**LSE-Featherstone Sexual Orientation & Gender Identity Moot 2024**

**Moot Problem**

1. This is a claim for a judicial review of the decision of the Governing Body of Oxingham Further Education College[[1]](#footnote-1) (‘the College’), to uphold the College Principal’s decision to permanently exclude the Claimant for a serious breach of the College’s behaviour policy.
2. At the relevant time, the Claimant was a 16-year-old student at the College in the first year of his A-Level studies. He is an Evangelical Christian and prays for several hours a day. He was permanently excluded on 20 September 2023 following an incident on 18 September 2023.
3. The Claimant coordinated a protest on the College’s grounds during the lunch hour, purportedly to *“express concern”* (his words at the Governors’ hearing) about the College’s new Relationship and Sex Education (‘RSE’) policy. The RSE policy was introduced at the start of the academic year following a consultation with the College’s students and parents, in which a draft of the RSE policy was overwhelmingly supported. The consultation also showed that 7.5% of students and 10% of teaching staff identified themselves as having a sexual orientation as either *“gay”*, *“bisexual”* or *“not heterosexual”*.
4. The RSE policy included a statement that *“same sex (homosexual) sexual attraction is just as valid as opposite sex (heterosexual) sexual attraction. Staff and students should be careful not to assume a student’s or a staff member’s sexual orientation. It is important that sex education is mandatory and treats same sex activity (including all forms of penetrative sex) as being equally as valid as opposite sex activity”.*
5. The Claimant had joined the College earlier that term. He and his parents had been sent the consultation but did not respond as they *“did not want to validate the consultation exercise”* (the Claimant’s words at the Governors’ hearing).
6. At the protest on 18 September 2023, which consisted of three students including the Claimant, the Claimant could be heard to shout that *“sodomy is a sin”* and that *“those that commit sodomy deserve to burn in hell*”. Several students reported the protest to the Deputy Principal who approached the Claimant and the protestors and asked them to stop. The Deputy Principal invited the students to his office to “*discuss the matters calmly*” and explained that if they failed to do so, they were at risk of a serious sanction. The other two students agreed but the Claimant refused. The Claimant continued to shout loudly that *“God will condemn those who sin, and homosexual sex is a sin”* and *“this policy promotes sodomy”.*
7. The Principal arrived shortly thereafter following complaints from several gay students who perceived the Claimant’s chants to be *“intimidating”* and amounting to “*hate speech”*. The Headteacher stated that he had phoned the Claimant’s parents who were coming to collect him.
8. On 20 September 2023, the Principal sent a letter to the Claimant’s parents permanently excluding the Claimant for *“creating a hostile environment for LGBT+ students”* and for *“insubordination"* by not agreeing to discuss the issues with the Deputy Principal.
9. The Claimant, with the support of his parents, appealed the Principal’s decision to the Governors on the basis that being permanently excluded unfairly interfered with his rights to freedom of expression and protest under Articles 10 and 11 of the European Convention on Human Rights (‘ECHR’). They also argued that the punishment amounted to direct discrimination based on the Claimant’s religious beliefs, in breach of section 13 Equality Act 2010.
10. The Governors held a meeting on 12 October 2023. At the meeting, the Chair of Governors was wearing a rainbow tie and stated at the start of the meeting *“for full disclosure”* that he was gay and the Chair of Oxingham Pride. At the hearing, the Chair of Governors asked “*do you consider a man who is married to a man to be in a valid marriage*?” to which the Claimant responded, “*I do not consider* ***your*** *marriage to be valid”.* The Chair of Governors responded by stating “*I was not referring to my marriage specifically, and it is offensive to direct personal comments at me”*.
11. In summary, the Governors’ decision was:
    1. It was accepted that the Claimant had a sincerely held religious belief and that he was entitled to express those views under Articles 10 and 11 ECHR.
    2. The Claimant’s speech went beyond the boundary of protected speech and constituted “*hate speech*”, especially the comment *“burn in hell*” which could reasonably be perceived to be threatening.
    3. Even if the Claimant’s words did not amount to *“hate speech”,* the College’s response had been a proportionate restriction on the Claimant’s rights to freedom of expression and protest as the College had not attempted to prevent the protestors from expressing their views altogether. The Deputy Principal had attempted to strike a fair balance between allowing the students to express their concerns while mitigating the disruption and distress caused to students and staff, particularly gay students that the College had safeguarding responsibilities in relation to.
12. The Claimant brought a claim for judicial review challenging the decision of the Governors to uphold his permanent exclusion. Permission to proceed with the claim was granted by Ms Justice Jessie (‘Jessie J’) with the following observations:

*“Comments:*

*I accept that the College is a body that is amenable to judicial review.[[2]](#footnote-2) I consider that the following three grounds as identified by the Claimant in his statement of facts and grounds to be arguable:*

*Ground 1: Breach of Article 10 and/or 11 ECHR*

*Ground 2: Breach of section 13 Equality Act 2010*

*Ground 3: The Chair of the Governing Panel had the appearance of bias*

*I will make a few brief observations on the merits of this case. From the information available to me, I consider the Claimant to have been protesting an issue where there is a considerable degree of public interest in having a full and frank debate. The Claimant plainly has sincerely held religious beliefs and he is entitled to protest peacefully, even if that is disruptive.*

*At a final hearing, it will be important for the Court to carefully consider whether the Claimant was punished for his views or a manifestation of those views, and whether that sanction (undoubtedly a very serious one) was proportionate.*

*The Chair of Governors was not a Judge and so should not be held to the same standard as a Judge. However, it seems to me that applying the test in Porter v Magill, the Claimant does have an arguable (I will put it no higher) claim that the Chair might have appeared to be biased against the Claimant, which would render the Governors’ hearing to be unfair. That being said, it might also be unreasonable to expect an LGBT+ person to hide their identity when adjudicating on issues that relate, either directly or indirectly, to LGBT+ equality.”*

1. For the purposes of the moot, it is suggested that one speaker in a team argues grounds 1 and 2 and the other speaker argues ground 3.

1. NB there is no right of appeal to the Independent Review Panel of a Further Education College and the Department for Education’s statutory guidance on permanent exclusions does not apply. [↑](#footnote-ref-1)
2. Please take it as not in dispute that the College is amenable to judicial review [↑](#footnote-ref-2)