

# Gassa & Anor, R (on the application of) v Richmond Independent Appeals Service & Anor [2020] EWHC 957 (Admin) (22 April 2020)

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By [Faizul Azman](#)

3PB Barristers

## Facts

1. This case concerned an application for judicial review of a decision by the London Borough of Richmond upon Thames (“the Council”) not to treat the Claimants’ rented address in East Sheen as their permanent home for the purposes of a school admissions application for their son. This was because the Claimants also owned a property in Barnes.
2. The Claimants appealed the Council’s decision under the School Standards and Framework Act 1998 (“the Act”). The Appeal Panel considered the appeal under both Section 3 (Reaching Decisions on Appeals) and Section 4 (Infant Class Size Appeals) of the Admissions Appeal Code. The Claimants requested the appeal be dealt with under Section 3 as the issue was on a determination by the Council that the permanent home was in Barnes and not East Sheen. The Appeal Panel considered both Sections 3 and 4 and ultimately found in favour of the Council.
3. The Claimants were given permission to bring a claim for judicial review upon the following grounds:
  - i. Insufficient reasons;
  - ii. Whether the Council’s (various) tests of “permanence” of a home address were compatible with the School Admissions Code 2014;
  - iii. Whether, in defining the “permanence” of a home address, the Council’s approach involved an unlawful rigid adherence to a policy, or was being used for an improper purpose, given the purpose of the relevant policy, or was *Wednesbury* unreasonable;

- iv. Whether an Appeal Panel's jurisdiction is that of a "decision" or "review" in respect of the Council's determination of the Claimants' home address at the material time.

## Held

4. **Issue 1:** The Council and Appeal Panel conceded that the decision letter failed to provide adequate and intelligible reasons. Accordingly, the Claimants succeeded; the decision was quashed and remitted for re-determination by a fresh Panel. [paragraphs 139-144].
5. **Issue 2:** It was not appropriate for the Court to decide this issue. The case was to be remitted to a fresh Panel which would have to re-determine the question of compliance and produce a reasoned decision. The statutory scheme and Appeals Code create a specific role for a specialist Appeal Panel to consider such compliance questions in the first instance. The Court was not satisfied that the question of compliance raised by the Claimants was a pure issue of law which could be decided without fact-sensitive assessment and judgment from the Panel. Finally, the question of compliance would not in any event be determinative of the appeal, because even if the admissions arrangements were not compliant, the question would then arise as to whether the child would have been offered a place if they had been. That question required a judgment which the statutory scheme intended to be exercised by the Appeal Panel in the first instance. This did not mean that the Court would not ultimately have to decide whether or not such a tribunal has erred. But it did mean that the Court needed to be cautious about not unduly intervening (*Secretary of State for the Home Department v AH (Sudan) [2007] UKHL 49 applied*) [paragraphs 149-171]
6. **Issue 3:** For the reasons above, it was also not appropriate for the Court to reach any definitive view on the allegations raised by the Claimants [paragraphs 172-177].
7. **Issue 4:** The Court did not feel able to definitively decide this point, but inclined to the view that the Appeal Panel had a decision-making function. It offered the following observations [paragraphs 178-225]:
  - a. There is no immediately obvious reason why an Appeal Panel's jurisdiction should be limited to a review. Neither the 1998 Act itself, nor any regulations made thereunder, purport to do so.
  - b. The Appeal Panel is an independent judicial body. There is no restriction upon the grounds of appeal that a parent may put forward. The Appeal Panel is therefore well-placed and well-suited to carry out a decision-making function rather than a review

function. If the intention was to limit the Appeal Panel's function to review, the Appeals Code could, and would have been more explicit in this regard;

- c. The Appeal Panel has to consider whether the admission arrangements complied with the mandatory requirements of the Admissions Code and the 1998 Act. The Appeal Panel does not formulate the admission arrangements itself, nor is it asked to limit itself to an assessment of whether the Council could reasonably have concluded that admission arrangements were complied with. The natural meaning suggests that the Appeals Panel needs to make its own decision as to any issue of compliance.
- d. There should be some hesitation in placing too much reliance upon the various verbs that are used in the Appeals Code to circumscribe the Appeal Panel's function. More generally, the Appeals Code refers to what the Panel "finds".
- e. If the Appeal Panel has the ability and specific function under Section 3 to decide whether the admission of additional children would prejudice the provision of efficient education or efficient use of resource, rather than deferring to a review of the decision, it can presumably make its own decision that admission arrangements were correctly and impartially applied.

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**Faizul Azman**

*Barrister*

*3PB*

0330 332 2633

[Faizul.azman@3pb.co.uk](mailto:Faizul.azman@3pb.co.uk)

[3pb.co.uk](http://3pb.co.uk)