

# School Exclusions and Child Criminal Exploitation

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## [R \(RWU\) v The Governing Body of A Academy \[2025\] EWCA Civ 147](#)

1. This case considers the application of Article 4 ECHR, and the impact of concerns of Child Criminal Exploitation (“CCE”), in the exclusion process.
2. The Claimant (“C”) was a 15-year-old boy, who was permanently excluded in January 2024. The judicial review related to the reconsideration decision of the disciplinary panel of the Governing Board (“GDP”), where they found C should not be reinstated.
3. This appeal was considered on a rolled-up basis on 6 February 2025, following the judgment of Fordham J on 24 October 2024.

### **Facts**

4. In September 2020, C began at the Academy in year 7. In September 2023, he started year 10, aged 14 years old.
5. Within a relatively short period, C began to have issues at school. A brief timeline is as follows:
  - a. 31 October 2023 – three-and-a-half-day suspension for swearing at a member of staff.
  - b. 15 November 2023 – one day suspension having jumped the gate and run away from the Academy.
  - c. 28 November 2023 – one day suspension after arriving at school seemingly under the influence of drugs, with prohibited items. C continually fell asleep in the reintegration room.

- d. 29 November 2023 – two days suspension. C was involved in an incident outside school, during the school day and in school uniform, which resulted in the police bringing him to school, having received calls from local residents of students smoking cannabis and throwing roof tiles off a balcony.
  - e. 29 November 2023 – a Multi-Agency Support Hub (“MASH”) referral was made because of safeguarding concerns and the risk of harm to C.
  - f. 1 December 2023 – a Pastoral Support Plan (“PSP”) was set up, designed to support pupils who were at risk of permanent exclusion (“PEX”).
  - g. 5 December 2023 – C was suspended for four days. The previous day he failed in the reintegration room and was placed outside the Principal’s office. C did not write a word and slept twice despite prompts from the Principal.
  - h. 15 January 2024 – the Head of Year followed up the MASH referral and was told that it had been escalated to Social Care given the safeguarding concerns.
  - i. 16 January 2024 – the Head of Year emailed the social worker to say C’s mother had reported him “missing”.
  - j. 18 January 2024 – C arrived at 09:30, smelling strongly of cannabis. Initially he refused his blazer to be searched. His mother was contacted and attended, and there was a physical altercation that was deescalated. C was found in possession of various banned items, including cannabis. The Principal made the decision to permanently exclude. A managed move was arranged.
  - k. 22 February 2024 – C was arrested in possession of a Rambo knife. The second Academy were made aware and the managed move failed.
6. On 18 March 2024, the GDP convened and upheld the Principal’s decision.
  7. Following this, the IRP hearing took place on 13 May 2024. The decision of the IRP is set out in detail in the judgment at paragraph 20-21. They considered lack of evidence in relation to the PSP and earlier suspension incidents. There was a lack of the pupil’s voice throughout the pack. There was not enough curiosity about C’s vulnerability to CCE. Consequently, the IRP found that the GDP’s decision was unreasonable. When considering procedural impropriety, the IRP found that the governors should have had all the guidance and policies to consider.

8. The GPD met for the reconsideration meeting in June 2024. The decision was made not to reinstate C. They considered the findings of the IRP, and the new evidence, but balanced this with the risk of harm to others. CCE was not directly raised by C's representative, but there was reference to the risk of exploitation if he remained excluded.
9. C was then arrested in Doncaster on 24 June 2024. Subsequently, on 19 August 2024, the LA made a referral to the NRM on the basis C was a potential victim of CCE. Later that month, C was arrested at Notting Hill Carnival for possession of a hunting-style knife in a public place.

## Judicial review

10. On 8 September 2024, C applied for judicial review. There were four grounds of challenge, with two pursued in court:
  - a. The Academy was required to act compatibly with Article 4 of the ECHR, to consider the wider impact of the exclusion on C, taking into account the protective factors of teachers and staff who knew him. The legal test for PEX should be construed strictly to avoid exposing children to the risk of CCE.
  - b. The GDP misunderstood and misapplied the clear direction from the IRP and failed to give conscientious consideration with due rigour to reinstatement and identify strong justification to not reinstate. A mandatory injunction was sought for C to be reinstated, which the Court of Appeal commented was an "extraordinary step" [27] and was not pursued before the judge.
11. Fordham J considered the position on Article 4 ECHR [28].
  - a. It was accepted that "the PEX decision should only be taken 'compatibly with a duty owed by the school to the pupil by reason of the Human Rights Act 1998'" [61].
  - b. If there was a HRA duty owed by the school to the pupil, the GDP could not fail to reinstate. An example of where a protective duty was owed by the school is with an Article 2 duty where the Academy could not force a pupil to leave the school knowing there was an imminent prospect of them being murdered at the school gates.

12. Therefore, the “critical issue in dispute below was whether an Article 4 positive protection duty had been triggered, either by the time of the PEX decision (18 January 2024) or by the time of the impugned GDP decision (24 June 2024)” [30].
13. Fordham J found that the Academy was alive to the issue of CCE and right to have considered it, but it had not been suggested or argued that there was a positive duty under Article 4 of the ECHR. He found that only by an “impermissible exercise of hindsight” could the Academy have concluded that there was an Article 4 protective duty on 18 January or 24 June 2024.

## **Court of Appeal**

14. C sought permission to appeal as Fordham J had erred in finding that no Article 4 duty arose, and the GDC had failed to give conscientious consideration in the context of the Article 4 protection duty in its reconsideration.
15. The Black Equity Organisation intervened through written submissions, and fresh evidence from Coram Children’s Legal Centre spoke “powerfully” of the severe impact of PEX, depriving pupils of a protective environment and making them more vulnerable to exploitation [34].
16. The Appellant relied on the Article 4 EHCR submissions, set out above. It was also put that the PEX “was in the nature of a punishment imposed through a quasi-prosecutorial process” and drew analogy to victims who are being prosecuted in a criminal jurisdiction. The Court of Appeal did not directly deal with this but had ‘serious doubts’ about the proposition.
17. There was no dispute that the trigger test for identifying potential CCE is “whether the state authorities are aware or ought to be aware of circumstances giving rise to a credible suspicion that the child concerned has been trafficked or exploited or that there is a real and immediate risk of his being trafficked” [43].
18. Fordham J concluded that, in this case, the Article 4 protective duty was not triggered at the time of the decision under review. The Court of Appeal found that it is not reasonably arguable that that was wrong. Therefore, the credible suspicion test was not considered, but the Court of Appeal found that even if it was crossed, the school would not have been automatically required to reinstate C.

## Conclusion

19. The judgment emphasised the role of the appeal court was not to substitute its own view but to consider whether it was reasonably arguable that the finding was ‘wrong’. In any event, the appeal court found that Fordham J’s decision was correct.
20. While on these facts, CCE was not something that could materially impact the outcome of C’s exclusion, the case provides clarification on the application of Article 4 ECHR for schools and academies when considering the need to protect vulnerable students. Exploitation should be taken into account when considering PEX, and educational institutions’ policies should reflect that.

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