

Neutral Citation No: [2025] NIKB 57

Ref: HUM12888

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 07/11/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

**KING'S BENCH DIVISION
(JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY JR333
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**Aidan Sands KC with Stephen Gilmore (instructed by Scullion & Green Solicitors) for
the Applicant**

Barry Mulqueen (instructed by A&L Goodbody) for the Proposed Respondent

RULING ON COSTS

HUMPHREYS J

Introduction

[1] By this application for leave to apply for judicial review, the applicant, a 13 year old boy, seeks to challenge decisions of the Board of Governors of his former school to suspend him from that school.

[2] He was suspended on 22 November 2024 for a period of five days and thereafter on a 'rolling' basis, every five days, until he was expelled from school on 21 January 2025.

[3] The applicant's solicitors issued pre-action protocol correspondence on 5 February 2025 seeking to impugn both the decisions to suspend and to expel. Much of this letter is taken up by the latter decision. In its reply to the PAP letter, the proposed respondent denied that it had committed any public law wrong and stated that any proceedings would be robustly defended and also pointed out that the applicant had an alternative remedy in the form of an appeal to the Expulsion Appeal Tribunal.

[4] The expulsion decision was overturned by the Expulsion Appeal Tribunal on 18 March 2025. This tribunal also found that the decision to suspend the applicant had been unfair.

[5] The applicant started a new school on 31 March 2025. These proceedings were issued and served on the proposed respondent on 2 April 2025. At this time, the proposed respondent became aware of the decision to move to a new school.

[6] On 9 May 2025, the proposed respondent's solicitors wrote, offering to expunge all relevant records of the suspension and stating:

“Our client's position would have been the same had you revisited the matter with us following the Applicant's change of school, before incurring the costs of legal proceedings. The factual position now differs materially from the consequences that existed when the original letter before action was issued on 5 February 2025, as a consequence of the recent change of school. In view of the steps now being taken to expunge the Applicant's suspension record, we suggest that these proceedings be dismissed with no order as to costs.”

[7] On 12 May 2025, the applicant's solicitors responded setting out a breakdown of the costs incurred to date and stating that the case ought to be disposed of by way of an order of certiorari.

[8] On 22 May 2025, the proposed respondent confirmed that the relevant periods of suspension had been expunged and removed from the school records.

[9] The application for leave to apply for judicial review was therefore dismissed and only the issue of costs remains live between the parties.

[10] In *Re YPK & Ors' Application* [2018] NIQB 1, McCloskey J referred to the *Boxall* principles (from *R (Boxall) v Waltham Forest LBC* [2001] 4 CCLR 258):

- “(i) The court has power to make a costs order when the substantive proceedings have been resolved without a trial where the parties have not agreed about costs.
- (ii) It will ordinarily be irrelevant that the application is legally aided.
- (iii) The overriding objective is to do justice between the parties without incurring unnecessary court time and consequently additional costs.

- (iv) At each end of the spectrum there will be cases where it is obvious which side who would have won had the substantive issues been fought to a conclusion. In between the position will, in differing degrees, be less clear.
- (v) How far the court was prepared to look into the previously unresolved substantive issues will depend on the circumstances of a particular case, not least the amount of costs at stake and the conduct of the parties.
- (vi) In the absence of a good reason to make any other order the fall back is make no order as to costs.
- (vii) The court should take care to ensure that it does not discourage parties from settling the judicial review proceedings for example by a local authority making a concession at an early stage."

[11] It is noteworthy that these principles are expressed to be in the context of a judicial review application where leave has been granted but resolution reached prior to a substantive hearing.

[12] In *YPK*, the learned judge went on to consider the decision of the England & Wales Court of Appeal in *M v London Borough of Croydon* [2012] EWCA Civ 595 and commented:

- "(i) Where a claimant has been wholly successful whether following a contested hearing or via settlement "... it is hard to see why the claimant should not recover all his costs, unless there is some good reason to the contrary": see [61].
- (ii) In a case where the claimant succeeds in part only following a contested hearing or via settlement, the court will normally evaluate the factors of "... how reasonable the claimant was in pursuing the unsuccessful claim, how important it was compared with the successful claim and how much the costs were increased as a result of the claimant pursuing the unsuccessful claim": see [62]. The court's evaluation of such questions will be greatly facilitated where the case has proceeded to the stage of substantive judicial adjudication. But the judicial

task will be altogether more difficult in cases where the claimant's partial success arises through the mechanism of consensual resolution. In the latter type of case "... there is often much to be said for concluding that there is no order for costs": see [62]." (para [18])

[13] Applications for leave to apply for judicial review in this jurisdiction are conducted on an ex parte basis, albeit that proposed respondents are now routinely invited to participate in leave hearings. There remains no obligation on them to do so and it is the almost invariable practice that where an applicant is refused leave after an oral hearing, no order as to costs between the parties is made.

[14] In this case, leave was not granted and the parties were able to resolve their differences without undue delay. Each party is, however, critical of the other. The applicant says that the proposed respondent ought to have moved to expunge the records prior to the issue of proceedings. The proposed respondent says that the applicant failed to inform the governors of the transfer to the new school and also that the grounds and issues advanced in the PAP correspondence did not carry through to the Order 53 statement.

[15] I have concluded, in the exercise of my discretion, that no order as to costs ought to be made in all the circumstances of this case. I do so, for the following reasons:

- (i) The focus of the applicant's claim in the PAP correspondence was on the decision to expel, as well as the prior decision to suspend;
- (ii) Once this issue had been the subject of a separate hearing and remedy, the applicant ought to have revisited the question of the judicial review proceedings, particularly in light of the tribunal finding and the decision to change school, and corresponded further with the Board of Governors;
- (iii) Whilst the applicant was ultimately successful, the court did not conduct any assessment of the merits of the applicant's claim;
- (iv) The court accepts the submission that the school may well have taken a different stance on the application in light of the changed circumstances from the issue of the PAP letter; and
- (v) Public authorities and decision makers ought not to be discouraged from seeking to resolve disputes prior to the grant of leave and acting in a pragmatic manner, in accordance with the overriding objective.

[16] I therefore make no order as to costs.