Neutral Citation No: [2021] NIQB 87	*Ref:* ROO11623
*Judgment: approved by the Court for handing down (subject to editorial corrections)**	ICOS No: Delivered: 06/10/2021

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION
(JUDICIAL REVIEW)

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IN THE MATTER OF AN APPLICATION BY JR164 (A MINOR) BY HIS MOTHER AND NEXT FRIEND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND IN THE MATTER OF THE DECISIONS OF THE SCHOOL EXPULSION APPEAL TRIBUNAL

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Ms Kyle BL (instructed by Nicholas Quinn Solicitors) for the Applicant
Ms Kiley BL (instructed by The Education Authority) for the Respondent
Ms McCartan BL (instructed by Murphy O'Rawe Solicitors) on behalf of the Notice Party School

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ROONEY J

Anonymity

[1] On the basis that the applicant is a minor, I grant him anonymity and he is to be referred to as JR 164. Nothing is to be published from this judgment which would identify the applicant and his family.

Introduction

[2] The applicant applies for judicial review of the decisions of the School Expulsion Appeal Tribunal ("the Tribunal") dated 16 March 2021.

[3] The background facts are as set out in the Affidavit evidence filed on behalf of the parties. In summary, the applicant, a 17 year old pupil, was expelled from school on 14 December 2020 because of abusive on-line activity directed at his teachers. It appears that the applicant gained access to the school's online learning system, sent abusive emails to several teachers and impersonated teachers by sending emails in their names to other staff members.

[4] A consultative meeting was convened by the school on Monday 7 December 2020 to consider the applicant's behaviour. On Wednesday 9 December 2020 a Board of Governors meeting considered the school principal's recommendation that the applicant be expelled from school. The applicant's parents were unable to attend the meetings due to the fact that one of the family members was exhibiting symptoms of Covid-19 and the family were required to isolate at home. As considered in further detail below, no alternative arrangements were made for the applicant or his parents to attend the meetings. The applicant alleges that the minutes of the 7 December 2020 meeting were silent on the issue of whether lesser sanctions to expulsion were considered. The minutes of the meeting on 9 December 2020 stated that alternative options to expulsion were considered, but details of same were plainly lacking from the minutes. The unanimous decision of the Board of Governors on 9 December 2020, apparently applying the Education Authority Scheme for the suspension and expulsion of pupils ("EA Scheme"), was to expel the applicant from the school from 14 December 2020.

[5] On 12 January 2021 a differently constituted Board of Governors heard the applicant's appeal against the expulsion decision made on 9 December 2020. The Board of Governors concluded that the requisite process had been followed and confirmed the decision to permanently exclude the applicant from the school. On 1 February 2021 the applicant's parents filed an appeal to the Education Authority's School Expulsion Appeal Tribunal. The Tribunal hearing took place, remotely, on Wednesday 24 February 2021. The applicant's parents and representatives from the school made representations to the Tribunal. Following the hearing, the applicant's mother emailed further submissions to the Tribunal for consideration. Additional submissions were sent to the Tribunal on 25 February 2021. The school responded to the said submissions on 1 March 2021. More submissions were made by the applicant's mother on the same date. It is noted that on receipt of the above submissions, the Tribunal met at various times on 25 February, 26 February and 3 March 2021.

[6] As acknowledged by the Tribunal, their role was to establish whether the correct procedures had been followed and whether expulsion was reasonable taking into account all the relevant circumstances of the case. In their decision dated 16 March 2021, the Tribunal dismissed the applicant's appeal and stated, inter alia, that expulsion of the applicant from the school was reasonable and proportionate. The applicant herewith challenges the Tribunal's decision.

Preliminary Issue on the Standing of the Applicant

[7] At a review before this court on 7 June 2021, counsel for the respondent, Ms Kiley BL, contended that the applicant did not have standing to challenge the decision of the respondent. The court requested written submissions on the issue of standing and indicated that this preliminary issue would be determined in advance of the substantive hearing.

[8] I am grateful to Counsel for their succinct and well researched submissions. At the commencement of the hearing on 7 September 2021, Ms Kiley BL on behalf of the respondent, did not pursue the preliminary argument about standing for the purpose of the leave application. However, it was contended that if leave was granted and the court proceeded to determine the application for judicial review in favour of the applicant, the respondent would invite the court to refuse to grant the relief sought, specifically with regard to the standing issue.

Grounds of Challenge

[9] The applicant's Order 53 statement sets out the grounds of challenge. This court observes that there was an element of overlap and duplication in the pleaded grounds.

[10] Having considered the Order 53 statement together with the applicant's skeleton argument and oral submissions, I am persuaded by the respondent's submission that the grounds of challenge can be distilled into the following four categories:

(1) The Tribunal's conclusion that the school had considered alternatives to expulsion was irrational. This ground has 3 elements:

   (a) the classic Wednesbury unreasonableness challenge, namely, that the Tribunal could not reasonably have concluded that the school had considered alternatives to expulsion on the evidence available to it;

   (b) an alleged failure to undertake reasonable enquiry;

   (c) the decision to expel was irrational because the applicant's conduct did not fall into the categories of matters justifying expulsion applying the EA or the School's scheme for suspension and expulsion.

(2) The Tribunal erred in concluding that any procedural errors in the school's process could be cured by the Tribunal process.

(3) The Tribunal failed to give adequate reasons for the decision.

(4) The Tribunal's decision breached the applicant's human rights.

[11] I propose to consider the lawfulness of the Tribunal's assessments and decision under each of the above four categories. However, prior to undertaking this analysis, it is necessary to set out the relevant statutory framework and legal principles.

Statutory Framework

[12] Article 49 of the Education and Libraries (Northern Ireland) Order 1986 ("the 1986 Order") provides as follows:

> ***"Suspension and expulsion of pupils***
>
> ***49.—****(1) Each board shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from controlled schools.*
>
> *(2) 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.*
>
> *(3) The Board of Governors of—*
>
> *(a) a voluntary school (other than a Catholic maintained school);*
>
> *(b) a grant-maintained integrated school,*
>
> *shall prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from the school.*
>
> *(4) 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.*
>
> *(5) In this Article "the expelling authority" means—*
>
> *(a) in relation to a pupil in a controlled school, the Authority …; and*
>
> *(b) in relation to a pupil in any grant-aided school, the Board of Governors of the school.*
>
> *(6) Every board shall make arrangements for enabling—*
>
> *(a) the parent of a pupil at a grant-aided school; or*
>
> *(b) if the pupil has attained the age of 18 years, the pupil himself,*

to appeal against any decision of an expelling authority to expel the pupil from the school.

(7) Any appeal by virtue of paragraph (6) shall be to an appeal tribunal constituted in accordance with regulations under paragraph (10).

(8) On the hearing of an appeal under this Article the appeal tribunal may –

(a) allow the appeal and direct that the pupil be re-admitted to the school; or

(b) dismiss the appeal.

(9) It shall be the duty of the expelling authority and, in the case of a pupil expelled from a controlled school, the Board of Governors of the school to comply with any direction given under paragraph (8)(a)."

[13] Article 49 of the 1986 Order (as amended) requires the Education Authority ('EA'), the Council for Catholic Maintained Schools, or the Board of Governors of a school to prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from the school. The Authority charged with that statutory duty depends on the type of school in question. In this case, the school was a voluntary grammar school and accordingly the Board of Governors of the school was responsible for devising a scheme pursuant to Article 49(3) of the 1986 Order.

[14] Under Article 49(5) of the 1986 Order, the Board of Governors is the expelling authority. Article 49(6) allows for a right of appeal against the decision of an expelling authority to expel a pupil from the school. Any appeal shall be to an appeal tribunal constituted in accordance with the regulations under Article 49(10).

[15] The Regulations in respect of the constitution and powers of the appeal tribunal are found in the Schools (Expulsion of Pupils) Appeal Tribunal Regulations (Northern Ireland) 1994 as amended by the Schools (Expulsion of Pupils) Appeal Tribunal (Amendment) Regulations (Northern Ireland) 1998. Schedule 1, paragraph 2 of the 1994 Regulations provides for the constitution of the Appeal Tribunal panel. An Appeal Tribunal shall comprise at least one person within each of the following categories:

(a) persons appearing to the board to represent the interests of controlled schools in the area of the board;

(b) persons appearing to the board, after consultation with the Council for Catholic Maintained Schools and such other bodies as the board considers

appropriate, to represent the interests of voluntary schools in the area of the board and persons appearing to the board to represent the interests of grant-maintained integrated schools in the area of the board;

(c) persons who have experience in education and are acquainted with the educational arrangements in the area of the board or are parents of registered pupils at a school.

[16] Paragraph 7 of Regulation 2 of the 1994 Regulations (as amended by the 1998 Regulations) sets out the matters to which the Tribunal must have regard -

> *"7. In considering the appeal, the appeal tribunal shall regard to -*
>
> *(a) any representations made to it under paragraph 4 or 5;*
>
> *(b) whether the procedures in relation to the expulsion of pupils from school were properly followed; and*
>
> *(c) the interests of other pupils and teachers in the school."*

[17] In compliance with its statutory obligation under Article 49(3) of the 1986 Order, the school devised and published its own scheme for the Suspension and Expulsion of pupils (April 2017). It must be emphasised that this scheme is not the same scheme as devised and operated by the Education Authority ('EA') in the case of a controlled school pursuant to the Schools (Suspension and Expulsion of Pupils) Regulations (NI) 1995). The school also compiled and published a Behaviour Management Policy (June 2017) and Online Safety Policy (December 2017).

Consideration of the Grounds of Challenge

(1) The Tribunal's conclusion that the school had considered alternatives to expulsion was irrational.

(a) The Wednesbury Unreasonable Challenge

[18] The applicant submits that expulsion of a child from a school is a draconian measure and that before any decision to expel is made, consideration must be given to alternative sanctions. Based on the evidence, the applicant claims the Tribunal could not reasonably have concluded that the school had considered a range of alternative sanctions to expulsion.

[19] The applicant's parents did not condone their son's behaviour. Indeed, the applicant had admitted his actions were wrong. Both parents drew to the attention of the Tribunal a considerable history of issues and events which they believed caused or contributed to the applicant's behaviour. The lengthy list is as detailed in

pages 2 and 3 of the Tribunal's decision. The applicant's parents argued that these issues were not taken into account and, in essence, challenged the proportionality of the decision to expel when balanced against the potential to impose lesser or alternative sanctions.

[20] The applicant does not accept that his conduct justified expulsion. However, it is further argued that even if the serious nature of his conduct had the potential to cause a significant impact on the staff or other pupils, there was no ascertainable evidence before the Tribunal that the school had considered lesser restrictive options or sanctions to expulsion.

[21] This court notes that the Tribunal was in receipt of the minutes of the Board of Governors' meeting on 9 December 2020 which recorded that "*the Board considered the alternative options available.*" However, as submitted by the applicant, it is clear from the minutes of the consultative meeting on 7 December 2020 and the minutes of the appeal to the Board of Governors on 12 January 2021, that there is no specific reference to any consideration given to alternatives to expulsion.

[22] It is the view of this court that if the Board of Governors did consider alternatives and sanctions to expulsions, these options should have been detailed in the minutes and particularised in their decisions, to include an analysis as to why the options were rejected. Failure to provide the said details is a justifiable criticism and, at the very least, would have prevented the lengthy and contentious debate in this case, not only in relation to the alleged seriousness of the applicant's behaviour, but also whether alternatives to expulsion were given any or any adequate consideration.

[23] The applicant asserts that there is no evidence that alternatives were considered. The school rejects this assertion. In its submissions to the Tribunal, the school claimed that prior to the consultative meeting on 7 December 2020, the applicant's mother indicated that she wished to discuss available options. The Tribunal highlighted the following from the school's submissions:

> "*At the consultative meeting on 7 December 2020, attended by the Chair of the Board of Governors, Principal and Vice Principal [Pastoral] and representatives of the Education Authority, alternative provision was considered including EOTAS but this was not an option due to [the Applicant's] age. Lesser sanctions than expulsion were also discussed but it was felt that these were not an option due to:*
>
> - *The school only had one A level Biology class for which (Ms. X) was the teacher and who was the main recipient of the inappropriate and explicit emails and harassment from [the Applicant].*

- *[The Applicant] could not return to his Form Class: he had sent two foul emails to [Mr Y], Form Teacher.*

- *Changes had already been made to [the Applicant's] timetable to accommodate subject changes.*

- *[The Applicant's] academic record from Year 8 was mixed and the Head of Year had made contact with [the Applicant's] parents in Year 13 with regard to the quality of his work and his overall attendance (p. 5 Tribunal's decision)."*

[24] The Tribunal's conclusion on the issue was stated as follows:

> *"The Tribunal considered that the school had considered alternatives to expulsion, but due to the seriousness of [the Applicant's] behaviour and the number of staff and pupils his behaviour had significantly impacted upon, there were no other viable options available. The Tribunal accepted the effect and impact of [the Applicant's] behaviour on [Mrs X] in particular as outlined in her impact statement. One of the matters a Tribunal must consider is the effect a return of a pupil would have on the staff and pupils and the Tribunal was very conscious of the adverse effect of [the Applicant's] return and presence in the school would have on staff, particularly [Mrs X], whether she would be teaching [the Applicant] or not. The Tribunal had understood that there was only one A level Biology class in [the Applicant's] year group which is taught by [Mrs X].*
>
> *The Tribunal Panel agreed unanimously, after much deliberation, that the Board of Governors … had explored all avenues in relation to the sanctioning of [the Applicant] and agreed with the school that the decision to expel him was reasonable and proportionate. (p. 7 of the decision)"*

[25] It is the decision of this court that the Tribunal did carry out a careful investigation as to whether alternatives to expulsion were considered by the school. In light of the paucity of documentary evidence from the school, it was desirable and indeed prudent for the Tribunal to receive oral evidence as to whether alternatives to expulsion had been considered and, if so, the nature and viability of the options. The Tribunal was in a unique position to assess the credibility of the witnesses and the weight to be attached to their evidence. The Tribunal's decision was that the school had considered alternatives to expulsion. It is the view of the court that the applicant's challenge to the Tribunal's decision on this ground is not sustainable.

[26] Despite the applicant's allegation that the school failed to carry out an investigation into options to expulsion, this court notes that at no stage did the applicant offer any suggestions as to any potential alternative strategies that the school or the Tribunal ought to have considered.

(b) Failure to Undertake Reasonable Enquiry

[27] The applicant contends that, pursuant to the legal test set out by the Court of Appeal in *R (Plantagenet) v Secretary of State for Justice* [2015] 3 All E.R. 361, the Tribunal failed to carry out reasonable enquiries.

[28] The nature and extent of the Tribunal's alleged failure to carry out reasonable enquiries has not been fully particularised by the applicant. The applicant simply argues that, in the absence of evidence in relation to the consideration of alternative options and sanctions, it was incumbent upon the Tribunal to make further enquiries. In this respect, the applicant's submission overlaps with the arguments already considered above at paragraphs [18]-[26].

[29] In *R (Plantagenet),* the Court of Appeal considered the relevant principles at para 100 of its judgment. The principles are summarised as follows:

(i) The application of the decision maker is only to take such steps to inform himself as are reasonable.

(ii) Subject to a Wednesbury challenge, it is for the public body, and not the court, to decide upon the manner and intensity of the enquiry to be undertaken.

(iii) The court should not intervene merely because it considers that further enquiries would have been sensible or desirable. It should intervene only if no reasonable authority could have been satisfied on the basis of the enquiries made that it possessed the information necessary for its decision.

(iv) The court should establish what material was before the authority and should only strike down a decision by the authority not to make further enquiries if no reasonable council possessed of that material could suppose that the enquiries they had made were sufficient.

(v) The principle that the decision-maker must call his own attention to considerations relevant to his decision, a duty which in practice may require him to consult outside bodies with a particular knowledge or involvement in the case, does not spring from a duty of procedural fairness to the applicant but rather from a duty to inform himself as to arrive at a rational conclusion.

(vi) The wider the discretion conferred on the decision maker, the more important it must be that he has all the relevant material to enable him properly to exercise it.

[30] The applicant's argument that the Tribunal failed to undertake reasonable inquiry plainly overlaps with his submission that that the decision maker acted in a way which was *Wednesbury* unreasonable.

[31] Applying the principles in *R (Plantagenet)* to this case, it is this court's decision that there is no evidence to support the submission that the Tribunal failed to carry out any reasonable enquiries or that, on the basis of the enquiries made, no reasonable Tribunal could have reached such a decision.

(c) The decision to expel was irrational because the applicant's conduct did not fall into categories of matters justifying expulsion in the Education Authority's Scheme or School's Scheme for Suspension and Expulsion

[32] The applicant argues that, in coming to their decision to expel, the Board of Governors wrongly applied the Education Authority's Scheme for the Suspension and Expulsion of Pupils. Considerable written and oral argument was advanced by Ms Kyle BL on behalf of the applicant that the school had not fairly applied the criteria specified in paragraph 5.8 of the EA scheme. In support of this argument, Ms Kyle referred to the fact that in the letters to the applicant's parents dated 10 December 2020 and 18 January 2021 ("notification of expulsion letters"), the Board of Governors on each occasion stated that the applicant's behaviour was so serious as to *"warrant expulsion as outlined by the Education Authority Scheme for the Suspension and Expulsion of pupils*." Furthermore, the applicant alleges that despite the importance of the EA scheme in assessing the school's decision to expel the applicant, there is no reference to the EA scheme nor indeed to the school's Suspensions and Expulsions policy at any point in the Tribunal's decision.

[33] The said notification of expulsion letters dated 10 December 2020 and 18 January 2021 present a confused narrative as to whether each Board of Governors, when reaching their decisions to expel the applicant, applied the EA scheme or the school's scheme or a combination of both. As identified by the applicant, the letters expressly state that that expulsion was warranted as outlined in the EA scheme. However, it is noted that the letters also state that the reasons for the expulsion are due to the fact that the applicant's conduct was *"in breach of the school's Behaviour Management Policy and Online Safety Policy."* Despite requests from this court, no satisfactory explanations were provided by the school to alleviate this anomaly or confusion.

[34] I remind myself that the subject of these judicial review proceedings focus on the decision of the Tribunal. I acknowledge that the Tribunal, in reaching its decision, failed to make any reference to the anomalies raised in the said notification letters and whether each Board of Governors applied the correct scheme. The question for this court is whether the Tribunal was cognisant of and applied the school's policy on the Suspension and Expulsion of Pupils (April 2017).

[35] The Tribunal, in reaching its decision dated 16 March 2021, made specific references to "anomalies in the procedures" adopted by the Board of Governors. For example, the Tribunal was aware that the applicant and his parents were unable to attend at the meetings on 7 and 9 December 2020 and were denied the opportunity to make oral representations. The Tribunal also referred to failures to comply with the procedures for arranging the said meetings. The letter of 10 December 2020 failed to give the statutory notification of the right of appeal to the Education Authority's Independent Appeal Tribunal. In making these observations, it is submitted by the respondent that the Tribunal must have been cognisant of and applied the school's own scheme for the Suspension and Expulsion of Pupils.

[36] The respondent alleges that any procedural irregularities were rectified by the decision of the Tribunal which is the subject of the applicant's challenge. Further evidence that, in reaching its decisions, the Tribunal relied on and applied the school's scheme, is demonstrated in the following passage;

> *"Whilst the procedural anomalies were noted the Tribunal was of the view that any procedural breaches by the school were corrected by the Tribunal appeal hearing itself. However, in light of the procedural issues that have arisen in relation to the expulsion of [the Applicant] the Tribunal Panel feel that the Board of Governors of [the school] should review all its relevant policies and procedures in respect of suspension and expulsion." (page 6)*

[37] I am satisfied that the Tribunal did apply the correct scheme. I am also satisfied that the Tribunal considered the matter afresh and applying the relevant criteria considered that the expulsion was reasonable and proportionate in all the circumstances. The Tribunal identified several procedural anomalies and took steps to bring these to the attention of the Board of Governors. Importantly, the procedural irregularities were not permitted to disadvantage the applicant at the hearing before the Tribunal.

[38] As strenuously argued by the respondent, the applicant's misconduct was extremely serious. The teacher, who was the victim of the applicant's misconduct, suffered a sustained a campaign of abusive emails which was documented at pp. 40-45 of the school's submission to the Tribunal. The Tribunal also had a statement from the teacher herself detailing the impact that the applicant's behaviour and actions had upon her.

[39] It is axiomatic that a decision to expel a pupil from school is a draconian measure requiring justification. However, contrary to the applicant's submission, there was clear evidence before the Tribunal that the applicant's behaviour had the potential to cause serious harm to staff and pupils. In all the circumstances, there was ample evidence before the Tribunal to reach its decision that expulsion was appropriate.

[40] Counsel for the respondent, Ms Kylie BL, referred this court to the decision of Girvan J (as he then was) in *Shay Lappin's Application for Judicial Review [Unreported] (delivered) 5/3/2006)* which considered a challenge to a school expulsion Tribunal's decision. Although the challenge in that case succeeded on the ground that the Tribunal had not made adequate enquiry into the facts, Girvan J dismissed other grounds of challenge, emphasising that the question of whether expulsion is appropriate is ultimately a matter for the Tribunal. In other words, a court should not interfere unless the decision was *Wednesbury* unreasonable. At paragraph [8] of the judgment, Girvan J stated as follows:

> *"[8] Had the matter simply stood on the question of whether expulsion was a proper decision on the assumption that the findings of fact were right, I accept [Counsel for the Tribunal's] argument that it is a matter which would not be open to attack, unless it could be shown that the Tribunal had made a Wednesbury unreasonable decision on the question of expulsion … It is entitled to weigh the gravity of the offence in scales and look at all the circumstances to come to its final conclusion on that."*

[41] I am satisfied that there was sufficient material to allow the Tribunal to come to the conclusion that, having considered the nature of the applicant's behaviour and the impact on the staff, expulsion was appropriate in the circumstances. It is clear that throughout the process, the Tribunal remained conscious that expulsion was a sanction of last resort and was to be avoided if there were any options available to deal with the applicant's behaviour.

(2) Whether the Tribunal erred in concluding that any procedural errors in the school's process could be cured by the investigation process adopted by the Tribunal.

[42] It is clear from the Tribunal's decision that it was cognisant of procedural irregularities by the school. The question for this court is whether the Tribunal was not only alive to the procedural irregularities but also conducted a process that was demonstrably fair and took steps to correct the previous errors.

[43] The Tribunal was aware that, due to no fault on their part, the applicant and his parents were unable to attend and to make oral submissions at the consultative meeting on 7 December 2020 and the Board of Governors' meeting on 9 December 2020. It was also noted that the notification of expulsion letter dated 10 December 2020 failed to inform the applicant and his parents of their right of appeal to the Tribunal. On the other hand, the school did give an opportunity to the applicant and his parents to attend and make oral representations to the Board of Governors at the meeting on 12 January 2021.

[44] In *NM Application for Judicial Review* [2012] NIQB 10 Horner J rejected a challenge to a decision of the Expulsion Appeal Tribunal, notwithstanding that there had been an accepted error in the school's hearing process. Horner J stated at paragraph [13]:

> *"[13] In the leading judgment Simon Brown LJ in the St George's Catholic School case said at paragraph 43:*
>
> > *"I for my part find it difficult to think of any case in which the decision reached upon another wise fairly conducted appeal by an independent tribunal following a full merits hearing should be impugnable by reference to unfairness at an earlier stage."*

He went on to say that there was no requirement that any child should have "two fair hearings" and that the earlier hearing would only be relevant if it had infected the second stage."

[45] Horner J further stated at paragraph [15]:

> *"[15] I conclude from the above that when an independent tribunal which comprises members with specialist educationalist expertise and experience reached a conclusion following a fair hearing, a court should grant it a wide measure of appreciation. It should only interfere when the tribunal has obviously erred."*

[46] In this case, the Tribunal did consist of educational and experienced experts. No challenge was made by the applicant as to the constitution, independence and expertise of the Tribunal. The Tribunal conducted a hearing *de novo*. The parties submitted both oral and written submissions to the Tribunal. Even after the hearing had concluded, the Tribunal permitted the parties to make further written submissions. The Tribunal met on three separate occasions, namely, 25 February, 26 February and 3 March 2021 to give careful consideration to all the issues raised by the said written and oral submissions. Any previous procedural errors or irregularities were noted and cured by the Tribunal. It is the view of this court that the hearing was demonstrably fair to the extent that any deficiencies in the earlier process was not permitted to infect the process adopted at the Tribunal hearing. Reference is made also to the court's analysis at paragraphs [35]-[37] above.

(3) Failure to Give Reasons

[47] The applicant contends that it is not possible to decipher from the Tribunal's decision the reasons for the dismissal of the appeal. I have scrutinised the Tribunal's detailed decision which consists of 7 pages. The decision is clear and unambiguous.

The reasons for the dismissal of the appeal are plainly discernible. Accordingly, I reject this challenge.

(4) The Tribunal's Decision breached the Applicant's Human Rights

[48] The applicant's Order 53 statement alleges that his rights under Article 6, Article 8 and Article 2 of the First Protocol have been breached. The said grounds were not specifically addressed in the applicant's skeleton argument, except to state that the Tribunal acted unfairly and contrary to the applicant's Article 6 ECHR right to a fair trial. It must be remembered that the applicant seeks to judicially review the decision of the Tribunal. From the evidence and submissions made to this court, there is no basis for any suggestion or indeed any sustainable arguments that the hearing before the Tribunal was unfair or contravened the applicant's ECHR's rights.

Decision

[49] In light of the urgency of this matter, the application for judicial review of the Tribunal's decision proceeded by way of a rolled-up hearing. I am satisfied that the applicant surmounted the modest test of establishing an arguable case or a case worthy of further investigation. However, on the basis of above analysis of the applicant's grounds of challenge, for the reasons stated, the substantive challenge is dismissed.