Neutral Citation Number: [2026] EWHC 1356 (Admin)

Case No: AC-2026-MAN-000073

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

Manchester Civil Justice Centre
1 Bridge Street,
Manchester, M60 9LJ

Date: 05/06/2026

Before:

Christopher Kennedy KC sitting as a Deputy High Court Judge

- -

Between:

THE KING **(On the application of NBT (a child) by his Litigation Friend RMT)**	**Claimant**
- and -	
BEPART EDUCATIONAL TRUST	**Defendant**

- -
- -

Olivia McGonigle (instructed by **Watkins Solicitors**) for the **Claimant**
Ben Mitchell (instructed by **Hill Dickinson LLP**) for the **Defendant**

Hearing date: 21 April 2026

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on Friday 5 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Christopher Kennedy KC (DHCJ):

Introduction:

1. The Claimant in this case is aged 17. He has been diagnosed with Attention Deficit Hyperactivity Disorder, Autism Spectrum Disorder and (likely) Pathological Demand Avoidance. He has an Education, Health and Care Plan ('EHCP'), the latest version of which is dated July 2025.

2. In September 2025 the Claimant started at Birkenhead Sixth Form College ('the College'), which is run by the Defendant Educational Trust. By this action for judicial review he seeks to quash the College's decision on 27 January 2026 permanently to exclude him, the decision being made by its Principal, Mr Michael Kilbride MBE.

3. On 13 March 2026 the Claimant was given permission on the papers by Karen Ridge, sitting as a Deputy High Court Judge, to bring a claim on three of the five grounds he advanced (Grounds 1, 3 and 4). She refused permission on Grounds 2 and 5. In its Detailed Grounds of Resistance the College argued that, if there was any procedural unfairness to the Claimant, it was cured by a subsequent appeal to the Governors, which was held on 5 March 2026. It has therefore been necessary for me also to consider that issue in this judgment.

4. Counsel provided me with an agreed list of issues which covered the grounds I have rehearsed above. I have altered the order of the issues slightly in order better to align them with the way in which I have addressed them in this judgment.

Ground 1: Procedural unfairness / breach of natural justice

1) Was there procedural unfairness or a breach of natural justice in the exclusions process?

   a) Was the decision of 27 January 2026 a fresh decision, and either way does this make the decision unfair?

   b) Was there a failure to properly investigate the incidents relied upon, and either way does this make the decision unfair?

   c) Was there adequate opportunity for the Claimant to respond or be heard, and either way does this make the decision unfair?

Ground 4: Ultra Vires / Misuse of power

2) Did the Principal act outside of his powers by reinstating the permanent exclusion decision on 27 January 2026?

Ground 3: Irrationality / disproportionality

3) Was the Principal's decision to exclude irrational because inappropriate weight was given to minor reintegration challenges, administrative logs or perceived 'defiance'?

4) Was the decision proportionate to the circumstances, and if not does this make the decision irrational?

"Curing the defects"

5) Was the Governors' review hearing enough to remedy any unlawful exclusion decision?

   a) Did the Governors approach this as a fresh decision?

   b) Was there adequate engagement with the issues raised by the Claimant's litigation friend?

   c) Did the Governors cure the defects in the Principal's decision making?

Background:

5. The College, as a sixth form college, falls outside the statutory scheme for exclusions. It has a Student Disciplinary Policy. That contains "College Core Requirements" and the policy informs students that a failure to comply with the core requirements will lead to disciplinary action. Breaches of the policy are divided into 'misconduct', which includes any breach of College Core Requirements, and 'gross misconduct' the definition of which includes persistent breach of College Core Requirements.

6. Sanctions available for a breach of the Student Disciplinary Policy include suspension and permanent exclusion. There is a pathway from teacher intervention to Senior Management Team ('SMT') intervention. The SMT has the authority to suspend. If the student does not engage, there can be a referral back to the SMT which can decide on further action, including permanent exclusion. Permanent exclusion is described in the Student Disciplinary Policy as a last resort,

> "This is either where all strategies and interventions have been exhausted and the student continues to breach the CCRs or an instance of gross misconduct so serious that the student cannot return to college"

7. The Claimant was suspended from the College for two days in October 2025 following concerns being raised about his disruptive behaviour in psychology lessons and about his intimidatory behaviour towards his psychology teacher and a learning support tutor. When he returned, he was given clear conditions and expectations about his future conduct.

8. On 24 November 2025 the Claimant was involved in a, fortunately relatively minor, road traffic accident outside the College. A car in which he was a passenger collided with a car driven by another pupil. He was alleged to have been hostile and intimidating towards that other pupil and to a member of staff. He was suspended the following day, pending fuller investigation. He was allegedly hostile to the member of staff who told him he was suspended.

9. It is the College's position that the incidents in October 2025 and on 24 November 2025 were not isolated but rather formed part of a pattern of persistent disruptive behaviour and breaches of the College Core Requirements. Persistent breach is a ground for permanent exclusion.

10. On 27 November 2025, the Claimant and his mother, RMT, attended a meeting at the College with Ms Amanda Hoey, the College's Assistant Principal, to discuss the events that led to the Claimant's suspension.

11. On 2 December 2025 Ms Hoey completed her consideration of the Claimant's case and issued a permanent exclusion notice. In her letter notifying the Claimant and his mother, RMT, of that decision she informed them that the Claimant had a right of appeal to the Principal. This accorded with the Student Disciplinary Policy, the material part of which is as follows,

> "If a decision is made to permanently exclude, the student has a right of appeal. The appeal will be commenced by way of letter to the Principal setting out the grounds of appeal, ("the Grounds of Appeal")
>
> The Grounds of Appeal must be received by the College within five working days of the notification of the decision to permanently exclude. The Grounds of Appeal must outline the reasons, arguments and evidence for opposing the decision to exclude. The Principal will review the evidence and assess whether the exclusion should be reversed or upheld. Any Appeal will normally be concluded within 10 days of receipt of the Grounds of Appeal. Any decision made by the Principal is final.
>
> If the principal made the Exclusion the Grounds of Appeal should be addressed to the Chair of Governors of the College. Any decision made by the Chair of Governors is final."

12. The Claimant exercised his right of appeal. An appeal meeting took place on 17 December 2025, the notes of which are contained in the core bundle. It was chaired by Mr Kilbride. Ms Hoey, Lyndsey Weekes, the College's special educational needs co-ordinator, and Ms Jane Green, who took the notes, also attended in person. The Claimant and RMT attended by Teams. Ms Hoey presented the reasons for her decision permanently to exclude. RMT then addressed the meeting and raised, first the College's duty to support the Claimant along the lines set out in his EHCP, second the fact that the road traffic accident was not on College premises, third the part others (students and teachers) played in events and, finally, she raised the need for reasonable adjustments and allowances in the Claimant's case. There was

discussion of the Claimant's EHCP and what those reasonable adjustments might be. During the hearing RMT had also stated that the Claimant's behaviour was better controlled when he took his medication. She invited the Principal to defer final judgment on the Claimant until the effects of his medication had kicked in.

13. On 18 December 2025 Mr Kilbride wrote to the Claimant and RMT with his decision on the appeal. He expressed his concern at what he saw as attempts by them to deflect responsibility onto others and to concentrate on the road traffic accident rather than dealing with what he described as "the full arc of [NBT's] behaviour". The letter went on to address the points made by RMT in some detail, including the points made concerning the Claimant's EHCP and the need for reasonable adjustments. Mr Kilbride then set out his decision and his reasons,

> "I want to find a way to rescind [NBT's] exclusion but I am unconvinced that we have the conditions to do so.
>
> However, I also see a young man who has intellectual potential, and who need avenues to realise that left open to him and so I find myself trying to square a circle. In trying to do so one piece of useful information shared was to do with medication. It was shared that [NBT] had not been taking his medication and I was assured that if he did then this would help regulate his behaviour. This impacted me on two levels, firstly is (*sic*) was the one substantive acceptance that his behaviour had been inappropriate and it gave a system for how behaviour could be improved in the future.
>
> I cannot insist that a student takes medication, it is not my place to do so, for many reasons. However, what I have is a small glimmer of hope that there is a means for behavioural improvement from [NBT]. On this basis I am prepared to consider rescinding [NBT] exclusion. I am not upholding the appeal as that was the right course of action but I would allow [NBT] to return to College on the basis that assurances have been given that behaviour will be more effectively managed moving forward.
>
> My offer in this case is that we allow [NBT] to return on the basis that there is an acceptance that his previous behaviours have been inappropriate but that moving forward you have a means, the medication, of substantially improving that behaviour. If this improvement did not transpire I would reinstate his exclusion and would not consider an appeal. A further condition of his return is that we have a pre-return in-person meeting managed by our learning support team and Assistant Principal. This meting (*sic*) would explore any appropriate adjustments that may need to be made and make the limits and degree of these explicit. It will also be an opportunity to look to what involvement may be appropriate from [NBT] SENDSTART case worker and if an early review of his EHCP is required.

14. The issue of how to characterise that decision, which I shall refer to as 'the December Appeal decision' is one which divides the parties. The Claimant's case is that, notwithstanding what he said, the Principal allowed the appeal. The Defendant's case is that he did not do that. Rather Mr Kilbride made an offer to go above and beyond the Student Disciplinary Procedure, whilst at the same time refusing the appeal. How it is characterised affects how the 27 January 2026 decision, the decision the subject of this claim, should be analysed.

15. The Claimant accepted the offer made by Mr Kilbride and on 5 January 2026 returned to the College for the spring term. Sadly, events did not proceed as hoped and the Claimant's behaviour continued to be a cause for concern for the College. The College wrote to RMT expressing concerns on 9 January 2026 and again on 13 January 2026. There was supposed to be a review meeting on 21 January 2026 but, for reasons which are not entirely clear, it did not take place. Events overtook that. On 27 January 2026 Mr Kilbride wrote to RMT informing her of his decision permanently to exclude the Claimant. He explained it as follows,

> "In my detailed letter of the 18th December 2025 I stated that I was prepared to allow [NBT] to return to College on the basis that:
>
> *'..there is an acceptance that his previous behaviours have been inappropriate but that moving forward you have a means, the medication, of substantially improving that behaviour. If this improvement did not transpire I would reinstate his exclusion and would not consider an appeal.'*
>
> This letter is to inform you that I am reinstating [NBT's] permanent exclusion and will not consider an appeal against this decision."

The letter cited continued breaches and the College's inability to mitigate them via reasonable adjustments.

16. On behalf of the Claimant, RMT moved quickly in response to the decision, writing a Pre-action protocol letter on 3 February 2026 and filing this claim for judicial review on 5 February 2026. On 13 February 2026 the College filed its Acknowledgment of Service and Summary Grounds of Resistance. On the same date it offered the Claimant an appeal to its governors. That offer was taken up.

17. The appeal was heard on 5 March 2026 by a panel consisting of the Chair of Governors, Mr Steve Griffiths, and two fellow governors, Mr Jonathan Ducker and Ms Sue Evans. A full note of the appeal was taken by Ms Green.

18. In his opening remarks Mr Griffiths explained that in deciding the appeal the governors would look at all matters concerning the Claimant's time at the College. The notes record,

> "The Chair was clear in explaining that the panel would be looking at matters in totality, from the start of September and not just the reintegration period in January"

It was therefore an appeal 'de novo' as opposed to an appeal focused on Mr Kilbride's decision of 27 January 2026. The parties disagree as to whether that was the correct approach.

19. Mr Kilbride presented the College's case and RMT represented the Claimant. She did this with care and dedication, which has been true of every other step she has taken in relation to her son's education. Both read out opening statements which were then included in the record of the hearing. RMT also read out a closing statement.

20. On behalf of the College Mr Kilbride focused his submissions on what he saw as the Claimant's persistent failure to comply with its Core Requirements. He anticipated the argument that the Claimant's requirement for reasonable adjustments was relevant to the assessment of his compliance and referred to those parts of the Claimant's EHCP which set out that it was beneficial to the Claimant to have consistency in rules and boundaries and that sanctions and rewards should be natural consequences of his choices, mirroring the situation in real life. He then went through the respects in which the College contended that the Claimant had breached the Core Requirements from October 2025 to January 2026.

21. Following his opening statement, the panel asked Mr Kilbride why he had offered reinstatement rather than confirming exclusion. He answered that he had been looking for a way for the Claimant to return to the College.

22. RMT had an opportunity to question Mr Kilbride and asked him several questions including about the fact that there had been no review meeting. His answer to that was that by the time he had reached the point of deciding whether to reschedule the review, he had come to the conclusion that the Claimant's place was no longer viable. There was a discussion between RMT and Mr Kilbride as to whether appropriate resources had been allocated to the Claimant. Her view was that they had not; his view was that they had but they had not resulted in the hoped for improvement.

23. The Claimant himself contributed to the discussion and later he answered questions from the panel, accepting that there had been issues with his behaviour but raising his feelings of anxiety and being overwhelmed. He also considered that the Sapien record (the College's log of events) whilst not wholly inaccurate was exaggerated.

24. RMT made detailed submissions to the governors. She urged them to conclude that the College had not allowed enough time in January 2026 to judge whether the re-integration had been a success and that the proper response to the Claimant's behaviour at that time should have been to review and refine the re-integration plan rather than to exclude. She drew their attention to the fact that the Claimant had GCSEs in June 2026 and that the period between March and June would be an appropriate one over which to consider his behaviour. RMT told the panel that the Claimant could turn matters round.

25. In her closing statement RMT returned to the argument that exclusion was not a proportionate response, given the short time that had elapsed since his re-integration. She reminded the panel that the Claimant's EHCP provided important context to the Claimant's behaviour, that he had not been violent and there had been no safeguarding incidents since his return.

26. The governors communicated their decision to RMT and the Claimant by a letter dated 11 March 2026. It was not to re-instate him. They recorded that they had approached the matter as though the decision of the principal was a fresh decision permanently to exclude and thus they had considered for themselves whether that was a decision which was warranted under the Student Disciplinary Policy. The reasoning of the panel is set out in the final page of their letter,

"The reasoning for the Panel's decision is as follows:

- The Panel noted the sustained pattern of breaches of the College Core Requirements over several months, despite repeated interventions, clear expectations, and structured reintegration plans provided by the college.
- The Panel acknowledged [NBT's] explanation that missed learning and anxiety contributed to his difficulties; however, it was not satisfied that this behaviour would be unlikely to continue given the extensive support and opportunity already provided to [NBT] by the College.
- When the Panel asked what was materially different that would enable [NBT] to meet the College's requirements if reinstated, it was not persuaded that any significant change in circumstances had occurred. This was based on the fact that [NBT] had already been given the benefit of significant additional support, beyond that provided by the College's policies. There was no discernible improvement in behaviours, instead serious incidents of misconduct continued, despite the commitments he and you made on his behalf.
- The Panel noted [NBT's] view that he could potentially have 1:1 teaching to catch up but recognised that this level of provision is not within the scope of what the college can reasonably provide within its timetable.
- The Panel also considered the impact of the repeated breaches on other students' learning, the demands placed on staff, and the need to maintain a safe and orderly environment for the wider college community. It considered that some of [NBT's] behaviour was sufficiently serious as to present a risk to the College community, including the well-being of staff and students.
- The panel considered that the College had been clear about what would constitute sustained improvement"

Having weighed all evidence presented, and considering the welfare of [NBT], his peers, and the College community, the Panel concluded that reinstatement would not be appropriate.

The Panel were satisfied that all strategies and interventions have been exhausted and that, in spite of those, [NBT] continued to breach the Student Disciplinary Policy and College Core Requirements."

Applicable legal principles:

27. There was significant common ground between the parties as to the principles I should apply. Whilst there is statutory guidance in relation to exclusions, the latest version being published in 2024, these did not apply to the College. The guidance was however included in the Authorities Bundle and my attention was drawn to the Permanent Exclusions Guidance (page 11, para 3-4), which stated that the factual basis for exclusion must be considered. It was submitted that there were useful lessons for the College from the guidance, in particular that it was important for the College to consider whether the facts had been proved on a balance of probabilities and for it to ensure that the student's voice was heard.

28. The College was required to act fairly towards the Claimant and to have regard to the principles of natural justice. It had a 'Tameside' (*Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014*)* duty properly to investigate and to act reasonably, but unless it acted unreasonably, it could decide whether it had sufficient information to make its decision.

29. The analysis of the link between a Principal's decision permanently to exclude and the Governing Body's consideration of that decision contained in *R v Governing Body of Dunraven School ex parte B* [2000] BGLR 494 at para 7 holds good for educational bodies outside the statutory regime.

> "On the contrary its [*the governing body's*] role must be precisely to ensure that exclusion (including the facts on which it is founded) is properly reconsidered in a manner which ensures that the pupil is being fairly treated something which a head teacher's initial inquiry and conclusion may not always be able to achieve in the difficult conditions of a large urban comprehensive with a hundred different demands on the head's time and attention. This, it seems to me, is why, where an appeal from the governors is provided by statute, there is no such statutory distancing of the governors from the head teacher. Because the latter is for practical reasons in the successive positions of investigator, accuser, jury and judge, the governors are there to provide an essential independent check on his judgment."

30. The Appeal to the Governors was capable of curing any defects in the decision of 27 January 2026. Both counsel relied specifically on the same passage in the judgment of Keene LJ in *R (DR) v Head Teacher and Governing Body of S School and others* [2003] ELR 104 at para 55,

> "…it is very difficult to see how a proper decision arrived at by the IAP (*Independent Appeal Panel)* after a fair hearing could be liable to be quashed because of a defect in the earlier decision-making process, unless that defect has in some way infected the appeal decision"

They accepted that the reasoning which applied to the IAP applied to the appeal to the Governors from the Principal in this case. They disagreed however on whether the appeal here had remedied any defects in Mr Kilbride's decision.

31. Ms McGonigle on behalf of the Claimant drew my attention to Popplewell J.'s review of the authorities as to what natural justice requires in *Dymoke v Association*

for Dance Movement Psychotherapy [2019] EWHC 94. That case concerned an analogous situation, where the Defendant private body had terminated the membership of the Claimant. Popplewell J. found that there was an implied term that the Defendant was under a duty to act in accordance with the principles of natural justice and, at paras 55 and 56 of his judgment, he discussed what previous authorities indicated that meant in the context of a termination of membership,

> "55. Care needs to be taken as to what is meant by "natural justice". In *Local Government Board v Arlidge* [1915] AC 120 Hamilton LJ described the phrase "contrary to natural justice" as "an expression sadly lacking in precision". It is commonly treated as having two central principles:
>
> (1) the principle encapsulated in the Latin tag *audi alteram partem*, namely that the decision maker should afford to a person adversely affected by the decision a reasonable opportunity to be heard (which will generally also require sufficient notice of the nature of the matters under consideration by the decision maker);
>
> and
>
> (2) the principle that the decision maker shall not be a judge in his own cause and will be free from bias.
>
> 56. So for example in *Ridge v Baldwin* [1964] AC 40, 132 Lord Hodson identified the three principle features of the requirement of natural justice as being the right to an unbiased decision maker, notice of the charges and a right to be heard in answer to the charges."

In subsequent paragraphs Popplewell J. noted that the rules were not rigid but flexible and fact specific but, citing *Graham Bradley v Jockey Club* [2004] EWHC 2164 (QB),

> " …that in each case, the essential concern should be with the lawfulness of the decision taken which includes whether the procedure was fair."

(para 58 of the judgment)

Ms McGonigle drew an analogy between the termination of the Claimant's membership in *Dymoke* and the exclusion of the Claimant in this case.

32. On behalf of the College, Mr Mitchell accepted that it had to make its decision in accordance with the requirements of natural justice but he emphasised flexibility. He relied on the observations of Lewis LJ in *Topadar v Secretary of State for the Home Department* [2021] 1 W.L.R. 2307 at para 59, that the requirements of procedural fairness are not set in stone. They are necessarily influenced by the context and the facts. He also drew my attention to the observations of the Court of Appeal in *R (Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport and others* [2025] PTSR 726 at para 75,

> "What procedures are required to ensure fairness will, as we have said, depend on a number of factors including the nature of the decision, the decision-making process, and the facts. And there will be no breach of the principles of procedural fairness even if a particular step has not been taken where that has not resulted in any prejudice to the individual."

Ground 1: Procedural Fairness / Breach of Natural Justice & Ground 4: Ultra Vires / Misuse of Power:

Claimant's submissions

33. Ms McGonigle's submission was that the decision on 27 January 2026 was a fresh exclusion decision. It was procedurally unfair and contrary to the College's Student Disciplinary Procedure because the Claimant did not have an opportunity to respond to or contest it. The Claimant was entitled to a fair process which he did not receive. Her argument under Ground 4, that the Principal did not have power to do what he did, is closely aligned to her arguments under Ground 1. There was no provision in the Student Disciplinary Procedure which permitted the disposal which the Principal settled on.

34. Ms McGonigle further submitted that the procedure was unfair because, at every stage, there was insufficient factual investigation and because RMT did not know the full extent of the allegations against the Claimant. In relation to the road traffic accident there was insufficient attempt to separate out what the Claimant was responsible for from the acts of the others involved. In relation to his behaviour on being informed that he was excluded, insufficient information was provided with the result that RMT was not able properly to meet the allegations. She raised the fact that instances of the Claimant's obstructive behaviours which were referred to in Mr Kilbride's statement to the Governors had not been recorded on 'Sapien'. Ms McGonigle argued that the failure to hold the review meeting before the decision permanently to exclude also rendered the decision to exclude unfair.

Defendant's Submissions

35. Mr Mitchell submitted that in this case the Claimant had had the benefit of a fair procedure. His appeal from Ms Hoey to Mr Kilbride had exhausted his rights under the Student Disciplinary Procedure. Mr Kilbride denied the appeal but, as Mr Mitchell put it in his skeleton argument, the College,

> "…then undertook a further process, an extra attempt, beyond the Student Disciplinary Policy to give the Claimant additional support."

36. Mr Mitchell invited me to find that what the College had to do was to be fair and looked at, holistically, that is what it had been. Mr Kilbride could have upheld the

appeal and taken no further action. What he in fact did was both outside and above and beyond, the Student Disciplinary Procedure. It was done to achieve a legitimate and lawful pedagogical goal, to make one last attempt to allow the Claimant to continue at the College. It was a decision, when characterised properly, that was within the power of Mr Kilbride to make. If he was wrong about that then the appeal cured any defect.

37. After the December Appeal decision the College set out its expectations of the Claimant clearly in correspondence. He therefore understood what he had to do.

38. There was, Mr Mitchell submitted, no material challenge from the Claimant and RMT to the evidence which formed the basis of the decision. The events relied on were set out in the decision letters and the notes of the hearings (in the case of Ms Hoey's decision, in her detailed decision making process note). The Claimant and RMT were afforded a proper opportunity to comment on the evidence and to make representations before the relevant decisions were made. He relied on the fact that RMT had expressed confidence in the Sapien record which contained much of what was considered. In Mr Mitchell's submission, the College's assessment that the Claimant had committed persistent and serious misconduct was a reasonable one and open to it as a decision maker.

39. Mr Mitchell referred to the contents of the Claimant's EHCP, as had Mr Kilbride in the Appeal to the Governors, and submitted that it showed that the Claimant had responsibility to adhere to the College Core Requirements. Amongst other parts he referred to the following observations on page 13 of the EHCP,

> - "Therefore, whilst adults must be nurturing in their interactions with [NBT], it is important to be firm and fair; saying what they will do and doing what they say.
>
> - When [NBT] is struggling to make good choices, he requires consequences of his choices to be explained thoroughly.
>
> - Sanctions and rewards should also, when possible, be 'natural consequences' of his choices which mirror real life consequences and are proportionate to the choices made."
>
> - [NBT] must be supported to understand that his actions will have either negative or positive natural consequences for him and that his actions are his responsibility and his responsibility alone."

40. Mr Mitchell submitted that RMT's submissions both in the hearing chaired by Mr Kilbride and in the appeal to the panel of governors were directed to the consequences for the Claimant in the light of what had occurred rather than to challenging evidence as to the events themselves. The same was true, he argued, in the observations of the Claimant himself who had not directly challenged the Sapien records albeit that he stated that they were exaggerated.

41. Any defect in the process that led to the decision on 27 January 2026 had to be seen in the context of the earlier processes and the later appeal which Mr Mitchell submitted could not be impeached.

42. Specifically in the context of ground 4, Mr Mitchell submitted that a decision-maker can depart from a policy where this is justified and here it was justified to balance the fact that the Claimant's conduct warranted exclusion with Mr Kilbride's wish to give him one last chance.

Discussion

43. The parties have advanced different constructions of the December Appeal decision. Both however agree that the Claimant had exercised his right of appeal from the Assistant Principal's decision to the Principal under the Student Disciplinary Procedure. The courses of action available to the Principal on appeal were those contained therein,

> "The Principal will review the evidence and assess whether the exclusion should be reversed or upheld."

Mr Kilbride therefore had two options, to reverse the exclusion or to uphold it. The Student Disciplinary Procedure did not give him the power to suspend the exclusion. He also did not have the power to let the Claimant return on condition that he substantially improved his behaviour, reserving to himself the right to decide, outside the procedure, whether or not he had done so.

44. As a consequence of the December Appeal decision the Claimant returned to the College. As a matter of fact therefore he was no longer excluded. It follows that the only sensible construction of December Appeal decision was that it operated to reverse the exclusion. The conditions Mr Kilbride sought to attach to the Claimant's return to the College curtailed his rights under the Student Disciplinary Procedure. Mr Kilbride had no power to attach them and I find that his attempt to do so was ultra vires.

45. I also find that it was a denial of natural justice for the Claimant's return to have been on the terms set out in the 18 December 2025 letter. What was expected of the Claimant was too vague for him to know whether he was meeting the condition and the terms did not give him an opportunity to make any representations about whether or not he had done so.

46. The decision to exclude the Claimant on 27 January 2026 was a fresh decision. It did not follow the Student Disciplinary Procedure and was unfair, in particular because, before that decision was made, the Claimant had no opportunity to be heard.

47. It follows that, subject to my answer to question 5 in the List of Issues, my answers to questions 1, 1(a), 1(c) and 2 are in the affirmative. In the light of these findings there is perhaps no need for me to consider the answer to question 1(b) (failure properly to investigate) in relation to the 27 January 2026 decision. However as the decision was taken without considering the Claimant's response or that of RMT, I consider that there was also a failure properly to investigate.

Ground 3 Irrationality/Disproportionality:

Claimant's submissions

48. Ms McGonigle's arguments on ground 3, irrationality, centred on the fact that the matters which occurred between the December Appeal decision and the 27 January 2026 decision happened over a short period during which the Claimant was re-integrating. They were she submitted not particularly serious in themselves. The Claimant was troubled by anxiety and his special educational needs formed important context. There were alternatives open to the College, in particular the College could have addressed the Claimant's anxiety and allowed longer for the effect of his medication to make its mark. Given that permanent exclusion is a last resort, the failure to explore those alternatives made the decision irrational and disproportionate. Ms McGonigle also invited me to find that there was insufficient/incorrect emphasis on the contents of the Claimant's EHCP. Those parts of the EHCP which set out that it was beneficial to the Claimant to have consistency in rules and boundaries and to be subject to sanctions if they were the natural consequences of his choices, should be seen in the context of the other parts of his EHCP. If he was not managing to keep to what was in the EHCP that was a matter for the local authority to address via amending the EHCP itself. It was her submission that no reasonable decision maker could have concluded that the further matters relied on by the Principal in the 27 January 2026 decision could have justified permanent exclusion.

49. Separately, Ms McGonigle relied on the fact that permanent exclusion is a last resort and to take that step on 27 January 2026 was disproportionate.

Defendant's submissions

50. Mr Mitchell disputed the characterisation of the matters which occurred in January 2026 as minor. The College was entitled to see these issues in the context of what had gone before and it was not irrational of them to take a more serious view. The mitigating feature that there had been a Christmas break was considered as were the issues of the Claimant's Special Educational Needs and his medication.

51. Overall the Defendant submitted, it was for the College, through the Principal, to assess the Claimant's conduct and there was nothing irrational about the assessment or the decision following on from it which was arrived at on proper grounds. The decision makers were aware that exclusion was a last resort but reasonably decided to take that step.

Discussion

52. The bar for intervening in the College's decision on the grounds of irrationality is a high one.

53. The Student Disciplinary Procedure is clear both in its expectations of students and in the sanctions available if those expectations are not met.

54. The December Appeal decision demonstrates that, as far as the College was concerned, the Claimant was fortunate to avoid permanent exclusion at that point. The Claimant's focus on the period between the December Appeal decision and the

27 January 2026 decision excludes the history which led to the December Appeal decision which I find was reasonably treated by the College as important. Mr Kilbride was entitled to view the incidents in January as part of the Claimant's history and as evidence that things which had led the Claimant to the brink of exclusion were not going to change. It was not irrational of him to take a different view to the Claimant's of the significance of the matters which had arisen since January and to exclude him. The decision was, I find, a proportionate one.

Curing the defects:

Claimant's submissions

55. Ms McGonigle submitted that the way that the appeal was conducted did not cure the deficiencies with the original decision because RMT still did not have adequate information about the case against the Claimant and the College had access to damaging information to which she did not have access. This she argued brought the Claimant within the exception to the general principle outlined by Keene LJ in *R* (*DR) v Head Teacher of S School* that a fair appeal hearing could cure a defect earlier in the process. Here the defect tainted the appeal decision. Ms McGonigle invited me to scrutinise the decision of the Governors particularly carefully because they did not have the distance from the College that an independent appeal panel would have had. She also invited me to find that the real reason that the Claimant was excluded was because the college could not meet his needs.

56. Ms McGonigle criticised the fact that the Appeal dealt with all matters since September and argued that it should rather have concentrated on the events between the December Appeal decision and 27 January 2026.

57. Ms McGonigle submitted that, if I found that the decision was unlawful, I should make a declaration to that effect even if I found that the appeal cured the defect as that would be of great value to the Claimant.

Defendant's submissions

58. Mr Mitchell submitted that the appeal was comprehensive and cured any defects in the earlier procedure. It was a thorough de novo appeal which considered the rights and wrongs of the exclusion and the governors came to a decision open to them. He did not accept that the scope of the appeal should have been confined to events after the 18 December 2025 decision. Key to the ability of an appeal to cure earlier unfairness is that it is a fresh decision which covers the entirety of what has gone before. He relied on the observations of Simon Brown LJ in *R (DR) v Head Teacher of S School [2003] ELR 104 at para 43,*

> "If, of course, in any particular case the prior procedural unfairness can be shown in some way to have tainted the subsequent appeal process, then the appeal decision itself will necessarily be unsustainable. As Lord Wilberforce said in Calvin v Carr and Others [1980] AC 574 there may be cases where 'the defect is so flagrant, the consequences so severe, that the most perfect of appeals or re-hearings will not be sufficient to produce a just result'. No doubt Lord Keith of Kinkel had that passage in mind when he said in Lloyd and Others v McMahon [1987] AC 625 that:

> '… there may be cases where the procedural defect is so gross, and the prejudice suffered by the appellant so extreme, that it would be appropriate to quash [the first-tier] decision on that ground.'
>
> Save in circumstances such as those, however, I for my part find it difficult to think of any case in which a decision reached upon an otherwise fairly conducted appeal by an independent tribunal following a full merits hearing should be impugnable by reference to unfairness at an earlier stage. Calvin v Carr itself was concerned with contractual disputes and private law rights rather than public administration and the only rationale suggested there for a category of cases requiring 'two fair hearings' was that (as in trade union cases) the prejudice resulting from an adverse first decision could carry over to infect the second stage. Such an approach was accordingly 'an essential condition of justice': the only way of ensuring even one fair hearing. Judicial review was never an option in Calvin v Carr, any more than it had been in Leary v National Union of Vehicle Builders [1971] Ch 34"

That is authority for the proposition that a fairly conducted hearing following a full merits hearing is not impugnable by reference to earlier unfairness. This he submitted was such a hearing. He invited me to find that the minutes and the outcome letter show that to be so.

Discussion

59. I do not accept the Claimant's submission that the Governing Body should have focused its consideration on the 27 January 2026 decision. It was entitled to look at the whole history which led to the permanent exclusion. It made it clear that that was what it was doing and did so. It was not in its format a defective appeal. It was a "full merits hearing".

60. I further do not accept the Claimant's submission that the engagement with RMT's detailed oral and written submissions was unduly limited. There was some difference between RMT and the panel as to what were the most important matters in the appeal but that is not unexpected and it does not follow from that that the panel's consideration of the appeal was unfair. The panel was entitled to and did consider the full history. It reached a conclusion which it was entitled to reach. The notes of the appeal and the outcome letter show that it engaged with the relevant issues even if it attached greater importance to some than the Claimant and RMT did.

61. I find that the Appeal was fair and that it remedied the defects in the 27 January 2026 decision. The Governors approached it as a fresh decision as they were entitled to. There was adequate engagement with the issues raised by RMT.

Conclusion:

62. For the reasons set out above, I dismiss the claim. I recognise that this will be disappointing to the Claimant and RMT particularly in the light of their justified criticisms of the January 2026 decision. However the appeal to the governors cured the defects in the December Appeal decision and I do not therefore consider it appropriate to accept Ms McGonigle's invitation to make a standalone declaration

that it was unlawful. It was one part of a procedure and the unfairness was addressed at the appeal stage.

63. Can I thank counsel for the considerable assistance I received from their submissions, their list of issues and their helpful chronology.