

[2022] EWHC 2707 (Admin)

Case No: CO/1410/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
33 Bull Street
Birmingham B4 6DS

Date: 25/10/2022

Before :

MRS JUSTICE FARBEY

Between :

R

Claimant

on the application of AB
- and -

(1) A County Council
(2) The Governing Body of a School

Defendants

Richard O'Dair (instructed by **Andrew Storch Solicitors**) for the **Claimant**
Aileen McColgan KC (instructed by **A County Council Legal Service**) for the **Defendants**

REPORTING RESTRICTIONS APPLY

Mrs Justice Farbey :

1. This is a renewed application for permission to apply for judicial review. It is important to understand what that means. In judicial review proceedings, this court will not engage in a general inquiry about the facts of the case. In judicial review proceedings, it is not the function of judges to enter into an inquiry about the relative advantages and disadvantages of any aspect of education policy in the UK generally or in any particular county. The court's jurisdiction is supervisory which means (in very broad terms) that it will interfere with a decision of a public authority only if there is an error of law.
2. A person who applies for judicial review must have standing to bring the claim. That means that the person must have a sufficient interest in the matter to which the application relates. Parliament has determined that the court shall not grant permission to apply for judicial review unless it considers that the applicant has such an interest: see section 31(3) of the Senior Courts Act 1981. Not everyone who has a personal interest in an issue will necessarily have standing (*R (Good Law Project) v Prime Minister* [2022] EWHC 298 (Admin), para 28). Even if the beliefs or concerns of a person are strongly held, the court must consider whether they have a sufficient interest as a matter of law.
3. The claimant in this case does not teach Child X. She has in the past had a personal dispute with the school about how she could or should treat Child X but that has been resolved. By bringing these proceedings, she seeks to ventilate what she calls "substantive safeguarding concerns" about Child X. In doing so, she does not claim to represent Child X. As a matter of law, she cannot represent Child X's interests because she has not sought the court's permission to do so.
4. The claimant is a teacher at Child X's school. She relies on the Department for Education's statutory guidance on "Keeping Children Safe in Education 2022". Para 7 of that guidance states that all staff have responsibility to provide a safe environment in which children can learn. Taking that isolated sentence out of place does not advance the claimant's case to have standing to bring these proceedings. There is a difference between a general duty on teachers to provide a safe environment and the right of any teacher to come to court when she disagrees with a decision taken by a school. I do not regard the passage on which the claimant relies as giving her standing to bring this claim – even arguably.
5. The claimant says that she should be allowed to bring the claim because she is acting in the public interest and as a whistle-blower who has brought information about Child X to the attention of her employer which she believes should be brought to the attention of the court. The claimant has over the course of the last year engaged with her employer and the county council but that does not mean that she has standing to bring judicial review proceedings.
6. She has no particular role in bringing public interest challenges. She does not for example represent a pressure group, charity or NGO with specialism in gender issues or in child welfare. If the mere assertion that she represents the public

interest were sufficient to give her standing, it would mean that the courts would have no way of distinguishing between a person with a genuinely sufficient interest and others. That is not the law. As the defendants submit, the argument fails to take into consideration the intrusion into Child X's right to respect for private life that would inevitably be involved by the deployment of evidence about Child X if the claimant were to bring her challenge in circumstances in which neither Child X nor Child X's parents have been joined as a party to proceedings. I see no good grounds for concluding that the claimant has standing in proceedings in which the court would receive such evidence.

7. In my judgment, the claimant has not established that she herself has a reasonable concern in Child X's welfare as opposed to others involved in Child X's care, education and development. I am not persuaded that she has standing or even that it is arguable that she has standing.
8. As she has no standing, even arguably, this renewed application must fail.
9. In these circumstances, I shall deal only briefly with other matters raised by the claim in light of the importance of the issues.
10. Claims for judicial review must be started promptly and in any event not later than 3 months after the grounds for making the claim first arose. In this case, the grounds for judicial review are dated 14 April 2022. I am told that the claim was lodged with the court on 20 April 2022. A letter to the claimant was sent on behalf of the school on 29 October 2021 which dealt with her concerns regarding the school's approach to Child X. By letter dated 21 January 2022, the school informed her that she had no right of appeal but the January letter was not even arguably a new decision. The decision under challenge in relation to the school was therefore taken in October 2021 which was more than three months before the claim was started. The claim against the school is therefore out of time.
11. The claimant submits that time should be extended on the basis that she was using the time to resolve the issues with the county council. I do not regard that as a good reason for lateness in this case. Child X is young and vulnerable. The claimant was seeking to change something about the education of a young and vulnerable child when Child X had already been moved from one school to another in order to be safe from bullying.
12. In any event, the key correspondence from the county council to the claimant is dated 15 February 2022, 24 February 2022 and 1 March 2022. Even if she had believed that she was exhausting alternative remedies through communications with the county council, the claimant failed to commence proceedings until some considerable time had elapsed following those key letters from the county council.
13. In a case concerning educational provision (in the broad sense) for a young child, time was in my judgment critical. The claimant took months to start proceedings in court against the school. She did not even arguably bring proceedings promptly. I would therefore also have refused permission to apply for judicial review against the school on grounds of delay.

14. In an application for permission to apply for judicial review, the claimant must persuade the court that her grounds for judicial review are arguable with a reasonable prospect of success.
15. The formation and implementation of policies on gender issues in schools concern complex issues of social policy. It is a long-established principle of the law of judicial review that, in relation to issues of social policy that raise multifactorial considerations for decision-makers, the courts will be slow to intervene. That is because the courts will have regard to the institutional competence of those charged within our democratic arrangements with taking those multifactorial decisions.
16. In my judgment the claimant is using the banner of law in an attempt to persuade the court to enter into a policy debate that is ill-suited for judicial review. She argues that: “logically and on the evidence then before the Defendants, the policy should have prohibited social transition at school.” I do not agree that the question is one of logic. In my judgment, the grounds for judicial review raise multifactorial and discretionary questions of social policy. They raise no arguable questions of public law.
17. As to the detail of the grounds, I gratefully adopt the reasoning of Henshaw J in his decision refusing permission to apply for judicial review on the papers.
18. The main point about the evidence seems to be that the defendants were bound to consider, indeed accept, the evidence of experts given in other proceedings. Contrary to what is implied in Ground 2 of the claimant’s grounds, there was no duty on the defendants to consider everything that the claimant chose to give them irrespective of the content of the documents or their relevance to Child X’s personal situation. The school provided a legally adequate response to the issues raised by the claimant in its letter to her dated 29 October 2021. The letter stated that:

“the treatment of children for gender dysphoria is a controversial issue where expert opinion is divided. The public, too, is divided on the issue. There is debate as to whether such treatment – and associated gender affirming practices – are appropriate. No consensus has yet been reached.”
19. The claimant may agree or disagree with that analysis but that is not the question for the court. The documents provided by the claimant do not show an arguable error of law or approach in the public law sense. The reports produced by the claimant are part of a public debate but have no special status requiring some additional enquiry by either or both of the defendants. The documents relied on by the claimant do not reveal any arguable error in the duty of enquiry under the well-known *Tameside* case.
20. Grounds 1, 3, 4 and 5 amount in effect to a disagreement on factual matters which this court would not resolve. They seek to deploy high level statutory duties, or unparticularised breaches of duty, and to gloss those duties in ways that advance a particular viewpoint. Irrespective of the claimant’s motivation, on which I specifically reach no conclusion, these are not the sort of hard-edged questions of public law that fall for consideration in judicial review proceedings. They raise no

arguable error of public law. I would therefore have refused permission on the merits of the grounds.

21. Accordingly this renewed application is refused.

22. Finally, although counsel will know this, I record that my ruling today relates to the issues in this claim. It is a permission decision and is not citable in other cases.