**LSE-FEATHERSTONE SEXUAL ORIENTATION & GENDER IDENTITY MOOT 2022**

1. Alex Smith (AS) is a non-binary (pronouns they/them) 14-year-old student at Oxingham School (‘the school’), which is a state maintained secondary school.
2. The school uniform policy provides that ‘male students’ must wear trousers and blue shirts and ‘female students’ must wear knee-length skirts and white shirts. The school’s behavioural policy provides that ‘persistent’ breaches of that uniform policy is a disciplinary matter that can result in sanction.
3. Since starting year 10 in September 2021, AS has openly identified as non-binary. AS sometimes wears a skirt and a white shirt, and sometimes wears trousers and a blue shirt.
4. After being asked by their form tutor to dress as a ‘male student’, AS and their parents were invited to attend a meeting with the headteacher. The headteacher said that AS was undermining discipline by not adhering to the school uniform policy. The headteacher stated that if AS now ‘identified as a girl that would be fine and the school would respect that’ but that ‘AS could not mix, match and switch genders in their school uniform’ as it ‘breaches the rules and could harm discipline’.
5. The headteacher asked AS to ‘pick whether they were a boy or a girl’ when deciding which version of the school uniform to wear. AS explained that as a non-binary person, they found it upsetting to be categorised according to the gender binary. AS also explained that being able to express themselves outside of the gender binary through their school uniform was an important expression of their gender identity. The headteacher said that ‘expressing yourself as non-binary is fine, but it must be within the rules’.
6. AS received several fixed term exclusions for non-compliance with the school uniform policy. This led to a Governing Body Hearing (‘GBH’) where AS’s parents argued that AS’s exclusions were unlawful on two grounds:
   1. Disciplining AS for non-compliance with the school uniform policy was indirect discrimination based on gender reassignment in breach of the Equality Act 2010 (‘EA 2010’).
   2. Discrimination on the basis of Article 14 ECHR, taken with Article 8 and/or 10, which is incorporated into domestic law by the Human Rights Act 1998 (HRA 1998).
7. The GBH dismissed ground 1. It held that that EA 2010 does not protect non-binary identities. The school made it clear that they would have supported AS if they had been transitioning from male to female. As such, it was not discriminating against them based on gender reassignment. The GBH concluded that if it had been wrong on that point, then any indirect discrimination was justified. AS could express their gender identity in other ways. For example, AS could express their gender identity through wearing gendered accessories within the remit of the school uniform rules, and they could also express themselves outside of the school day. Instead, AS was overtly breaching the school’s policy, which undermined discipline if allowed to go unpunished. The fixed term exclusions were necessary to enforce the rules and maintain discipline.
8. The GBH also dismissed ground 2. It accepted that wearing school uniform was within the ambit of Articles 8 and 10 ECHR, but found that there was no breach of Article 14 EHCR. It held that any discrimination could be justified for the same reasons given on ground 1. The question of justification was less finely balanced than for ground 1 given the minimal interference with privacy and expression rights, as AS was welcome to use pronouns and other signifiers of their non-binary gender identity. The GBH also noted that it would be a ‘radical development of the law’ to find a breach of Article 14 as it would be ‘be going further than the Strasbourg authorities.’
9. AS’s parents appealed to the Independent Review Panel, which upheld the GBH’s decision and adopted its reasoning in full.
10. AS, through their litigation friend and mother, CS, brought a claim for judicial review of the IRP’s decision on the same grounds as advanced before the GRP and IRP (see paragraph 6 of the problem). Permission was granted on both grounds by Minogue J.