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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

JR17's Application No. 1 (Education) - Appeal [2009] NICA 14

AN APPLICATION FOR JUDICIAL REVIEW BY JR17 (EDUCATION)

Before Kerr LCJ, Higgins LJ and Girvan LJ

KERR LCJ

Introduction

[1] This appeal concerns the suspension of a young man from school. Because of his age and that of other pupils who have some association with the events that led to the suspension, we shall not refer to them by name. Nor will we identify the school or the members of staff whose actions will be touched on in this judgment so that the identity of the young people is not disclosed. Nothing should be reported that would tend to identify them.

Background

[2] On 31 January 2007, a female pupil (we shall refer to her as A), who attended the same school as the appellant, made a report to the principal about certain conduct that he had engaged in and which was directed towards her. A was accompanied by a friend, also a young woman. It was

made clear that A did not want her report to be regarded as a formal complaint. She said that she did not wish to be identified as she was in fear of the appellant. Some time later on the same day, the friend who had earlier accompanied A returned to the principal's office. She told him that A was in deep distress and was possibly suicidal.

[3] On 1 February 2007 the vice-principal of the school attended a case conference about the appellant. This had been organised by Social Services and had nothing to do with A's report to the principal. The appellant's maternal grandmother was present. She and her husband had had care of the appellant on a day-to-day basis for some time before the events giving rise to his suspension. The appellant's mother was also at this meeting. In the course of the case conference the vice-principal learned of three allegations involving the appellant. These allegations concerned indecent assault, threatening behaviour and aggravated assault on females (all of which were said to have taken place outside the school). Criminal proceedings in relation to these matters were either in train or in contemplation. An allegation was also made that the appellant had stored indecent photographs of a female pupil on his mobile telephone. This was strongly denied by the appellant's grandmother and has never been substantiated.

[4] The vice principal informed the principal about the further allegations on 2 February 2007. A risk assessment meeting was then arranged for 6 February 2007. This was attended by the principal, the Education and Library Board's child protection officer, and representatives from Social Services and the police service. Neither the appellant nor any of his relatives was invited to be present. At the meeting it was decided that Social Services should carry out what was described as "an assessment of the allegations concerning the female pupil and of its impact on her emotions". It was also decided that the appellant should be suspended from school while the assessment took place. The initial period of suspension was to be for five days but it was recognised that this might have to be extended. Following the Social Services assessment, the Board would convene a formal multi-agency/multi-disciplinary meeting to assess risk.

[5] The appellant had been absent from the school on work experience between 31 January and 7 February 2007. On his return he was summoned to the principal's office and informed that certain allegations had been made about his behaviour in school and that he was to be suspended for a period of five days from 7 February. He was told that he could not be given details of the allegations. On the same date a letter was sent to the appellant's grandparents informing them of the meeting that had taken place the previous day and that, as a consequence of the information presented at the meeting, it had been decided that the appellant "should not remain in school". The letter stated that this action had not been prompted by "an assumption of [his] guilt" of the matters alleged against him but was "a

precautionary strategy" taken in everyone's best interests, including those of the appellant. The letter also stated that school work would be available for collection from the office and it ended with an invitation to the grandparents to contact the principal if they wished to discuss the matter or if they required further information.

[6] According to the appellant's mother, she contacted the principal after seeing the letter of 7 February. When she inquired about the reasons for the suspension, she was told that these would appear from the minutes of the meeting that had been held on 6 February. This assurance was given, she has said, a number of times but the minutes were not in fact received until 18 April 2007. The principal has given a somewhat different account of his contact with the mother after the suspension. According to him, he telephoned her after the meeting with the appellant to inform her that he had been suspended until a meeting could be arranged with the Board's protection officer. He also told the mother that she would be invited to attend that meeting and that she could contact him at any time in the interim to discuss her son's position.

[7] The principal spoke to the chairman of the board of governors to inform him of his intention to suspend the appellant. The chairman expressed his support for the decision. In paragraph 12 of his affidavit, the principal explained his decision to suspend: -

> "I confirm that in reaching my decision to suspend the applicant, I was motivated by the need to protect the female pupil from the applicant. I was mindful of the nature of the allegations which she had made and of the sincerity of her condition. I also made an assessment as to the likelihood of the veracity of her complaints. In this regard, the new information which I received about allegations of assault on females in the community provided an important context to my overall assessment but was not the motivating factor behind the decision. … I was also conscious of advice from the Department of Education that in circumstances where there was conflict between the interests of children, the needs of the victim should be paramount."

[8] The suspension was extended on three occasions, each for a period of five days. At the expiry of the last period on 13 March 2007, the appellant was marked in the school register as 'educated off site' and home tuition was provided by the Board. This continued until 23 April 2007 when the appellant was permitted to attend school to receive assistance with studying

prior to his examinations. On each of the occasions that the suspension was extended, a letter was sent by the principal to the grandparents of the appellant informing them that they could contact him to discuss the matter and, according to the principal, he had three lengthy telephone conversations with the appellant's mother on 7 February, 12 March and 20 March 2007.

[9] The appellant's solicitors wrote to the child protection officer of the Board on a number of occasions seeking information on, among other matters, the appellant's status after the extension periods had ended but before his return to the school. On 18 April 2007, a reply to this query was provided. It was stated that the appellant had been suspended as a precautionary measure, pending the outcome of "appropriate assessment by Social Services". The Board had been waiting for confirmation that this had been completed since 14 March 2007. In fact an assessment had been carried out on that date but it appears that the minutes of the meeting at which this was carried out were not sent to the Board until early May 2007. The letter of 18 April 2007 also stated that since 14 March 2007 the appellant had received "alternative education provision".

[10] On 4 May 2007 a meeting was held at the school. This was attended by the appellant's mother and grandparents, the principal and the Board's child protection officer. At this meeting it was explained that a multi-disciplinary meeting planned to discuss what should happen to the appellant had not been held because of the delay in the completion of the Social Services assessment but it was agreed that such a meeting was no longer necessary since resources were now available to allow for close supervision of the appellant within the school environment.

[11] On 29 April 2007 an application was made for leave to apply for judicial review of the decisions of the principal and the Board to exclude the appellant from the school. An order of mandamus to require the principal to allow him to return to the school was sought. The appellant also asked for a declaration that the respondents had failed to provide him with adequate tuition and that they had deprived him of his education during the time that he had been excluded from the school. Leave was granted and a substantive hearing took place on 10 October 2007. On 6 December 2007, in a reserved judgment, Weatherup J dismissed the application for judicial review. It is from that judgment that the appellant now appeals, although the application for a declaration has not been pursued on the appeal.

The issues

[12] For the appellant, Ms Quinlivan, who appeared with Ms Askin, made five principal submissions: -

1. There was no legal authority to suspend the appellant as a precautionary measure;

2. In any event, the appellant's suspension was for disciplinary purposes and the failure of the respondent (and, in particular, the principal) to observe the duty of candour in the material presented to the court supported that conclusion;

3. In contravention of the relevant regulations and the requirements of procedural fairness, neither the appellants' mother nor his grandparents were given sufficient information about the reasons for the suspension nor were they invited to attend the school to receive an explanation.

4. The period between 14 March 2007 and the appellant's eventual return to school, although described as a time when the appellant was being educated off site, was in effect a period of suspension and the safeguards required for a proper suspension were not applied during that time;

5. At no time was a proper investigation of the allegations undertaken and the appellant was never given the opportunity to refute them.

Precautionary suspension

[13] Article 49 (1) of the Education and Libraries (Northern Ireland) Order 1986 requires each board to prepare a scheme specifying the procedure to be followed in relation to the suspension or expulsion of pupils from schools under its management. The Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995 (as amended by 1998 Regulations/255) make provision for the scheme that the board must prepare. Regulation 3 sets out the matters that must be dealt with in the scheme. The relevant matters (in relation to this case) that must be contained in the scheme are those found in the following paragraphs of the regulation: -

> "(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 reasons for the suspension and the period of suspension to the parent of the pupil, to the Board and the chairman of the Board of Governors and in the case of a pupil suspended from a Catholic maintained school to the local diocesan office of CCMS;

and

(ii) invite the parent of the pupil to visit the school to discuss the suspension.

(e) The principal should 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 office of CCMS."

[14] The board prepared a scheme in compliance with this regulation. It replicated verbatim the provisions contained in paragraphs (a), (b) and (c) of Regulation 3. In relation to the requirements provided for in paragraph (d), the scheme contained the following: -

"3.4 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 and to the Board."

[15] A number of further provisions are contained in the board's scheme. Those that are relevant to the present case are these: -

"Steps to be Followed Prior to Suspension:

4.1 The school's disciplinary policy describes the standards of behaviour expected from pupils and outlines the procedures and sanctions to be adopted when these guidelines are not adhered to.

4.2 The disciplinary policy will provide for the suspension of a pupil in certain circumstances. The option of suspending a pupil for a prescribed period should only be considered;

4.2.1 after a period of indiscipline –

The school is required to maintain a written record of events and of the interventions of teachers, contacts with parents and any requests for external support from the Board's educational welfare and educational psychology services; and/or

4.2.2 after a serious incident of indiscipline –

The school is required to have investigated and documented the incident. The investigation should include an opportunity for the pupil to be interviewed and his or her version of events given before the decision to suspend.

Instigating Suspension

5.1 On taking the decision to suspend a pupil the principal must immediately notify the parents, in writing, of the suspension, its duration and the reasons for the suspension (for sample letters see appendix 2). The letter notifying the parents of the suspension must be sent out on the day of the suspension. If the letter is sent home with the pupil this must be followed by a copy sent by first class post.

5.2 The letter must also invite the parents to visit the school to discuss the suspension. Should the parents accept this invitation the principal may consider it appropriate to invite other parties such as educational welfare, educational psychology or social services. The meeting should be chaired by the principal.

5.3 Schools should keep full notes of the meeting.

> 5.4 A copy of the letter must be sent to the chairman of the Board of Governors.
>
> 5.5 All suspensions from all grant aided schools must be notified to the Board using form S1 (see appendix 3) and accompanied by a copy of the letter sent to the parent.
>
> 5.6 A suspended pupil can only be sent home before the end of the normal school day with the agreement of the parent and only if the pupil can be delivered directly into the care of the parent or of a person previously agreed by the parents.
>
> 5.7 Work should be made available to the pupil during the suspension.
>
> 5.8 On the day of the pupil's return from suspension the pupil should report immediately to the principal or nominated teacher."

[16] It will immediately be seen that there is no express provision dealing with precautionary suspension in either the Regulations or the scheme. This court has expressed the view that the general management powers available to school authorities must be seen to include a power to suspend as a precautionary measure in appropriate circumstances. In *Re M's application* [2004] NICA 32, the scheme under consideration was in broadly similar terms to that involved in the present appeal. It was not argued in that case that there was a power to suspend a pupil that was freestanding of the legislation or the scheme. The case therefore proceeded on the basis that, to be lawful, the precautionary suspension must comply with the requirements of the scheme. On the practical need for a power to suspend as a precautionary measure, we said: -

> "[20] We are satisfied that school principals must have the power, in appropriate cases, to suspend pupils before investigating the full circumstances of an alleged infringement of school rules or other misbehaviour. In those circumstances suspension is not a form of punishment but merely a means of allowing the proper investigation of the allegations. We therefore cannot agree with the judge's comment that because suspension is a severe sanction it is always a form of punishment. Nor do we agree that it may not be used as 'a mechanism to give time for further reflection on

> the ultimate penalty to be imposed'. On the contrary, we consider that it is entirely proper for a principal to suspend a pupil who may face the prospect of expulsion if the allegations made against him are substantiated for the purpose of having the case against the pupil explored. One need only instance a simple example to demonstrate the inevitability of that conclusion. If a pupil was alleged to have assaulted a teacher, it would be inconceivable that the principal should not be able to suspend the pupil pending a full investigation of the incident or a final decision as to what the ultimate punishment should be."

[17] The need to recognise a power to suspend as a precautionary measure was also acknowledged in *Ali v Head Teacher and Governors of Lord Grey School* [2006] UKHL 14, although in that case, the question whether such a power could be said to derive from the statutory code that applied in England and Wales was directly addressed. The relevant code in that case was contained in sections 64 to 67 of the School Standards and Framework Act 1998. It was described as a code that dealt with the exclusion of pupils on disciplinary grounds. At paragraph 36 of his opinion, Lord Hoffmann said this about it: -

> "The statutory code was well adapted to the use of exclusion as a punishment for a serious disciplinary offence, imposed in the interests of the education and welfare of the pupil and others in the school. It is far less suitable for dealing with a case like this, in which the pupil was excluded on precautionary rather than penal grounds."

[18] Because the question was not in controversy between the parties, Lord Hoffmann and Lord Bingham of Cornhill proceeded on the basis that the exclusion of the respondent (because he had been charged with having started a fire in the school) had to comply with the provisions of the code. Both expressed misgivings, however, about the concession apparently made by the school that the respondent could only be lawfully excluded if his suspension met the terms of the statutory code. Section 64 (1) of the 1998 Act provided that the exclusion must be for a fixed period or permanently which, Lord Hoffmann unsurprisingly suggested, indicated that it was to be used as a disciplinary measure after it had been established that a disciplinary offence had taken place. This consideration prompted him to remark that the case could not be shoehorned into section 64.

[19] Lord Hoffmann then considered possible legal justifications for precautionary exclusions other than under the statutory code and at

paragraph 42 discussed the possibility that a school had, as part of its general powers of management, the right to exclude a pupil on precautionary grounds, limited only by the need that it should be reasonably exercised.

[20] Although agreeing with Lord Bingham and Lord Hoffmann that the point did not need to be decided in order to dispose of the appeal, Lord Scott of Foscote expressed the view that the conclusion that the respondent had been unlawfully excluded from the school was wrong. At paragraph 69 of his opinion, he said: -

> "It seems to me clear that the management powers of a head teacher enable him or her to keep a pupil temporarily away from the school for reasons that have nothing to do with discipline. An obvious example is that of a pupil who arrives at school one day suffering from some infectious disease. It may be necessary, in order to safeguard the health of the other pupils and the school staff, for the pupil to be sent home until he or she is not longer infectious. It is to be hoped that the pupil's parents or guardians would agree with this course. But if they did not, the head teacher (or, in the head teacher's absence, his or her deputy) would, in my opinion, have power to impose it. The situation that confronted [the school authorities] is, in my opinion, another example where sensible and responsible management of a school may require a pupil to be kept temporarily away from the school. It would, in my opinion, be lamentable if, by an application of sections 64 to 68 to situations to which they could never have been intended to apply, managers of schools found themselves placed in a statutory straitjacket and prevented from taking sensible decisions to deal with unusual situations."

[21] Baroness Hale of Richmond was less certain. Although she shared some of the expressed misgivings about the applicability of section 64 to the case, she felt that it was possible to regard a "precautionary exclusion pending the resolution of criminal proceedings, especially where these involve what would undoubtedly be a serious breach of school rules as well as of the criminal law, as a step taken on disciplinary grounds". On that account the exclusion for precautionary reasons might, on her analysis, be considered to have been taken on disciplinary grounds.

[22] With profound respect to Baroness Hale, we cannot agree. If an action such as exclusion is taken on disciplinary grounds, it surely takes place on the basis that disciplinary grounds exist *i.e.* that there is a reason associated with discipline for taking the action. If a pupil is excluded or suspended in order to investigate whether an offence has been committed, this cannot, in our opinion, be said to have occurred on disciplinary grounds – it is done in order to investigate whether disciplinary grounds exist.

[23] We respectfully agree with Lord Scott that a head teacher must have, within his management powers, the right to suspend a pupil as a precautionary measure. We do not consider that this power derives from the 1986 Order, the 1995 Regulations or the Board's scheme. It appears to us that the Regulations and the scheme are designed to deal with suspensions and exclusions where there has been a finding that a disciplinary offence has been committed. It is significant that article 49 of the Order and the Regulations deal together with suspension *and* expulsion. This clearly indicates the intention of the legislature that these measures relate to matters of discipline.

[24] The power to suspend a pupil as a precautionary measure does not, therefore, originate from the Regulations or the scheme although, ironically, it appears that the school considered that this was the authority under which the suspension should take place. No doubt, this is what led to the somewhat contrived re-classification of the appellant's absence from school after 13 March 2007 as 'educated off-site'. We are satisfied that the principal of the school, as part of his management powers, had sufficient legal authority to suspend the appellant as a precautionary measure.

[25] It follows from the conclusion that this suspension did not need to comply with the terms of the scheme that it was not subject to the requirements of the scheme or the regulations concerning such matters as the giving of immediate notice to parents or the restriction of the period of suspension. As Lord Hoffmann said, however, a power of precautionary suspension must be exercised reasonably and we shall have to consider later in this judgment the question whether the duty to act fairly has been fulfilled. In this context, the words of Lord Bingham in the *Ali* case provide a salutary reminder of the need for great circumspection in the exercise of the power to suspend or exclude a pupil from school. He said at paragraph 21: -

> "The immense damage done to vulnerable children by indefinite, unnecessary or improperly motivated exclusions from state schools is well-known, and none could doubt the need for tight control of the exercise of this important power."

Disciplinary or precautionary?

[26] Ms Quinlivan argued strongly that, although the appellant's suspension was avowedly for the purpose of obtaining a Social Services assessment, it proceeded on the assumption that the pupil was guilty as alleged. But all the contemporaneous evidence flatly contradicts this claim. The principal's letter to the appellant's grandparents expressly stated that no assumption of guilt had been made and all the references to this issue in the minutes of the meeting of 6 February 2007 are to like effect.

[27] In support of the claim that the suspension of the appellant was a disciplinary measure, Ms Quinlivan referred to a discrepancy in the evidence between the principal and the child protection officer as to when the principal had said that he first learned of the allegation about the appellant's behaviour towards A. She also pointed out that the child protection officer had not sworn an affidavit although she was, counsel claimed, central to the decision that the appellant should remain suspended. We do not consider that either point is in any way significant. The inconsistency between the two accounts is readily explicable as a failure of recollection or a misunderstanding. We do not consider that there was any requirement for the child protection officer to provide an affidavit. The issues that had to be determined were fully ventilated in the affidavits filed on behalf of the respondents. We are entirely satisfied that the suspension was a precautionary measure.

Was sufficient information given?

[28] Weatherup J held that basic information that the complaint from A had led to the appellant's suspension and the Social Services assessment could have been imparted to the appellant's grandparents in the letter of 7 February 2007 as this material was apparent from the minutes of the meeting of 6 February and was discussed at the meeting of 4 May. Since he dismissed the application for judicial review, one may reasonably suppose that the judge did not consider that the failure to provide the information vitiated the decision to suspend.

[29] The respondents did not seek to challenge the judge's finding that the principal had failed to supply information. We are not sure that we would have reached the same conclusion on this issue. The principal described in his affidavit how A had said she was terrified of the appellant; that she did not wish to make any formal complaint; and that she did not want the principal to tell the appellant what she had reported because she was in fear of him. A was visibly distressed and her friend later told the principal that she was possibly suicidal. To tell the appellant that he was suspended because of a complaint made by a female pupil was almost certain, in our estimation, to alert him to the fact that A had complained about him. Indeed, in his affidavit, the appellant described how, after reading the letter to his grandparents, he returned to the principal's office and in an extremely angry and upset mood, inquired whether a female pupil (whom he named) had

anything to do with his suspension. Of course, we do not know whether the young woman named is A but this demonstrates, in our view, why the principal was – sensibly - reluctant to say anything about why the appellant was suspended.

[30] The principal faced a dilemma, of the type which we suspect confronts many head teachers. Obviously, he could not suspend a pupil (with the inevitable impact that this would have on his education) without substantial justification. And to suspend the young man without giving him any precise information about the reasons for that drastic decision would require compelling reasons. But he had been told that A was possibly suicidal and he had formed the unmistakable impression that she was under considerable strain. She had demanded that he should not tell the appellant that she had complained about him.

[31] In any event, we are satisfied that the appellant – and, in consequence, his mother and grandparents – were sufficiently aware of the probable reasons for his suspension. Even if the judge was right to find that what he described as 'the basic information' that A's complaint had prompted the appellant's suspension, we have no hesitation in concluding that this should not invalidate the decision to suspend.

[32] On the question of whether an invitation to attend the school should have been issued to the mother and grandparents, we consider that the obligation in the precise terms expressed in the regulations (that they should be invited to come to the school) did not apply. What was required was that the relatives of the appellant be treated fairly in the manner in which they were offered the chance to discuss the suspension with the school authorities. Given the constraints that applied on the amount of information that the principal could disclose to them, the statement that he made in the various letters sent to them that they should contact him if they wished to discuss the matter amply fulfilled this obligation.

Was the exclusion after 13 March 2007 suspension?

[33] As we have already observed, the technical alteration of the description of the appellant's absence from school after 13 March 2007 was prompted by the erroneous belief that his exclusion had to comply with the Regulations and the scheme. We consider that he was prohibited from returning to school during this latter period on foot of the precautionary suspension that had brought about his earlier exclusion, in other words, he was being kept away from school throughout this time because the principal was waiting for the Social Services' assessment. Although the grandparents' and mother's consent was sought to the appellant being educated off-site, it was clear that the appellant would not have been permitted to return to the school had they refused this offer.

[34] The assessment by the Social Services seems to have taken an inordinately long time and it appears not to have been communicated to the school as promptly as it might have been. There may be an explanation for this, of course, and, since the Social Services were not a Notice Party in the judicial review proceedings, we have not been told anything about the reasons for the delay. In any event, it does not appear to us that the school can be faulted for the delay and it is to be remembered, of course, that the appellant has not sought to criticise the school for having failed to press for a more rapid outcome to the Social Services' assessment. We do not consider therefore that it has been shown that the school acted unfairly in awaiting the assessment and in continuing to exclude the appellant during that period.

A proper investigation?

[35] The circumstances that the school faced in this case did not lend themselves to a conventional investigation of the truth of the allegations made. A had signalled her clear wish that her report should not be treated as a complaint. She did not even want the appellant to know that she had made the report. Yet the principal had been given clear reasons to conclude that this was an extremely disturbing and potentially dangerous situation for her. What, then, was the school to do? It could only obtain an account from the appellant if it disregarded A's plea that he should not be told about the complaint. It could only properly investigate if it compelled her to provide information beyond the bare report that she had given.

[36] It seems to us that the only option not available to the principal was to do nothing about the report that A had made. He had to act to protect her interests without unduly affecting the appellant's education. No perfect solution was possible. Some action to protect both pupils' interests was required. The course chosen by the principal – if not the only one realistically available – was at least defensible as a practical means of protecting A and ensuring that the appellant's education did not suffer beyond that which was inevitable from his suspension.

Disposal of the appeal

[37] None of the arguments advanced on behalf of the appellant has succeeded. The appeal must be dismissed. A possible disadvantage to the appellant arises, however, from the manner in which his registration certificate (which records attendances at or absences from school) is maintained. The code for the various entries includes the letter 'C' as signifying suspension. Since the Board's scheme employs this term in the context of disciplinary action only, the impression might be created that the suspension of the appellant during the periods from 7 February to 13 March and from the latter date until his eventual return indicated that he had been

guilty of a breach of discipline. Since his guilt or innocence of the behaviour of which he was accused has never been investigated, this would be unfair.

[38] No challenge to the entry in the registration certificate on this particular ground has been made by the appellant and the school has not therefore had the opportunity to seek to meet it. Indeed, the appellant has proceeded on the basis that the suspension was a disciplinary measure and that the school was wrong to impose it without proper investigation, while the school has defended the suspension on the basis that it was taken as a precautionary measure but has implicitly accepted that it was a suspension under the scheme.

[39] For the reasons that we have given, both stances were either wrong or contained erroneous elements. In the absence of a challenge directed precisely to the propriety of maintaining the record of the appellant as having been suspended (with the connotation that this may hold) on the basis that it should have been made clear that this was a precautionary suspension, we do not believe that it is open to this court to require that the register be amended.

[40] The code for various entries does not include any reference to precautionary suspension but it does have a category of 'other exceptional circumstance'. It may be considered that, since precautionary suspensions might well be necessary in the future, it would be proper to add to the code by introducing a symbol for precautionary suspensions. The appellant's registration certificate could then be appropriately amended. Alternatively, it might be decided to change the entry for the entire period from 7 February 2007 until the appellant's return to 'other exceptional circumstance'.

[41] Either amendment would seem to meet what we perceive to be the justice of the situation, as best we can judge it on the material that we have been able to consider. We should emphasise, however, that there may be other information which would make either or both of these options unsuitable. Because the point was not argued in this way, it would be imprudent to make a definitive finding one way or the other. If the school, with the benefit of the judgments in this case, were to find either suggestion helpful and were to voluntarily make the necessary alteration to the register, that would be a propitious outcome, especially if it avoided further litigation.