], [14] and [17]). This was not being left unaddressed by the GDP. These were submissions advanced which lacked supporting evidence, which is what the GDP addressed. I pause to record that, in all the fresh evidence put forward, there was nothing said to reflect evidence on these points which reasonable or fair enquiries would have elicited. Once again, I have focused on the substance, in the decision letter, and in the contemporaneous record of discussion. There was in my judgment no public law error as to reconsideration and Guidance §259. And again, I reach that conclusion without any resort to Retro-Reasons.

<u>Conclusion</u>

82. For the reasons I have given, none of the four grounds for judicial review has succeeded. Having circulated this judgment in draft, I can deal here with any consequential matters. The Order will grant all the permissions (§4 above), including permission to both parties adduce the evidence filed and served, on the basis that its relevance could be evaluated within the judgment. It will record that the claim for judicial review is dismissed; that the Claimant is to pay the Defendant's costs of the claim subject to detailed assessment if not agreed, subject to determination of the amount of the costs payable under s.26 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012; and that there be detailed assessment of the Claimant's publicly funded costs. That leaves permission to appeal.

<u>Permission to Appeal</u>

83. Ms Braganza KC seeks permission to appeal on two grounds. Each is fact-specific and evaluative. I cannot therefore agree that there is an "other compelling reason" involving "issues of legal principle" being "plainly of significant wider public interest". The question is whether there is a "real prospect of success". One proposed ground of appeal is that I am wrong to have rejected the added ground (§67(3)) about an unlawful absence of "conscientious" reconsideration (Guidance §259). As to that, I do not – for my part – see a realistic prospect of success in the Court of Appeal in light of all the points I have made about the reconsideration (see §§79-81; also §§69-72, 74-77). The other proposed ground is that I am wrong to have found the Article 4 protection duty untriggered in the GDP's reconsideration afresh. Reference is made to the features of the context and circumstances, all identified with the judgment. Particular emphasis is placed on the "low threshold" trigger; on objective consideration; and on the GDP's need to act independently of anything argued (or not) by the family's advocate or anything done (or

not) by the police and local authority. Ms Braganza KC does not contest the analysis of the law. She accepts that, on a case-specific basis, circumstances which trigger an Article 4 protection duty may become a relevant consideration (§61). She accepts that the question is whether the public authority is "aware or ought to be aware" of circumstances giving rise to a "credible suspicion" of "a real and immediate risk" of the individual "having been, or being, trafficked or exploited" (§62). She accepts that this "cannot be an exercise in hindsight" (§62). She recognises that I proceeded – in the Claimant's favour – by an objective evaluation (§62); and by considering the later date of GDP reconsideration not simply the earlier date of the Principal's PEX decision. That leaves the evaluation, applying the law to the facts (§§65-66). I will not repeat or summarise my reasoning. I have explained what led me to conclude that only through an impermissible exercise of hindsight could the Article 4 protection duty be seen as having been triggered. And it is a non-hindsight reality-check in this case that the police and local authority – informed and involved designated First Responders – did not see the duty as triggered; nor did the social worker addressing the IRP; nor did the family's advocate; and nor did the IRP. I have been unable, for my part, to see a realistic prospect of success on the Article 4 evaluation. In those circumstances, I will refuse permission to appeal.