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*(subject to editorial corrections)**

2016 No 027106

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

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EM's Application (Judicial Review) [2016] NIQB 80

IN THE MATTER OF AN APPLICATION BY EM TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF ONGOING DECISIONS MADE BY THE STAFF AND THE BOARD OF GOVERNORS OF X SCHOOL FOLLOWING THE REPORTING OF AN INCIDENT ON 21st OCTOBER 2015

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ANONYMISATION

[1] I have anonymised the name of the applicant in this matter by the use of initials. I have taken a similar course in relation to other persons involved in the incident and in relation to schools and teachers. The reason for doing this is that children are involved. I make an order providing that no person shall publish any material which is intended or likely to identify the applicant or any child involved in these proceedings or an address or school as being that of a child involved in those proceedings except insofar (if at all) as may be permitted by the direction of the Court.

INTRODUCTION

[2] I am obliged to the assistance of counsel in this matter for their exemplary written and oral submissions. Ms Walkingshaw appeared on behalf of the applicant and Mr Sayers on behalf of the respondent.

[3] The background to this matter is set out in the various affidavits filed and in the exhibits attached to those affidavits.

[4] The circumstances giving rise to this application make sorry reading.

[5] The applicant (hereinafter referred to as "EM") brings these proceedings through his mother and next friend. He commenced Year 8 at School X in September 2015. On 14 October he, along with other Year 8 students, attended at an adventure centre as part of an overnight school trip.

[6] Before dinner he was in a room with five other students when they began playing a game of "dare". As the game progressed a dare was suggested which resulted in EM being pinned to the floor by one boy while another boy pulled his trousers down and masturbated him. The matter was witnessed by the other boys in the room.

[7] The matter was not reported at that time but on 21st October two 6th Form mentors, having learned of the incident, reported the matter to a Year 8 teacher after 21st October at 3.10pm. That teacher completed an Incident Report Form and the matter was brought to the attention of the Head of Year 8 and to the designated teacher with responsibility for issues of child protection who also shared the position of Acting Principal of the school at that time. I have received a detailed affidavit from that teacher (hereinafter referred to as "MMcC").

[8] Seven pupils – five of whom were aged 11 years and two of whom were aged 12 years – were identified as having been present at or about the time of the incident. These pupils were brought to MMcC's office (with the exception of one who had left school) and were spoken to about the matter.

[9] A note prepared by the Year Head of the meeting records:

> *"A very disjointed story around some form of `dirty dare' following arm wrestling match. `Pupil A' was very upset as the boys had been calling him names. BMD told all of the boys to contact their parents and invite into school tomorrow morning – felt it would be better to discuss face to face – parents to be told there had been some form of incident and to ask their son what he knows."*

[10] During the course of the meeting Pupil A (whom it is alleged touched EM inappropriately) became very upset and he was brought home to his parents by MMcC.

[11] After this meeting MMcC contacted the Education Authority to inform the Duty Child Protection Officer (although no one was available at that time). He also contacted the school Principal who was absent from school as the result of a medical appointment, discussed the matter with her and then advised the Chairperson of the Board of Governors of the incident.

[12] At 8.40 am on the following morning, Thursday 22nd October 2015, MMcC made contact with the Duty Child Protection Officer at the Education Authority who

advised that the matter would be discussed with the authority and that advice would be provided in relation to the involvement of Police and/or Social Services.

[13] During the course of the morning he along with the Principal met with each pupil and at least one parent of each. During the meeting the pupils were asked to give an account of the incident. Each parent was advised that the Education Authority's Child Protection Team had been made aware of the matter and would provide advice to the school. MMcC avers that in light of the nature of the incident it was more than likely that the matter would be passed to Social Services and/or the Police Service of Northern Ireland. The applicant's mother disputes that there was any reference to the Social Services or the PSNI although reference is certainly made to both in the "Summary of Parental Meetings" which was exhibited to MMcC's affidavit.

[14] After the meeting it was agreed by MMcC and the Principal that all information should be provided to the Education Authority's Child Protection Support Services for Schools ("CPSSS") and that guidance from that service should be followed.

[15] MMcC avers that after these meetings he met with the Chairperson of the Board of Governors and the Principal where they discussed the next steps to be taken. The applicant's mother is sceptical about whether such a meeting took place, in particular, given the absence of any notes of such a meeting, but I have no reason for doubting the sworn account from MMcC in this regard.

[16] At 4.00pm on 22nd October 2015 the school received guidance from the Education Authority, which identified three options to be discussed with the mother of the applicant:

- The mother of the applicant could contact police directly;
- The school could contact police and advise of the incident;
- Due to the age and stage of development of the children, the school could deal with the incident.

[17] MMcC contacted the applicant's mother to inform her of the Education Authority's response at 4.25pm by which time she had already contacted the Health and Social Services Trust Gateway Team as a result of which the matter had been brought to the attention of the Duty Social Worker. MMcC then made contact with that Social Worker who advised that Social Services would talk to the applicant and let him decide the appropriate course of action to take in respect of police involvement. At 5.30pm he informed the Child Protection Officer of the Board of Governors of the situation as it then stood.

[18] On Friday 23rd October (by which stage the pupils were on mid-term break) the names, addresses and contact details of the pupils concerned were passed to Social Services in accordance with Education Authority advice.

[19] CPSSS indicated to the school that the investigation of the matter would proceed under the *Protocol for Joint Investigation by Social Workers and Police Officers of Alleged and Suspected Cases of Child Abuse – Northern Ireland (April 2013)*. MMcC stresses that the investigative role under the *Joint Protocol* is discharged by Social Services and the PSNI, and CPSSS made clear that during that investigation the school's role was to support the pupils for whom it had responsibility.

[20] On Monday 2nd November 2015 (on which date school commenced following the mid-term break) all staff were asked at the 8.55am briefing to be vigilant in light of an incident, characterised as bullying, within Year 8; all information and/or concerns were to be passed to the designated teacher.

[21] On that date four of the pupils (not including the applicant) attended school and MMcC spoke with each as did their Head of Year. The boys were offered support and encouraged to approach staff if anyone was talking about the incident.

[22] At 9.10am on that date an assembly was held for Year 8, which revisited the school's stance in respect of bullying. On that date the applicant's mother also contacted the school and advised that she had been told by Social Services that the school should deal with the incident by way of its disciplinary procedures. At that stage MMcC informed the applicant's mother of the advice received from the Education Authority to the effect that control of the investigation presently lay with Social Services and the PSNI, and indicated the Board of Governors would convene after this investigation was concluded to address the matter with reference to the school disciplinary procedures.

[23] In the afternoon he made a call to the Education Authority Child Protection Officer, who confirmed the propriety of the school's actions. The residential centre where the incident took place was informed of the report received. At 4.20pm he received a call from a representative of CCMS, who had received a call from the applicant's mother. CCMS indicated that it was content that the school was observing applicable policies and procedures.

[24] The applicant returned to the school on 3rd November 2015.

[25] On Monday 9th November 2015 MMcC was advised that Pupil A would return to school the following day. In his affidavit MMcC sets out that in anticipation of that return a plan was put in place that sought to address the potential for adverse interactions with others including the applicant. This is described as a support plan which also operates and is intended also to operate, to protect other children concerned. In effect this involved Pupil A attending a classroom made available at breaks and lunchtimes which limited his ability to socialise with other pupils. It is supervised by three classroom assistants and at any particular time they cater for approximately 10-15 children. It was also agreed that a Pupil B (who was the person who pinned EM down during the relevant incident)

would voluntarily attend a safe space at breaks and lunchtimes. It was further arranged that Pupil A would start school late and finish early.

[26] The applicant's mother was advised by telephone on 10th November 2015 the pupil had returned to school and was subject to arrangements by which he was not permitted access to the school yard at breaks and lunchtimes.

[27] On Wednesday 11th November 2015 the school arranged for the delivery to all Year 8 pupils of a NEXUS programme about respect for others, e-safety and cyberbullying.

[28] By letter dated 13th November 2015 solicitors on behalf of the applicant and his mother wrote to the school advising of her fears of the impact upon EM of attending school alongside the alleged perpetrators of the assault. The letter also expressed EM's mother's discomfort at having to attend a meeting with the parents of the perpetrators and requested a meeting with the school's Child Protection Officer.

[29] A response dated 18th November 2015 indicated that the school was happy to meet the applicant's mother at her earliest convenience.

[30] On 24th November 2015 MMcC returned a call from the applicant's mother who expressed a view that the school was not taking the matter seriously and was brushing it under the carpet. Her view was that the police had told her that the school was in a position to act. MMcC made it clear that the school was also frustrated at the apparent lack of progress in relation to the matter but he stressed that the school had received clear advice from the Education Authority that it was proper for the investigation of the matter to be conducted under the *Joint Protocol*. EM's mother indicated that she would like to meet with the "Board". Mr MMcC took this to refer to the Education and Library Board and the note of the conversation indicates that he contacted the Child Protection Officer at the Education Authority at the material time and he indicated that "… happy for EA to be involved for a meeting."

[31] A further meeting then took place between MMcC and EM's mother and her friend on 26th November 2015. At that meeting it is clear that the applicant's mother wanted the perpetrators suspended. MMcC avers that he made it clear that the investigation had to take place under the *Joint Protocol* and that until such investigation was concluded suspension would not be appropriate. It appears this meeting was also attended by a representative from the Education Authority. During the meeting EM's mother also expressed concern about the fact that EM had contact with the perpetrators during PE and Maths classes. In relation to Maths class her concern was that although the pupils were in different classes the classrooms were beside each other with the door of the classroom being left open with the result that he could see the perpetrators during the class. She raised a concern that Pupil B

was in the same PE class as the applicant on 10th November 2015 and the school indicated that it would seek to address this concern.

[32] As a result of these representations the door to the applicant's Maths classroom had been kept closed at all times, save when being used. He indicates that all reasonable steps were taken to avoid any interaction between the pupils but records that regrettably an incident occurred on 22nd February 2016 when Pupil A had forgotten his swimming gear but had PE gear. This meant that he could not attend the swimming and instead remained in school. Another teacher from the school took responsibility for this lesson without knowledge of the applicant's situation. As a result, the applicant was not separated from others involved in the PE class on this date.

[33] In the course of the meeting on 26th November 2015 the applicant's mother also inquired about ADHD assessment and counselling. MMcC avers that there was a waiting list for these services but the applicant would be entitled to priority.

[34] On 5th January 2016 which was the first date on which a counsellor was available to see him the applicant saw a councillor from Family Works (which provides counselling services to the school). EM's mother was disappointed that she was not informed in advance of the counselling and she contacted the school on 6th January to complain about this.

[35] On 26th January MMcC noted a request from the applicant's mother via the School Nurse for additional external counselling, which was pursued by the School Nurse.

[36] In relation to PSNI contact it appears they first contacted the school on 8th January 2016. Thereafter MMcC met with the police at Grosvenor Road PSNI Station on 11th January 2016 at which stage he made available his summary of the parental meetings together with related statements. His note of the meeting includes the following:

> "*Police clear investigation was with them plus it would not be appropriate for school to follow any other actions other than those the school were currently following.*"

[37] It appears that the PSNI investigation is ongoing and I was informed at the morning of the hearing that "*there are 3-4 pupils still to be spoken who I believe were present in the room when the alleged offence occurred.*" Whilst I have no doubt that the PSNI have many investigations to conduct it is regrettable that this investigation appears to be proceeding at such a slow pace. It seems that almost one year post-incident there are still 3-4 pupils who have not yet been interviewed about the matter.

[38] The applicant has not attended the school since 22nd February 2016 and transferred to another school on 29th day of February 2016.

THE APPLICANT'S CASE

[39] In these proceedings the applicant seeks to quash:

> "The ongoing decision of the respondent not to convene a meeting of the Board of Governors in order to carry out a comprehensive review of its policies, practices and decisions in respect of the ongoing schooling of the applicant and the perpetrators in light of the need to make the welfare of the victim paramount in order to prevent ongoing human rights breaches."

[40] In general terms the applicant through his mother is most unhappy about the failure by the school authorities to suspend and to consider the expulsion of pupils who were involved in the assault. She is unhappy that any disciplinary action is being suspended pending the PSNI investigation. She feels that the school has been more concerned about protecting the perpetrators of the assault than protecting her son. She is particularly concerned that the school's sympathies lie disproportionately with Child A and his family because of his reported distress. She feels the school has let her son down and believes that disciplinary measures should be implemented against Child A and Child B in particular. The legal basis for her challenge is two-fold. Firstly she argues that the respondent has failed to properly implement the relevant statutory guidance governing disciplinary procedures for the school. Secondly she argues that the respondent has acted irrationally in unreasonably fettering its discretion in waiting for the conclusion of the criminal investigation before taking disciplinary action. She argues there is no good reason for not following the relevant statutory scheme and that she has a legitimate expectation that the respondent would follow that scheme.

ALLEGED ILLEGALITY

[41] Article 49(2) of the Education and Library (Northern Ireland) Order 1986 ("the 1986 Order") provides that:

> "The Council for Catholic Maintained Schools shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from Catholic Maintained Schools."

[42] Article 49(4) provides that:

> "A scheme prepared under Paragraph (1), (2) or (3) shall provide that a pupil may be expelled from a school only

> by the expelling authority and shall include provision for such other matters as may be prescribed."

[43] Regulation 3 of the Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995 (As amended) ("the 1995 Regulations") provides that:

> "Without prejudice to the generality of Article 49(4) of the 1986 Order a scheme prepared under Article 49(1), (2) or (3) of that order shall include provision for the following other matters, that is to say –
>
> (a) a pupil may be suspended from school only by the Principal;
>
> (b) an initial period of such suspension shall not exceed 5 school days in any one school term;
>
> (c) a pupil may be suspended from school for not more than 45 school days in any one school year;
>
> (d) where a pupil has been suspended from school the Principal shall immediately –
>
> (i) give written notification of the reason for the suspension and the period of the suspension to the parent of the pupil, to the Board and to the Chairman of the Board of Governors and, in the case of a pupil suspended from a Catholic Maintained School, to the local Diocesan offices of CCMS; and
>
> (ii) invite the parent of the pupil to visit the school to discuss the suspension;
>
> (e) the Principal shall not extend the period of suspension except with the prior approval of the Chairman of the Board of Governors and shall in every such case give written notification of the reasons for the extension and the period of extension to the parent of the pupil, to the Board and, in the case of a pupil suspended from a Catholic Maintained School, to the local Diocesan offices of CCMS;

(f) a pupil may be expelled from a school only after serving a period of suspension;

(g) a pupil may be expelled from a school only after consultation about his expulsion has taken place between the Principal, the parent of the pupil, the Chief Executive of the Board or another officer of the Board duly authorised by him and the Chairman of the Board of Governors and in the case of a Catholic Maintained School the Director of CCMS or another officer of CCMS duly authorised by him, provided any neglect or refusal on the part of the parent to take part in such consultations shall not prevent a pupil being expelled from the school;

(h) the consultations referred to in paragraph (g) shall include consultations about the future provision of suitable education for the pupil concerned;

(i) where a pupil has been expelled from the school the Principal shall immediately give written notification to the parent of that pupil of his right to appeal the decision to expel that pupil, of the time limit set by the Board for lodging the appeal and of where the appeal may be lodged."

[44] The relevant scheme under the legislation is the "*Scheme for the Suspension and Expulsion of Pupils*" published by the CCMS. Ms Walkenshaw on behalf of the applicant relies on paragraph 13(2) of the scheme which states:

> "*Where an incident occurs which is clearly or may possibly be of a criminal nature, the police, parent/guardian together with the Senior Management Officer, Designated Officer of the local ELB and Social Services must be consulted by the Principal and a suspension invoked immediately, pending arrangements being made for the consideration of an expulsion.*"

[45] She argues that the scheme could not be clearer. In this case an incident has occurred which is "of a criminal nature". That being so a suspension should be invoked immediately pending arrangements being made for the consideration of an

expulsion. An expulsion would require convening a meeting of the Board of Governors.

[46] She goes further and says that the matter is also covered by paragraph 14 of the scheme under the heading "**Single major incident"** which states that:

> "Where a `single major incident' occurs, the pupil is suspended and consultative meeting and a meeting of the Board of Governors must be arranged as soon as is practically possible."

It is argued that on any showing this must be a major incident which should be followed by suspension.

[47] It is argued that the school is under a mandatory obligation to suspend in the circumstances of this case.

[48] In relation to the second limb of her argument it is submitted that the school has unlawfully fettered its discretion by waiting until the conclusion of any criminal proceedings before a decision on suspension. To do so is an unreasonable exercise of the respondent's discretion (if it has any). Furthermore it is submitted that the applicant has a legitimate expectation that the school will follow the guidance to which I have already referred.

[49] In general terms it is argued that there is no good reason for the delay as it serves no useful purpose and is detrimental to the victim and to the promotion of good behaviour at the school. She specifically rejects the reasons put forward by the school for its decision not to suspend any pupil arising from the incident and not to convene a meeting of the Board of Governors to consider an expulsion.

THE RESPONDENT'S CASE

[50] The respondent argues that the applicant has erroneously read paragraph 13.2 and 14 of the scheme as imposing a *mandatory* requirement of suspension and a consideration of expulsion in any case involving conduct that may possibly be of a criminal nature. In terms of any irrationality challenge Mr Sayers on behalf of the respondent argues that notwithstanding the genuinely held view of the applicant that disciplinary action could and should have been taken by the school before the conclusion of a police investigation the school has taken a view, rationally available to it, that disciplinary action should not be invoked at this stage.

CONCLUSION

[51] Before coming to any conclusion it must be stated unequivocally that the applicant in this case was a victim. He in no way can be held to blame for what took place. The affidavit filed on behalf of the school asserts that this has been made clear

to both the applicant and his mother and that all appropriate pastoral care has been made available to him. Notwithstanding this the applicant has left this school and is now attending another school. I was very concerned to hear from Ms Walkenshaw at the hearing that EM is now experiencing difficulties in settling at his new school and wishes to return to his original school but would be unhappy to do so while the perpetrators of the assault remain at the school. He feels that because there has been no suspension or disciplinary action taken against the perpetrators the school has failed to recognise that he is a victim and that there is some equivocation on behalf of the school about the matter. In the course of the hearing the school made it clear that it was happy and willing to accept the pupil back.

[52] I do have some concerns about the terms of the actual relief sought in the Order 53 statement. The relief sought does not expressly seek the suspension of any pupil. It is clear however from the submissions on behalf of the applicant that that is precisely what is being sought and the implication is that a Board of Governors' meeting can only be called when a suspension has taken place with a view to potential expulsion. Thus a meeting of the Board of Governors "in order to carry out a comprehensive review of its policies, practices and decisions in respect of the ongoing schooling of the applicant and the perpetrators in light of the need to make the welfare of the victim paramount in order to prevent ongoing human rights breaches" would not it seems to me necessarily result in the outcome sought by the applicant. Indeed I do not know how the Court could make an order compelling the school to suspend any pupil without putting that pupil and his parents on notice.

[53] However having made that comment I turn to consider the arguments concerning how the scheme applies in the circumstances of this case. Before focussing on the specific paragraphs relied upon by the applicant it is of course important to consider the scheme as a whole. Firstly the purpose of the scheme is to specify "*the Procedure to be followed in relation to the suspension or expulsion of pupils;*" (my underlining) – Article 49(2) of the 1986 Order.

[54] It is clear from the scheme as a whole that the question of suspension and if necessary consideration of expulsion lies within the discretion of the Principal.

[55] Thus the scheme sets out **fundamental principles** at paragraph 1.1 which include the following:

> "*When a pupil fails to meet the minimum required standards of behaviour, the school is entitled to impose such sanctions as are outlined in the School Disciplinary Policy. These may include suspension and, if necessary expulsion.*"

[56] Addressing **suspension**, the scheme notes that a suspension is a severe sanction, but indicates at paragraph 3.3 that:

"While adhering to the fundamental principles as outlined on page 1 of the scheme, the Council for Catholic Maintained Schools (CCMS) recognises that there will be times when a Principal has no alternative but to suspend or recommend the expulsion of a pupil."

[57] Paragraph 4 of the Regulation makes it clear that:

"A pupil may be suspended from the school only by the Principal."

Paragraphs 6 and 7 of the scheme refer to suspension in normal circumstances and suspension in exceptional circumstances respectively. Paragraph 8 sets out **some considerations before implementing the scheme for suspension and expulsion of pupils.**

[58] Paragraph 8.1 provides:

"The arbitrary use of suspension and expulsion is not only unacceptable but also unlawful. It is a requirement … to have a set of school rules in place. In the interests of avoiding any misunderstanding, these should be drawn up in such a way as to be clear to both pupils and parents/guardians. Together with effective discipline and pastoral care policies these rules should be applied as a first step before a suspension or ultimately an expulsion take place."

Paragraph 8.3 provides:

"It is good practice to:

- *Adopt and apply criteria which are clear, fair and known to all.*
- *Promote higher standards of classroom management where appropriate.*
- *Consider fully the circumstances which led to the behaviour and whether any effective alternative approach to suspension/expulsion is possible.*
- *Apply the minimal period of suspension as appropriate in the circumstances;*
- *Consider issuing a discipline contract either as a measure immediately following the cessation of an extended period of suspension or alternatively as a 'last chance' option before expulsion is considered."*

Paragraph 8.4 provides:

> Factors which might impact on decision making, as examples, include:
>
> - the age and state of health of the pupil;
> - child with an education disability;
> - pupil living in a home with known serious tensions in family relationships;
> - extent to which parental, peer or other pressure contributed to the behaviour;
> - socio-economic deprivation;
> - the degree of severity of the behaviour;
> - whether the incident was perpetrated by the pupil on his/her own or as part of a group."

[59] It would be immediately obvious that some of these considerations are directly relevant to the circumstances of this case.

[60] It seems to me that a proper reading of the scheme is that the procedural requirements only apply when the Principal is minded to suspend or recommend expulsion. This is consistent with the paragraphs which precede 13 and 14 which make it clear that suspension is only appropriate when a Principal "has no alternative but to suspend or recommend the expulsion of a pupil".

[61] If it were held that paragraph 13.2 was a mandatory requirement this in my view is inconsistent with the overall reading of the scheme. Furthermore it could lead to absurd results (as where, for example, a child commits a low value theft or common assault at school). It could not be right that this would require suspension as clearly disciplinary consequences well short of that would be appropriate in such circumstances.

[62] That the scheme relates to the procedure to be adopted is further emphasised by the references in paragraphs 6 and 7 to normal circumstances and exceptional circumstances. In relation to the latter paragraph 7.1 provides that:

> "In exceptional circumstances and because of the grave nature, or the gross extent, of any behaviour a pupil may be suspended immediately."

Thus even in exceptional circumstances there remains an element of discretion before a suspension is imposed. Thus the procedural requirements of the scheme in respect of cases in which the Principal may recommend expulsion do not fall to be applied where the Principal is not minded so to recommend. In this case the Principal came to the view that suspension was not considered appropriate in the case of any pupil on the information available to the school and in circumstances

where there was an on-going investigation in accordance with the joint protocol to which I have referred above.

[63] Given that this is my view the question then remains whether in deciding not to invoke a suspension in this case the school has acted irrationally. At the outset I should make it clear that the mere fact of a police investigation does not mean that a school is not free to impose a suspension if it is so inclined. Certainly the fact of an on-going investigation would be a relevant factor to be taken into account but this alone would be insufficient to justify a failure to consider a suspension.

[64] What then has the school done and what is the basis for a decision not to suspend any pupils at this stage? Mr Sayers points out five matters which he says demonstrate the proper and appropriate response by the school in this case. Firstly he points to the promptness of the response when the school became aware of the matter. Secondly, he argues that the school was correct not to investigate the matter in any detail having regard to the joint protocol between the Social Services and the PSNI and the fact that CPSS made it clear that during the investigation the school's role was to support the pupils for whom it had responsibility. Thirdly, the school sought advice from the appropriate authorities and acted on that advice. Fourthly, it was submitted that the school was aware of its disciplinary power but having considered the matter and having regard to the guidance provided in the CCMS scheme decided not to suspend any pupils at this stage and not to engage in the type of investigation which was specifically warned against in the joint protocol. It was not appropriate they say to refer the matter to the Board of Governors (although the Chairman was informed of the school's view) until such time, if any, that the Principal came to the view that suspension and/or expulsion was merited. Finally and fifthly the school did put measures in place to support the applicant and to place restrictions on Pupil A to avoid any further contact with the applicant. It is clear from the contents of the affidavits that this was not completely successful, something which is of regret to the school.

[65] In short it is argued that the school has sought to respond sensitively and effectively to an incident involving a number of Year 8 pupils, newly arrived at the school, by placing a primary focus on the school's pastoral care responsibilities and putting in place measures intended to provide support and ensure the protection of pupils involved, while facilitating the investigation by the appropriate agencies of the incident itself. I agree with this submission.

[66] For the reasons set out above I determine that the school has not acted illegally in terms of an alleged failure to implement the CCMS scheme in relation to suspensions and expulsions.

[67] In terms of the irrationality challenge to the school's decision I accept that the school has taken a view which was rationally available to it. I fully accept that the applicant has a genuinely held view that disciplinary action should have been taken by the school irrespective of any police investigation. Indeed had the school

determined to suspend some of the pupils involved in the matter, on the presumption that the proper procedure was followed it seems to me that such a decision would not have been susceptible to a legal challenge.

[68] However as per the seminal judgment of Lord Diplock in Thameside Metropolitan Borough Council [1977] AC 1014 (HL) at 1064F:

> "The very concept of administrative discretion involves the right to choose between more than one possible course of action upon which there is room for reasonable people to hold different opinions as to which is to be preferred."

[69] I therefore conclude that the approach of the school falls within the bounds of the responses rationally open to it and for that reason I dismiss the application.