



# Courts and Tribunals Judiciary

## SUMMARY

**NOTE: This summary is provided to help in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court, which was handed down on 16 April 2024 after a hearing on 16-17 January 2024, is the only authoritative document. Judgments are public documents and are available at: [www.judiciary.uk](http://www.judiciary.uk) and <http://caselaw.nationalarchives.gov.uk/>**

**16 April 2024**

**THE KING (On the application of TTT, by her mother and litigation friend UUU) -v- Michaela Community Schools Trust and London Borough of Brent [2024] EWHC 843 (Admin): Mr Justice Linden**

## SUMMARY

### Introduction

1. Please note that there is an Order dated 16 January 2024 for the anonymity of the Claimant, her mother, staff (other than the Headteacher) and pupils at the School and their immediate families. This Order remains in force. For this reason the Judgment anonymises any pupils and staff other than the Headteacher to whom specific reference is made.

### Summary of the issues

2. The Defendant ("the School") is a secular secondary free school for girls and boys located in Wembley, in the London Borough of Brent. It has around 700 pupils who are from diverse ethnic and religious backgrounds although half, including the Claimant, are Muslims.
3. The School is exceptionally academically successful and it attributes this success to its distinctive approach to the provision of education. This includes a very high level

of control over the behaviour of the pupils, underpinned by a strict approach to discipline; and an ethos which encourages pupils to see themselves as part of a team. The “Team ethos” of the School means that the interests of the school community take precedence over the needs of the individual. It also involves, using the Headteacher’s word, “*aggressively*” promoting integration between pupils from different faiths, cultures and ethnic backgrounds whilst they are at school as well as minimising social distinctions between them.

4. The principal challenge in this Claim was to the decision of the governing body of the School to prohibit its pupils from performing prayer rituals on its premises (“the prayer ritual policy”, or “PRP”). That decision was taken on 23 May 2023, after the Headteacher had introduced the PRP as an interim measure on 27 March 2023. Whilst the PRP applies to all prayer rituals, regardless of religion, there was no evidence that pupils at the School of any religion other than Islam wish to perform prayer rituals during the school day.
5. The Claimant’s objection to the PRP is a narrow one. Muslims are required to pray five times a day but, with one exception, she accepts that the requirements of the school day mean that she will not always be able to fulfil this obligation during the allotted period of time. That exception is the *Duhr* or *Zuhr* prayer, which is required to be undertaken in a window of time from when the sun passes its highest point in the day to the opening of the window for the next of the five prayers: the *Asr* prayer. During the autumn/winter months the window for performing *Duhr* overlaps with the School lunch break. The Claimant wishes, during 25 minutes of this break which she characterises as “*free time*”, to perform *Duhr*.
6. The Claimant argued that the School’s refusal to permit her to do this is a breach of her right to freedom to manifest her religious beliefs, which is protected under Article

9 of the European Convention on Human Rights (“ECHR”) (“Ground 1”). She also argued that the PRP indirectly discriminates against Muslim pupils, contrary to sections 85(2)(d) and/or (f) of the Equality Act 2010 (“the 2010 Act”), read with section 19 (“Ground 2”). And she said that, in introducing the PRP, the School failed to have “*due regard*” to the need to eliminate discrimination, to advance equality of opportunity and to foster good relations between Muslims and non-Muslims, contrary to the public sector equality duty (“PSED”) under section 149 of the 2010 Act (“Ground 3”).

7. Fourthly, the Claimant was also subject to a two day fixed term exclusion on 23 March 2023 and a five day fixed term exclusion on 28 April 2023. Each exclusion was followed by an equal number of days of “referral”, or isolation. She contended that these fixed term exclusions were procedurally unfair in that she was not given an opportunity to respond to what was alleged against her before the decisions were made by the Headteacher (“Grounds 4(a) and (b)”).
8. The School’s case was that the PRP does not “*interfere*” with the Claimant’s freedom to manifest her religion or belief for the purposes of Article 9 ECHR. Nor does it subject her to a “*detriment*” for the purposes of section 85(2)(f) of the Equality Act 2010. Islam permits the Claimant to make up for missing Duhr by performing Qada prayers later in the day and, even if this were not so, she chose a secular school which she knew to have a strict behavioural regime and she is free to transfer to a school which would permit her to pray if she wishes to do so. The School argued that any interference with the Claimant’s religious freedom was in any event justified, as was any indirectly discriminatory effect of the PRP itself, principally because the performance of ritual prayer would conflict with the School’s ethos and its behavioural rules, and because the practicalities of pupils doing so mean that it cannot be accommodated by the School.

9. As for Grounds 3 and 4, the School argued that it did have “*due regard*” to the required considerations under section 149 of the 2010 Act when the PRP was introduced. The allegation of breach of the PSED was therefore denied. Moreover, there was no breach of the duty to act fairly in the decision making which led to the fixed term exclusions of which the Claimant complained. In relation to these Grounds of challenge, the School also contended, in the alternative, that it is highly likely that the outcome would not have been substantially different had a compliant approach been adopted. Relief should therefore be refused pursuant to section 31(2A) of the Senior Courts Act 1981.

### **The Court’s decision**

10. For the reasons explained in the Judgment, the conclusion of the Court was that all of the Grounds of challenge other than Ground 4(b) failed.
11. Ground 1 was rejected for two reasons. First, the PRP did not “*interfere*” with the Claimant’s freedom to manifest her religious beliefs under Article 9 ECHR. She had chosen the School knowing of its strict regime; on the evidence she was able to move to a suitable school which would allow her to pray at lunchtime; and, in any event, she was able to perform Qada prayers in order to mitigate the fact that she was not able to pray at the allotted time. Second, the PRP was in any event justified under Article 9(2) ECHR given the ethos of the School and the practicalities of facilitating prayer for Muslim pupils at lunchtime.
12. Ground 2: it was accepted that not permitting the Claimant to perform the Duhr prayer at the allotted time was a “*detriment*” for the purposes of the Equality Act 2010, and that the PRP put Muslim pupils at a “*particular disadvantage*” given that they were more likely than non-Muslim pupils to wish to pray during the school day. The PRP therefore had an indirectly discriminatory effect. However, it was “*a*

*proportionate means of achieving the legitimate aims*” of the School and was therefore justified, essentially for the reasons given in the context of the claim under Article 9 ECHR. The disadvantage to Muslim pupils at the School caused by the PRP was outweighed by the aims which it seeks to promote in the interests of the School community as a whole, including Muslim pupils.

**13.** Ground 3: in substance the School had had due regard to the required equality issues in relation to the PRP and therefore had complied with the PSED. Even if it had considered these issues more thoroughly, as the Claimant argued it should have, it would have come to the same conclusion.

**14.** Ground 4:

(a) The Headteacher had not acted unfairly in failing to ask the Claimant for her version of events before excluding her for 2 days on 23 March 2023. Even if she had asked the Claimant for her account, the outcome would have been the same. The Headteacher’s decision was based on the evidence of a senior teacher that the Claimant had been extremely rude and defiant towards her in front of other pupils, and in the context of concerns about growing numbers of pupils using prayer mats to pray in the school yard in what appeared to be coordinated action. The Headteacher was fully entitled to accept the teacher’s account. Ground 4(b) therefore failed.

(b) However, the Headteacher had acted unfairly in excluding the Claimant for 5 days on 28 April 2023 on the basis of what she was told by a teacher after an investigation which did not include asking the Claimant for her account. The second fixed term exclusion related to allegations by fellow pupils about remarks by the Claimant, some of which were said to have been made months earlier but had not been complained of at the time. She ought to have been

asked for her version of events so as to establish the facts before the Headteacher made a decision. Nor could it be said that the outcome would have been the same if the Claimant had been asked. Ground 4(b) therefore succeeded.

16 April 2024