Neutral Citation Number: [2026] EWHC 2088 (Admin)

Case No: AC-2026-LON-000384

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

Wednesday, 5th August 2026

Before:
ALAN BATES
(sitting as a Deputy Judge of the High Court)

- -

Between:

THE KING
(on the application of HVF
(a child, by his Litigation Friend, HWD) **Claimant**

- and –

LIFT SCHOOLS **Defendant**

- -

Ollie Persey and Rosa Thomas (instructed by Duncan Lewis solicitors) for the **Claimant**.
Ben Bentley (instructed by Browne Jacobson LLP) for the **Defendant**.

- -

Hearing date: 6 May 2026
Judgment Released: 5 August 2026

- -

Judgment

THE DEPUTY JUDGE:

INTRODUCTION

1. This case is about a boy whom I will call "Henry" (he has been granted anonymity in these proceedings). By this judicial review claim, he challenges a decision of a primary school he was attending ("the School") that he be permanently excluded, i.e. removed from being a pupil at the School.

2. At the time of the School's decision to permanently exclude him, Henry was 10 years old. He was known to have complex special educational needs and disabilities ("SEND"): he had been diagnosed as having attention deficit hyperactivity disorder ("ADHD") and autism; he had significant social, emotional and mental health ("SEMH") needs; and he was the subject of an education, health and care plan ("EHCP") prepared pursuant to Part III of the Children and Families Act 2014.

3. The School was an Academy school (i.e. a school directly funded by the UK Government's Department for Education, rather than being maintained by a local authority) and its proprietor was the Defendant (an Academy Trust).

4. Decisions to permanently exclude a pupil from a state-funded school are taken initially by the school's headteacher/principal but must then be considered by the school's governing body or, in the case of an Academy school, its proprietor (i.e. the Academy Trust responsible for operating the school). The relevant legislation requires that the school's governing body or Academy Trust then decide whether to "reinstate" the pupil. Governing bodies and Academy Trusts typically delegate this function to a panel known as a governors' disciplinary panel ("GDP"), which holds a meeting at which it considers relevant evidence and representations and then takes its decision as to reinstatement.

5. A GDP's decision to refuse to reinstate a pupil can be challenged before an Independent Review Panel ("IRP"), a panel comprised of individuals who are not governors of, or appointed by, the relevant school, and which is administered by the local authority. The IRP can quash the GDP's permanent exclusion decision if it finds that decision to have been "*flawed when considered in the light of the principles applicable on an application for judicial review*" (see paragraph 25 below). If the IRP does not quash the permanent exclusion decision, then it may still, if it thinks appropriate, recommend that the school's governing body reconsider whether to reinstate the pupil. But the IRP does not have the power to require or direct a school to reinstate a pupil.

6. Despite the significant number of children who are permanently excluded from state-funded schools every year, relatively few cases are the subject of a substantive judgment in this Court. This may be, in part, a consequence of the tension between the time taken up by the process of obtaining a review of a GDP's decision by an IRP (and potentially further GDP proceedings consequent upon the IRP's decision), and the pressing practical need for the child's schooling arrangements to be swiftly settled. In the present case, for example, Henry is now attending a different school and is doing

well there. By the time of the substantive hearing before me, his mother (the Litigation Friend by whom he brings these proceedings) had accepted that, regardless of the outcome of these proceedings, it would be best for Henry that he remain at that new school. Therefore, she was no longer seeking that he be reinstated at the School from which he was permanently excluded. She has nevertheless continued to pursue the judicial review claim on his behalf, considering that it would be in his interests for the historical permanent exclusion to be deleted from his schooling record.

7. I note that, had the mother's position in this regard already been taken, and been communicated to the Court, prior to permission to apply for judicial review being granted, then it is something that would have been taken into account by the judge deciding whether to grant permission to apply for judicial review. Even if permission had still been granted, it is unlikely that expedited listing of the substantive hearing would have been ordered. Nevertheless, as the parties came before me fully prepared for a substantive hearing, I proceeded to hear the claim and have determined it on its merits. Given the relative infrequency with which school exclusion decisions are the subject of substantive judgments of this Court, the giving of this judgment may serve a useful purpose in clarifying or confirming significant points of principle that may be relevant to other cases.

8. The key issue addressed by this judgment is as to the standard of reasons to be expected of a GDP when it decides not to reinstate a pupil. As I will explain, in my judgment, it is essential that the GDP's contemporaneous reasons demonstrate that it has made its own careful assessment of whether the threshold conditions for permanent exclusion have been crossed, including the condition that allowing the pupil to return to the school "*would seriously harm the education or welfare*" of the pupil or others at the school. Such an assessment will necessarily involve considerations of proportionality and, specifically, of: (a) the likely impacts on the pupil of being unable to resume attending the school; (b) the nature of the harms that could be suffered either by the pupil, or by other members of the school community, if the pupil were allowed to resume attending the school, and the degree of risk of those harms occurring; and (c) the sufficiency or otherwise of any potential lesser measures under which the pupil would remain on the school's roll and ultimately be able to resume attending the school, for protecting against the contemplated harms. Such lesser measures could, for example, include a fixed term suspension or an "off-site direction" (a requirement that the pupil attend another setting for a fixed period before returning to the school).

FACTUAL BACKGROUND

9. The School's decision to permanently exclude Henry arose out of something that happened at the School at the beginning of July 2025. On that day, Henry had brought into school a replica butterfly knife. A butterfly knife, also known as a balisong, is a folding pocketknife featuring two counter-rotating handles that conceal a blade when closed. There is a long history of such knives being used in the Tagalog region of the Philippines for self-defence and as pocket utility tools, but also for one-handed opening and dynamic manipulation tricks. Although traditional butterfly knives have a sharp

blade and a pointed end, replica and 'training' versions are available which have unsharpened blades and rounded ends and are intended for use for practising tricks with minimal risk of injury. The butterfly knife Henry brought into school was such a version; I will call it a "replica knife".

10. The documents I have seen show that there have at times been differences between Henry's mother and the School as to whether the replica knife was made of metal (as the School appears to have believed) or plastic (as Henry's mother appears to have believed). Without having physically examined the replica knife myself, I cannot be certain as to its characteristics. It may be that it was closer to being a 'fidget toy' than an unsharpened, or 'training', version of a weapon.

11. At mid-morning breaktime, Henry and two other children were playing with the replica knife whilst in the playground. Very shortly afterwards, another child walked past, and one of the children who had been playing with the replica knife (I will call him "Child X") ran up to another child ("Child Y"), whom he grabbed around the neck and pulled to the ground. Child X, whilst having one of his arms around Child Y's neck, stretched his other arm backwards with his hand opened. Henry opened the replica knife and placed it into Child X's hand. Child X then used the replica knife to stab at Child Y. School staff quickly intervened and removed the replica knife from Child X and confiscated it. As far as I am aware, Child Y did not suffer any significant injury. A short time after the replica knife had been confiscated, Henry asked a member of staff to return it to him. When the member of staff refused that request, he responded by calling her a "fat bitch".

12. Henry was promptly suspended from attending the School for a fixed period of 5 school days, starting on the day after the incident. Such a suspension does not preclude a subsequent decision by the school to permanently exclude the pupil. A decision to permanently exclude can be made only by the headteacher/principal and is typically made only after the headteacher has taken some time to gather evidence from witnesses and establish the facts.

13. On 10 July 2025, the School's Principal wrote to Henry's mother setting out a decision to permanently exclude him. The letter stated that Henry had committed a "*one-off serious breach*" of the School's behaviour policy, namely the prohibition on the "*[u]se or threat of use of an offensive weapon or prohibited item (including possession)*". The Principal's letter set out details of the incident involving the replica knife and then stated, "*This breach means that allowing [Henry] to return to the school would seriously harm the education or welfare of either [Henry] or others at the school.*" The letter did not set out any other reasons or reasoning in support of that conclusion, or for explaining why permanent exclusion was necessary or proportionate. The letter went on to note that it was the responsibility of the local authority to provide alternative education for a permanently excluded pupil from day 6 of the exclusion. The letter also stated that permanent exclusion decisions "*must be reviewed by a panel*" and that Henry's mother would be entitled to make representations and provide evidence to the GDP hearing.

14. The GDP hearing took place after the school summer holiday period, on 10 September 2025. The outcome of the hearing was that the GDP decided not to reinstate Henry. That decision was set out in a letter to Henry's mother on 17 September 2025. The letter summarised the submissions that had been made at the hearing, and then set out the GDP's reasons as follows:

> "Having given very careful and detailed consideration to all of the written and oral evidence presented, the panel concluded, on a balance of probabilities, that the facts occurred as alleged and that the [P]rincipal's decision to permanently exclude [Henry] was a proportionate, rational, reasonable and fair response to [his] actions. The panel did not feel that the decision was based on any element of discrimination and agreed that the exclusion was procedurally correct. The panel therefore declined to reinstate [Henry].
>
> […]
>
> The panel appreciated … [the] input [from Henry's mother and others], but agreed that the Principal was not being unreasonable or unfair to permanently exclude [Henry] in the interests of staff and other pupils at the school. The panel accepted the Principal's position that staff and fellow students would not feel safe or have a calm and orderly learning environment if [Henry] were allowed to remain at the school. Given the factual circumstances, the panel agreed that the Principal had no choice but to exclude [Henry] permanently, as allowing him to remain in school would seriously harm the education and welfare of staff and pupils at the school. The Principal has a duty to ensure that the school is a safe and calm learning environment. A panel will support her when on the basis of sound evidence it is necessary to take disciplinary action in order to secure this position. In this case they agreed that permanently excluding [Henry] was in accordance with the national guidance and in the interests of other pupils and other people working at the school."

15. The GDP's clerk produced a document headed "*Deliberation minutes*", albeit the document was more in the nature of a summary note, in bullet point form, of matters considered by the GDP during their deliberations (the "Deliberation Note"). The Deliberation Note stated on its face: "*The IRP panel may ask about the deliberation notes, these are P&C and do not have to be shared.*" It appears that this document was not provided to Henry's mother with the decision letter on 17 September 2025 but was subsequently disclosed by the Defendant at some time prior to, or in the course of, these judicial review proceedings. This may have happened during the IRP process, as the IRP appears to have had sight of the Deliberation Note.

16. The Deliberation Note included the following text:

> "**Nature of the Incident**
> ● [Henry] brought a bladed (Balisong) article into school (described variably as a knife or item with intent to cause harm).
> ● Conscious choice, not impulsive: he was regulated, in control of his emotions, and self-aware during the incident.

● He handed the item to another child, stating he thought the other child would "get into trouble."
● Multiple shifting explanations afterwards (swapped bags, dropped on floor, put in bin, etc.).
● CCTV evidence exists but was not shared with the whole panel, due to other children being in the footage.

Intent and Awareness
● Evidence shows the act was intentional, not accidental.
● Panel satisfied he knew or reasonably should have known the behaviour breached school policy.
● Language matters: he made a conscious choice to open the blade and hand it to the perpetrator.
● He showed little remorse, saying he thought the other child would be blamed."

"**Risk**
● Risk assessment considered - but constant 1:1 support by staff is not sustainable long-term.
● Question of whether exclusion was a last resort and whether all alternatives were considered.
● Core issue: **is it safe for him and others for the child to remain in school?**
● Incident elevated from a possible playground scuffle to a potential stabbing because of the weapon."

"**Panel Reflections**
● Tension between 'one-off incident' framing and recognising the wider contextual build-up.
● Acknowledgement that the system has failed the child, but the safety of others must come first.

The key is that this was a **serious, intentional act** with a weapon by a child who was **self-regulated at the time**, and therefore accountable. While the parents raised broader issues (bullying, discrimination, SEND needs), the panel concluded those did not explain or excuse the incident itself. The overarching decision point was whether it was safe for the child to remain in school and the panel leaned towards exclusion as proportionate.

The safety and well-being of the staff and pupils at [the School]

The [P]rincipal has a duty of care for all pupils at the school and the panel felt that on the balance of probabilities, [Henry] had breached the school's behaviour policy and that the principal had demonstrated that to allow him to remain in school would impact adversely on the safe learning environment for other pupils as well as a safe environment for staff.

As required by the National Guidance relating to exclusions issued by the Department for Education, the panel considered the representations … with considerable care, and discussed whether the decision to exclude [Henry] was lawful, reasonable and procedurally fair. Based on the points noted above, the panel concluded that the Principal had taken a lawful and proportionate decision

> to permanently exclude [Henry]. The panel was satisfied that the principal's decision was not based on any elements of discrimination."
>
> (Emphasis in original.)

17. I observe that the Deliberation Note referred to the replica knife as a "*bladed ... article*" that was "*described variably as a knife or item with intent to cause harm*". The GDP therefore appears to have proceeded on the assumption that the replica knife had a "*blade*", was a prohibited item (i.e. something Henry should not have brought into school), and was inherently harmful. As far as I can tell, the GDP did not physically examine the replica knife during the hearing, or express a finding as to whether that item was made of metal or plastic, or state any reasoned conclusion as to the degree to which it was intrinsically dangerous.

18. I observe too that the Deliberation Note recorded that CCTV footage of the incident had not been viewed by all members of the GDP, "*due to other children being in the footage*". I understand that Henry's mother was also not shown the CCTV footage, either before or at the GDP hearing, but that some still images taken from the CCTV footage were considered at the hearing.

19. Henry's mother requested that the GDP's decision not to reinstate Henry be reviewed by an IRP. The IRP held a hearing on 10 October 2025. The IRP comprised 3 members: a chairperson, a governor of another school, and a headteacher.

20. The chairperson of the GDP (who was also a Regional Education Director at the Defendant Academy Trust) gave evidence at the IRP hearing. The minutes of the hearing show that, in the course of that hearing, the GDP chairperson responded to a question put to him by the IRP regarding whether the GDP had considered a long fixed-term suspension as an alternative to permanent exclusion:

> "Q: Did the Governors Panel consider additional suspension of 45 days[?] Legal … had informed me this was possible, can we explore that? Did you satisfy yourself as a panel that the Head Teacher explored this option[?]
>
> A: We didn't look at this when considering, within the 5 days. The [permanent exclusion] decision had been taken which we couldn't rescind."

21. The IRP's decision found that "*[t]hough ... a number of possible sanctions were explored, not all were considered*". The IRP also criticised the GDP for a "*lack of recorded minutes which could have provided evidence of anxious scrutiny and robustness within the [GDP's] discussion*". The IRP nevertheless upheld the GDP's decision. This was a 2:1 majority decision: the IRP hearing minutes record that one member of the IRP (the headteacher) would have recommended that Henry be reinstated.

22. The IRP's stated reasons for upholding the permanent exclusion decision were as follows:

> "… [T]he remit of the [IRP] is to exercise a scrutiny of the decision-making process applied by the [GBP] and not to pass judgement on the decision itself.
>
> The [IRP] found the governing body acted legally and rationally. However, they questioned how the governing body came to their own conclusions as the minutes, especially in relation to their deliberations, were unclear. They considered if this could be classed as procedural impropriety of the governing body, due to the lack of recorded minutes which could have provided evidence of anxious scrutiny and robustness within the governing body's discussion. On balance, the [IRP] felt that whilst it was a procedural flaw, it was not sufficient to be classed as procedural impropriety. The [IRP] felt the Head Teacher had conducted a thorough investigation, knowing all children involved and their needs.
>
> There were deemed to be no mitigating circumstances therefore, the governors were reviewing the isolated incident rather than [Henry]'s disability surrounding the event. The [IRP] considered the proportionality of the incident and the sanction, they were satisfied that given the nature of the breach in behaviour code and carrying a prohibited item, it was a proportional sanction. Though it should be noted that while a number of possible sanctions were explored, not all were considered.
>
> The [IRP] acknowledged that the governing body reviewed all documentation they had available to them at the time, though the [IRP] notes that further evidence was provided in this [IRP] that had not been present or provided at the time of the governing body's decision. The [IRP] were satisfied that the parent had every opportunity to provide evidence to the governing body if they wished.
>
> As a result no major procedural impropriety was identified. Though the [IRP] would like to make a recommendation to the governing body to increase their evidence of robust challenging within their decision-making minutes."

23. A judicial review pre-action protocol letter on behalf of Henry was sent to the Defendant on 17 December 2025. No substantive response was provided by 14 January 2026, the day when the claim was filed.

LEGAL FRAMEWORK

24. Provision for the permanent exclusion of a pupil from an Academy is made by s.51A of the Education Act 2002 ("EA 2002"), as modified by reg.21 of the School Discipline (Pupil Exclusions and Reviews) (England) Regulations 2012 ("the Regulations").

25. The statutory scheme governing permanent exclusion includes up to four stages, as summarised by Fordham J in *R (RWU) v Governing Body of A Academy* [2024] EWHC 2828 (Admin) ("*RWU*") at [4]-[18]. The four stages are these:

- Stage 1: The principal of the Academy decides to impose a permanent exclusion. That stage is governed by s.51A(1) EA 2002 and reg.22.

- Stage 2: The Academy's proprietor, acting through a GDP to which relevant functions have been delegated, conducts a hearing to determine whether to reinstate the pupil. That stage is governed by s.51A(3)(b) EA 2002 and reg.24. Pursuant to reg.24(2)-(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; [and]
> (c) take reasonable steps to arrange a meeting at which the exclusion is to be considered for a time and date when [relevant] persons [are] able to attend;
> …"

- Stage 3: An IRP holds a hearing to review the GDP's decision. That stage is governed by s.51A(3)(c) EA 2002 and Regulation 25. By s.51A(4), there are three decisions which the IRP can make:

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

- Stage 4: If the IRP has either quashed the [GDP]'s decision or recommended reconsideration, the [GDP] looks again at whether to reinstate the pupil.

26. Stages 1 and 2 are two parts of a single decision-making process. As Sedley LJ stated in *R v Governing Body of Dunraven School, ex p B* [2000] LGR 494, at 498D-E, a GDP "*is not a tribunal of appeal from the head teacher but part of a single decision-making process within the school in which both play a role*". (The legislation relevant to that case pre-dated the EA 2002 but was to substantially the same effect.) I therefore disagree with the submission made to me on behalf of Henry that the School's Principal bore a "*burden of proof*" at the GDP hearing in that she was required to prove that her permanent exclusion decision was justified. Rather, the GDP was required to take its decision based on considering all the relevant evidence, including evidence from, and

the views of, the Principal: her proper status and role at the hearing was essentially that of a witness and an adviser, not a party.

27. Pursuant to reg.27 of the Regulations, in exercising their statutory functions under s.51A(1) of the EA 2002 or under the Regulations, an Academy school's principal, proprietor, and the IRP, "*must have regard to any guidance given from time to time by the Secretary of State*". (Reg.9 makes equivalent provision in relation to schools that are maintained schools and therefore not Academies.) The relevant guidance is set out in a document entitled "*Suspension and Permanent Exclusion from Maintained Schools, Academies and Pupil Referral Units in England*" (the "Guidance"). The edition of the Guidance that is relevant to the present claim was published in August 2024.

28. As Fordham J stated in *RWU* at [5]:

> "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 …. 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 …."

29. As to the content of the Guidance and, specifically, the threshold condition it specifies for a permanent exclusion decision to be taken, Fordham J noted in *RWU* at [7]:

> "The Guidance provides that a [permanent exclusion] decision involves two limbs – which I will call Limb [i] and Limb [ii] – both of which need to be satisfied …:
>
> > **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.**
>
> … Limbs [i] and [ii] are framed as necessary preconditions, but that there remains an "overall" decision as to whether [permanent exclusion] is appropriate."
>
> "The Guidance speaks … 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 [permanent exclusion] will sometimes be necessary as a "last resort" to maintain this environment. … It says [permanent exclusion] decisions are to be made alongside a school's duty to safeguard and support children and their duty to provide an education …."

30. As to the degree of scrutiny to which this Court should subject a GDP's decision letter setting out a reasoned decision not to reinstate a pupil, Fordham J provided the following formulation, at [58] (see also [57]):

> "… [T]he Court should approach the GDP's decision letter … 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."

31. For completeness, I note that Fordham J's judgment in *RWU* was the subject of an application to the Court of Appeal for permission to appeal. The Court of Appeal endorsed its judgment setting out its reasons for refusing permission as one that may be cited ([2025] EWCA Civ 147) but the issues discussed in that judgment related to excluded pupils who may be victims of modern slavery or trafficking and are not directly relevant to the present case.

<u>GROUND 1: DID THE GDP FAIL TO ADEQUATELY ASSESS THE PROPORTIONALITY OF PERMANENT EXCLUSION?</u>

32. Ground 1 of Henry's challenge to the GDP's decision alleges that the GDP failed to adequately assess the proportionality of permanent exclusion. This ground of challenge implicitly raises questions as to: (1) whether, and to what extent, a school's headteacher/principal and GDP are each required to assess the proportionality of permanent exclusion in the circumstances of the case; and (2) what 'proportionality' means in this context, and the approach to be taken for assessing whether permanent exclusion is 'proportionate'.

33. The starting point for answering these questions must, in my view, be the legislation and, specifically, the requirement in reg.24(3)(a) for the Academy school's proprietor – i.e., in practical terms, the GDP – to "*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)*". This requirement to consider the interests of the excluded pupil, as well as the interests of other pupils and of staff and volunteers working in the school (and against whose interests the excluded pupil's interests may need to be balanced), is itself a strong indicator that a proportionality assessment is required.

34. In addition to complying with the legislation, a decision whether to permanently exclude – or, in the case of the GDP, whether to reinstate – a pupil must be taken in adherence to the Guidance: see paragraph 28 above. The Guidance states, at paragraph 2, that *a headteacher's* decision to permanently exclude a pupil must be "*proportionate*" (as well as "*lawful*", "*reasonable*", and "*fair*"). It is, in my view, unfortunate that the paragraph begins by referring to reliance on a pupil's behaviour *outside school* as a ground for exclusion or suspension, which gives rise ambiguity as to whether the proportionality requirement applies only in those situations, i.e. to

exclusions relating to behaviour outside school. The Guidance is thus not as clear as it might be as to whether an exclusion by reason of behaviour *in school* must be proportionate. This unhelpful lack of clarity is exacerbated by paragraph 124, which states that a GDP, in deciding whether to reinstate a pupil, "*should consider whether the decision to suspend or permanently exclude the pupil was lawful, reasonable, and procedurally fair*" but, in contrast with paragraph 2, does not include the word 'proportionate'.

35. In my view, there would be no rational basis for requiring that exclusion decisions relying (wholly or partly) on a pupil's misbehaviour *outside school* must be proportionate, but imposing no such requirement in relation to exclusions relying on misbehaviour that has taken place *in school*. I do not think this can be what the authors of the Guidance intended.

36. In any event, the Guidance makes clear that permanent exclusion should always be a "*last resort*" and can be appropriate only where <u>both</u> of the two "*limbs*", or "*pre-conditions*", (as Fordham J termed them in *RWU*) are satisfied (see paragraph 29 above, and paragraph 11 of the Guidance). Pursuant to the second of those limbs, permanent exclusion can be appropriate only in a case "*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*". This threshold requirement for a permanent exclusion necessarily implies a form of proportionality analysis, since permanent exclusion may be contemplated only where nothing else will suffice for protecting the pupil or other members of the school community from contemplated "*serious harm*" to their education or welfare. Permanent exclusion is a tool of last resort, to be used to protect the pupil and/or other members of the school community from serious harm that is likely to result if the pupil remains at the school.

37. Thus, although it is common for schools' behaviour policies to identify permanent exclusion as the "sanction" at the farthest end of a spectrum of "sanctions" for behaviour by pupils which breaches the policy, it is important to bear in mind that, under the Guidance, the legitimate purpose of a permanent exclusion is not punishment but protection. There will, of course, be cases in which a pupil's misbehaviour has been so serious or persistent that, if he or she were permitted to continue attending the school, this would seriously undermine the school's ability to maintain an effective behaviour regime. The safety and welfare of pupils requires that a degree of order be maintained, and that pupils know that serious misbehaviour will be met with genuine and effective consequences. In a case, for example, of a pupil who is persistently defiant of school staff, allowing that pupil to continue attending the school could send a message to other pupils that the school is ultimately powerless to deal with such behaviour. This could contribute to a breakdown in the school's ordered learning environment, to the detriment of the school community. But even in such cases, the primary purpose of the permanent exclusion is not punishment, but to protect pupils and staff in the school.

38. In my judgment, the GBP must *itself* consider whether the two limbs, or pre-conditions, are present, and whether permanent exclusion is appropriate. If the GBP is not satisfied

that either of the two limbs is present, and that permanent exclusion is appropriate, then the GBP should reinstate the pupil. This follows from the statutory scheme under which it is the responsibility of the school's governing body or proprietor, exercised through the GDP, to decide whether the pupil should be reinstated. The decision as to whether to reinstate the pupil is a separate decision from the prior, initial, decision of the headteacher to exclude, albeit that both decisions form part of a single overall decision-making process by which a school may permanently exclude a pupil. Thus, the GDP's role is to take its own decision, based on the circumstances as they appear at the time when that decision is being taken, as to whether to allow the pupil to resume attending the school (whether immediately or otherwise). The role and remit of the GDP are therefore materially different from that of the IRP (whose role is genuinely confined to a "review": the IRP cannot itself take any decision to allow the pupil to resume attending the school).

39. That being so, it may be potentially misleading to speak of the GDP carrying out a "review" of the headteacher's decision. But the GDP may, when taking its decision, properly choose to give very considerable weight to the headteacher's views (which may have developed since the time when the headteacher took the initial exclusion decision, given the passage of time and the potential for further facts, or relevant developments, to have come to light in the interim). The Guidance notes, at paragraph 16, that "*The government trusts headteachers to use their professional judgement based on the individual circumstances of the case when considering whether to exclude a pupil.*" This makes sense, given that the headteacher is likely to have close knowledge of both the excluded pupil and the school environment, and will be well-placed to assess the impact that the pupil's return to the school would be likely to have on the school community. Additionally, as Judge Thomas Church, sitting as a Deputy Judge of the High Court, observed in *R (TZA) v A Secondary School* [2023] EWHC 1722 (Admin) ("*TZA*"), at [55]:

> "… [T]he members of a governors' disciplinary committee can be expected to have considerable experience of the head teacher through their interactions as governors. That experience is likely to have put the members of the GDC in an excellent position to form a view of the head teacher's credibility and to assess the reliability of her evidence."

40. It follows from the points set out above that a GDP should not refuse to reinstate an excluded pupil unless it has first satisfied itself that:

(1) a lesser measure, such as a fixed term exclusion (i.e. a suspension), would not be sufficient to protect against serious harm; and

(2) refusing to allow the pupil to return to attending the school would be proportionate in the sense that the detriment to the pupil from refusing to allow him or her to return, is outweighed by the countervailing interests of that pupil or other members of the school community.

41. In practice, consideration of matters (1) and (2) may largely overlap, and they will often be considered together. That is because, in a case where lesser measures than permanent exclusion would be insufficient to protect against serious harm, permanent exclusion is likely to be proportionate and appropriate for protecting against such harm. But it is intrinsic to a proper consideration of those matters that the GDP will satisfy itself that permanent exclusion is proportionate.

42. I do not, however, consider that the GDP is required to follow a 'structured approach' to proportionality assessment akin to that which is required where a public authority is incurring upon a Convention right. Such a structured approach implicitly presumes against the lawfulness of the contemplated incursion, meaning that the incursion will be lawful only if objectively justified. That is not the right framework here. Permanent exclusion, whilst undoubtedly having a profound impact on the pupil, does not deprive him or her of access to education, since the local authority will be obliged to make alternative educational provision. For the same reason, I do not think the present context is one in which 'proportionality review' applies in the sense that a court before which a permanent exclusion decision is challenged should make its own assessment of whether the decision is proportionate, perhaps affording the headteacher and the GDP a narrow margin of appreciation but no more. Rather, the court should review the decision applying the usual public law standards that a public authority is expected to meet when making a judgement that is its to make, albeit applying a level of scrutiny that befits a decision with momentous consequences for the individual child (see paragraph 30 above).

43. The Guidance sets out the threshold conditions for permanent exclusion and, in my view, proper consideration of the 'limb (ii)' threshold condition necessarily includes an assessment of proportionality and is apt to produce a result that is compatible with both the Convention rights (including Article 14, which may be relevant to pupils who have SEND) and the Equality Act 2010. Accordingly, it will suffice to constitute a proper proportionality assessment that the GDP has genuinely and rationally addressed the two matters set out in paragraph 40 above, including by balancing the harm to the pupil of maintaining the permanent exclusion, against the harm to the school community if the pupil is allowed to return to the school.

44. Further, provided that the school's exclusion decision has been reached by a lawful procedure and adheres to the Guidance, and the GDP's decision letter shows there has been genuine and careful consideration of the two matters in paragraph 40, there will be no basis for this Court to interfere.

45. I turn now to consider whether, in the present case, the GDP's decision to refuse to reinstate Henry properly addressed those two matters. In my view, this must properly be assessed by reference to the reasons set out in the GDP's decision letter dated 17 September 2025, read alongside the Principal's letter of 10 July 2025 setting out her decision to permanently exclude Henry. It would not be appropriate to rely on the Deliberation Note as the principal source of evidence of the GDP's assessment of proportionality, given that that document was not intended by the GDP to be shared

with Henry's mother and was not provided to her alongside the decision letter. In any event, as I will explain, the content of the Deliberation Note itself discloses reasons for concern as to whether the GDP properly assessed the proportionality of permanent exclusion in this case.

46. I have reminded myself that, as Judge Thomas Church stated in *TZA* at [82], a court reviewing a decision of a GDP "*should not approach decisions and reasons given by a committee of laymen ... expecting the same accuracy in the use of language which a lawyer might be expected to adopt*". Equally, however, as Lord Brown of Eaton-under-Heywood said in *South Bucks District Council v Porter (No 2)* [2004] 1 WLR 1953 at [36], reasons "*must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the 'principal important controversial issues'*".

47. In my judgment, the reasons given in the GDP's decision letter fall short of showing that the two matters set out in paragraph 40 above – including, specifically, proportionality – were properly considered. The text within (i) the GDP's decision letter, and (ii) the prior decision letter from the Principal, for setting out the reasons why permanent exclusion was appropriate do little more than recite the "*would seriously harm the education or welfare*" threshold condition specified in the Guidance, before stating that permanent exclusion was proportionate. Such statements were essentially just *asserted conclusions*: they asserted that the pre-conditions for permanent exclusion were satisfied. The documents did not provide reasoning or analysis explaining *why* the Principal and/or the GDP had found that those pre-conditions were satisfied.

48. Those documents did not provide – but, in my judgment, ought to have provided – the following:

(1) A statement as to, and reasoned assessment of, the nature of the "*serious harm*" that the GDP considered would occur if Henry was allowed to resume attending the school.

(2) A statement as to, and reasoned assessment of, the degree of likelihood of that harm occurring.

(3) A statement as to, and reasoned assessment of, the degree of harm likely to be caused to Henry by the permanent exclusion, taking account of his relevant circumstances, including his SEND and the evidence that he was otherwise reasonably well-settled in the school. A child with SEMH needs is likely to find it more difficult, as compared with an average child of similar age who does not have SEMH, to successfully transition to a new school.

(4) Consideration of whether there were any alternatives to permanent exclusion (i.e. alternatives that would have enabled Henry to resume attending the school) – such as, for example, a further fixed-term exclusion, or an off-site direction – available which would sufficiently mitigate the risk of the contemplated serious harm

occurring. Notably, by the time when the GDP hearing took place, Henry had already been *de facto* excluded from school from the day after the incident (at the beginning of July) through to beyond the last day of that academic year. Given the school holiday period, he had therefore not attended the School for around 10 weeks following the incident. This should, in my view, have been recognised as a material factor when the GDP was considering whether Henry could be allowed to return to the School without this giving rise to harm to the school community.

49. Thoughtful consideration of those matters was, in my judgment, necessary in a case such as this, i.e. one in which a child with complex SEND had handed another pupil an object which may not have been intrinsically dangerous, and/or which he may not have understood was dangerous, or may not have thought was likely to cause significant harm. The GDP's failure to address those matters in its reasons was, in my view, closely related to, and arose out of, its failure to properly assess the facts and the appropriate impacts of those facts on its analysis. In that regard, the documents provide no evidence of the GDP ever having formed a clear view, based on careful examination of the evidence, on any of the following questions:

(1) the degree to which the replica knife was an intrinsically dangerous item;

(2) whether Henry is likely to have thought, when he passed that item to Child X, that it was capable of causing significant injury to Child Y; and

(3) whether Henry intended that Child Y be caused any significant injury or other harm.

50. Those questions were, in my view, highly material to a proper assessment of whether allowing Harry to resume attending the school would seriously harm the education or welfare of staff or other pupils in the school. If, for example, Henry brought an intrinsically dangerous item into school, and then handed it to Child X with the intention that it be used to cause Child Y significant harm, then those facts might well provide strong reason for thinking that, if Henry returned to attending the school, then he would engage in further behaviour harming other pupils. On the other hand, if the replica knife was not intrinsically dangerous, and Henry had viewed it essentially as a toy and had handed it to Child X without any intention to cause significant harm to Child Y, then the risk profile associated with allowing Henry to return to the school might have been significantly lower.

51. The text in the Deliberation Note (see paragraph 16 above) tends to reinforce my concerns about these points. In that regard:

(1) The Deliberation Note referred to the replica knife as a "*bladed ... article*" that was "*described variably as a knife or item with intent to cause harm*", and as a "*weapon*". These terms did not properly recognise that the replica knife may have been a blunt 'training' or 'novelty' butterfly knife that, arguably, was not properly comparable with an intrinsically dangerous item (such as a lock knife with a sharp blade).

(2) The Deliberation Note referred to the incident as a "*potential stabbing*". It is not clear to me that so dramatic a description was justified. If the replica knife was not sharpened and was not intended for use as a weapon, then there may have been little or no risk of it being used in a "stabbing".

(3) The Deliberation Note repeatedly emphasised that Henry, when he opened the replica knife and handed it to Child X, was doing an "*intentional*" and "*deliberate*" act and knew he was breaching the behaviour policy. But the GDP does not appear to have formed any view on other points which might fairly have been thought to be more informative for assessing risks of harm, such as whether Henry thought, or intended, that the replica knife would be used to cause significant harm to Child Y.

(4) Likewise, the Deliberation Note suggests that the GDP attributed an irrationally high degree of significance to the fact that Henry was "*self-regulated*" (as opposed to being 'dysregulated') at the time of the incident, relying on this for both (i) dismissing as irrelevant, or at least minimising the relevance of, his SEND and SEMH needs, and (ii) finding him "*accountable*" for his actions. In my view, the fact that Henry was not experiencing dysregulation at the time when he passed the replica knife to Child X does not render Henry's SEND and SEMH needs irrelevant: his actions may still have been partly attributable to his SEND, which may have affected both his decision to engage in the conduct and his ability to comprehend its seriousness or potential consequences. Whilst this does not excuse his conduct, it was an important contextual factor when assessing whether allowing him to resume attending the school would be likely to result in harm to other members of the school community. Further and in any event, the degree to which he was "*accountable*" for his actions should have been of only limited relevance to the decision whether to reinstate him, given that the proper purpose of a permanent exclusion is to *protect* against contemplated harm, rather than to punish culpable behaviour. The decision whether to reinstate Henry ought, therefore, to have turned substantially on an assessment of the risk of harm to others, not on the voluntariness of his behaviour. Yet, as noted above, the GDP does not appear to have come to any view on the more salient question of whether he intended to cause significant harm, and whether such harm could in fact have occurred in the incident.

52. Ground 1 therefore succeeds. In my judgment, there is no basis for assuming that the GDP's members would have reached the same conclusion had they properly considered the two matters listed at paragraph 40 above. Further, the Principal's exclusion decision letter was also lacking in reasons and analysis. In the circumstances, the appropriate remedy is to quash the permanent exclusion decision.

53. For the sake of completeness, however, I note that I have not accepted the argument advanced on Henry's behalf that the GDP was required to consider potential 'alternatives' that *would not have allowed him to return to the school*. In particular, I reject the argument that the GDP was required to ask whether Henry's non-return to the school could be procured by a device other than a permanent exclusion decision, such as by inviting the local authority to consider nominating a different school for Henry in

his EHCP. In my view, it is clear from the text of paragraph 11 of the Guidance that the GDP's focus should be on whether "*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*" (emphasis added). A permanent exclusion is not disproportionate simply because the child's non-return to the school could potentially be achieved in some other way, thus sparing him the 'stigma' of a permanent exclusion decision.

GROUND 2: INADEQUATE REASONS

54. Ground 2 alleges that the GDP's reasons were inadequate. This ground was ably argued on behalf of Henry by Mr Persey's supporting junior counsel, Ms Thomas. I am very grateful to her for her submissions. In my view, however, Ground 2 ultimately rolls into Ground 1 and succeeds for the same reasons.

55. In so observing, I am not downplaying the importance of reasons. The giving of reasons (not just asserted conclusions) is important, regardless of whether the decision included, or should have included, consideration of proportionality. As Ms Thomas submitted, that is because reasons assist individuals in exercising their rights of appeal or judicial review so as to challenge decisions that may be vitiated by unlawfulness: *R v Secretary of State for the Home Department, ex parte Doody* [1994] AC 531, p.565; and *Threlfall v General Optical Council* [2004] EWHC 2683 (Admin), [36].

56. In my view, however, there is a further reason why the giving of reasons is important: it assists in providing individuals with a basis for having confidence in the decision-making process and that they have been treated fairly. This may be of particular value to individuals who are of minority racial or other backgrounds, or who have faced discrimination in the past. Henry was a Black child attending a school in which Black children were a small minority. He and his mother believed he had, earlier in his education, suffered racial prejudice. A key driver of his mother's determination to pursue these proceedings on his behalf appears to have been a concern that he may have been treated less favourably because of his race. For my part, I have not found evidence that this was so. But the lack of reasoning in the Principal's exclusion letter and the GDP's decision letter is likely to have contributed to her lack of confidence that Henry was being treated fairly.

THE GDP'S TREATMENT OF CCTV FOOTAGE

57. Although not directly relevant to the grounds of challenge, I record my misgivings about the fact that, although the CCTV footage of the incident was viewed by the Principal and informed her decision to permanently exclude Henry, it was not shown to Henry's mother or to all members of the GDP. The reason given for not allowing access to the footage was that it included images of other children.

58. Whilst it is right that schools take seriously their duties under data protection law to protect children's personal data from unnecessary disclosure, it is essential that a child facing permanent exclusion is afforded a fair procedure at a GDP hearing. Fairness is likely to require that the child's parents be given access to the key evidential material,

including any available CCTV footage of key incidents, and that it be viewed by all members of the GDP. Still images may not afford the degree of appreciation of an event which could be obtained from viewing dynamic video footage.

59. If a school has a genuine concern about sensitive information being revealed by showing a parent or the GDP members the CCTV footage, then the school may choose to use software to blur the faces of some children shown in the footage, provided that this does not materially impede a proper assessment of the footage for the GDP's purposes. It will often be the case, however, that the pupil whose proposed exclusion is in issue will already know the identities of the other children who were involved in, or who saw, an incident, and that attempts to anonymise those children will therefore be unnecessary or serve no practical purpose.

THE ROLE OF THE IRP

60. I think it appropriate to add a few words as to the approach to be followed by IRPs when reviewing permanent exclusion decisions. In the present case, an IRP upheld the GDP's decision to refuse to reinstate Henry. The judicial review claim does not directly challenge the IRP's decision.

61. As noted above, however, an IRP, in deciding whether to quash a decision, is required to apply the same principles as this Court applies on an application for judicial review. In my view, an IRP should quash a GDP's decision in circumstances where this Court would have granted that remedy upon a judicial review claim. Accordingly, if a GDP's decision is inadequately reasoned in the sense that the written reasons (including any contemporaneous deliberation minutes supplied alongside those reasons) do not suffice to show that the GDP approached its task correctly and properly considered the matters it needed to consider, then the appropriate outcome of the IRP hearing will generally be quashing of the GDP's decision. Quashing will be the appropriate outcome unless the IRP is satisfied either: (a) that the question as to whether the pupil should be able to return to the school has become academic; or (b) that it is highly likely that the outcome for the pupil, i.e. permanent exclusion, would have been the same, even if the error in approach, or lack of proper consideration, implied by the GDP's inadequate written reasons had not occurred (i.e. applying the principle in s.31(2A) of the Senior Courts Act 1981, as amended by the Criminal Justice and Courts Act 2015).

62. The IRP should not allow a school to salvage a GDP's decision by presenting evidence from one or more members of the GDP that certain matters were considered, or as to why certain potential alternative options were dismissed, where this goes beyond reasonable elucidation of the reasons that the GDP contemporaneously set out in its written decision. Otherwise, IRPs would be at risk of allowing schools to succeed in sustaining poorly reasoned written decisions based on advancing previously undisclosed reasons, and/or self-serving 'retro-reasons', in a way that would not be permissible in proceedings in this Court. (The relevant principles applied in this Court were summarised by Chamberlain J in *Inclusion Housing Community Interest Company v Regulator of Social Housing* [2020] EWHC 346 (Admin), at [78].) That cannot be

right in circumstances where Parliament has provided for IRPs to apply judicial review principles when deciding whether to quash GDPs' decisions.

63. The IRP's remit includes both: (a) deciding whether the GDP's decision should be quashed; and (b) deciding whether to make a recommendation that a GDP should reconsider its refusal to reinstate the pupil. In my view, it would be logical for an IRP, when determining the outcome of a review, to *first* consider whether, applying judicial review principles, the GDP's decision should be quashed. That assessment should be made based on the material that was before the GDP at the time of its decision, and should therefore exclude any subsequent developments. If the IRP decides that the GDP's decision stands (i.e. will not be quashed), then the IRP should then go on to consider whether it should exercise its power to recommend that the GDP reconsider whether to reinstate the pupil. For that purpose, the IRP may consider material that has come into existence after the date of the GDP's decision or was, for some other reason, not provided to the GDP. (See paragraphs 203-209 of the Guidance; and *R (CR) v Independent Review Panel for the London Borough of Lambeth* [2014] EWHC 2461 (Admin), [27]-[30].)

DOES THE GUIDANCE REQUIRE UPDATING?

64. In my view, there are a number of aspects of the Guidance which could fairly be said to be unclear and/or incomplete, and which the Department for Education might therefore wish to consider developing when the Guidance is next updated. Those aspects include: (a) the need for a GDP to assess the proportionality of refusing to reinstate a pupil (see paragraphs 34-35 above); (b) the responsibility of the GDP to take its own decision as to reinstatement, based on the circumstances as they appear at the time of the GDP hearing, rather than merely to review the headteacher's exclusion decision for ensuring that it was, or remains, reasonable and fair; and (c) the full scope of the public law standards properly to be applied by an IRP when deciding whether a GDP's decision should be quashed, applying judicial review principles.

CONCLUSION AND DISPOSAL

65. For the reasons set out in this judgment, the claim for judicial review succeeds. The Defendant's permanent exclusion decision will be quashed.