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IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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

IN THE MATTER OF AN APPLICATION BY JR164 FOR JUDICIAL REVIEW AND IN THE MATTER OF A DECISION OF THE SCHOOL EXPULSION APPEAL TRIBUNAL

Mel Power QC and Sinéad Kyle (instructed by Nicholas Quinn) for the Appellant
Paul McLaughlin QC and Denise Kiley (instructed by The Education Authority Solicitors) for the Respondent
Peter Coll QC and Roisín McCartan (instructed by Murphy & O'Rawe) for the Notice Party

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Before: Keegan LCJ, Treacy LJ & Humphreys J

HUMPHREYS J (delivering the judgment of the court)

Introduction

[1] This is an appeal from a decision of Rooney J [2021] NIQB 87 whereby he dismissed the appellant's application for judicial review of the decision of the School Expulsion Appeal Tribunal ('the Tribunal') dated 16 March 2021.

[2] The appellant, who is now aged 18, was expelled from a voluntary grammar school on 14 December 2020 and this decision was upheld by the Tribunal.

[3] The facts of the case are uncontentious. Between September and November 2020 the appellant engaged in abusive online activity which involved him sending offensive emails to members of school staff and impersonating teachers by sending emails in their names to colleagues. His biology teacher was a particular target of this appalling behaviour.

[4] At no stage has the appellant or his parents sought to deny his wrongdoing or its seriousness but the case has been made that the school failed to explore the alternative sanctions open to it and that it failed to follow its own procedures. There is no challenge to the school's decision but it is argued that these failings were not cured by the hearing before the Tribunal.

The Statutory Framework

[5] The suspension and expulsion of pupils from school is governed by Article 49 of the Education and Libraries (Northern Ireland) Order 1986 ('the 1986 Order'), which provides:

> "(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 other 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).

(10) The Department shall by regulations provide for the constitution and procedure of appeal tribunals and, without prejudice to the generality of the foregoing, such regulations—

(a) shall provide for an appeal tribunal to consist of a prescribed number of persons selected in the prescribed manner from a panel of persons appointed by the Authority to act as members of appeal tribunals under this Article;

(b) may provide for disqualifying prescribed persons or descriptions of person for membership of an appeal tribunal;

(c) may contain provision requiring an appeal tribunal to hear and determine an appeal within such period

as may be specified in, or determined in accordance with, the regulations;

(d) may provide for two or more appeal tribunals to sit at the same time;

(da) may provide for an appeal tribunal in considering an appeal to have regard in particular to any matters specified in the regulations;

(db) may provide for appeal tribunals to sit in private, except in such circumstances as may be specified in, or determined in accordance with, the regulations;

(e) may provide that all matters relating to the procedure on appeals which are not specifically regulated by the regulations shall be determined by the Authority.

(11) An appeal tribunal shall not be regarded as a committee of the Authority.

(12) Article 79(1) shall apply to members of an appeal tribunal"

[6] Since the school in question in these proceedings is a voluntary grammar school, it was obliged to prepare its own scheme specifying the procedure to be followed in relation to suspension or expulsion. Under the Schools (Suspension and Exclusion of Pupils) Regulations (Northern Ireland) 1995 ('the 1995 Regulations'), made pursuant to the power in Article 49(4), certain provisions must appear in such a scheme, namely:

(i) An expulsion decision may only be made after a period of suspension (Reg 3(f));

(ii) A pupil may be expelled only after consultation has taken place between the Principal, the Chair of the Board, an authorised Education Authority officer and the pupil's parent, provided that refusal or neglect of the latter to take part shall not prevent an expulsion decision (Reg 3(g));

(iii) The consultation shall include consultation about the future educational provision for the pupil concerned (Reg 3(h));

(iv) Once an expulsion decision is made, the principal must give written notification of the right to appeal, the relevant time limit and the procedure (Reg 3(i)).

[7] It is evident from Article 49(8) that a Tribunal hearing an appeal has a binary option, either to dismiss the appeal or allow it and direct that the pupil be re-admitted to the school. There is notably no power to remit a matter to the 'expelling authority', the Board of Governors, for reconsideration.

[8] The regulations made pursuant to Article 49(10) are the Schools (Expulsion of Pupils) (Appeal Tribunals) Regulations (Northern Ireland) 1994, as amended ('the 1994 Regulations'). Schedule 1 sets out the constitution of the Tribunal. Each appeal tribunal consists of three or five members selected by the Education Authority from a panel, comprising:

(i) Persons representing the interests of controlled schools;

(ii) Persons representing the interests of voluntary and integrated schools; and

(iii) Persons with experience in education or parents of registered pupils at a school.

[9] Schedule 2 to the Regulations lays down the procedure on the hearing of appeals. It states, inter alia:

> "4. An appeal tribunal shall give to the appellant an opportunity to make written representations and an opportunity of appearing and making oral representations and may allow the appellant to be accompanied by a friend or to be represented.
>
> 5. An appeal tribunal shall give to the expelling authority and, in the case of a controlled school, the Board of Governors of the school, an opportunity to make written representations and shall give to a representative of the expelling authority and, in the case of a controlled school, a representative of the Board of Governors, an opportunity of appearing and making oral representations.
>
> 6. An appeal tribunal may request the expelling authority to supply it with relevant information including information about the procedures followed in relation to the expulsion of pupils from the school.
>
> 7. In considering the appeal, the appeal tribunal shall have regard in particular to:

(a) any representations made to it under paragraph 4 or 5;

(b) whether the procedures in relation to the expulsion of pupils from the school were properly followed; and

(c) the interests of other pupils and teachers in the school."

[10] In arriving at its decision to allow or dismiss an appeal, the Tribunal must therefore have particular regard to the three issues set out in paragraph 7 of Schedule 2. This is not an exclusive or exhaustive list but provides a framework within which the Tribunal can consider the merits of the appeal.

The Nature of the Tribunal

[11] It is clear that the Tribunal is an independent, bespoke and specialist body established by statute to consider appeals from school expulsion decisions across the educational spectrum. It is similar to the Independent Appeal Tribunal ('IAP') in England & Wales. In *Re DR* [2002] EWCA Civ 1827 Simon Brown LJ described the IAP as:

> "… a tribunal entirely independent of the head teacher and the governing body. It has expertise in the matter of school discipline - is, indeed, trained for the purpose … It entertains the appeal on a de novo basis to the extent of hearing all the evidence for itself. It enjoys full powers such as to enable it to make a final decision to re-instate which is then binding on all parties. And it operates within an appropriately tight timetable." [para 37]

[12] It is well-established that where the legislature has created a specialist tribunal to determine disputes in a particular sphere, the courts should be slow to interfere with their decisions and apply only a light touch irrationality based standard of review. In the context of the Tribunal, Horner J said in *Re NM* [2014] NIQB 10:

> "… when an independent tribunal which comprises members with specialist educationalist expertise and experience reaches 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." [para 15]

The School's Scheme

[13] In accordance with its obligations under Article 49(1), the school prepared a scheme, entitled 'Suspensions & Expulsions Policy' dated April 2017. This includes a number of principles at paragraph 2.1:

(i) A pupil may only be expelled after serving a period of suspension;

(ii) Only the Board of Governors may expel a pupil;

(iii) A pupil may only be expelled after consultation has taken place between the Principal, the parents, the Chair of the Board and representatives of the Education Authority;

(iv) Such consultation must include consultation about future provision of suitable education for the pupil;

(v) The parents (or pupil himself if aged 18) must be given immediate written notice of the right to appeal a decision to expel.

[14] Paragraph 2.2 of the scheme lays down the procedures to be followed in the event of a case where expulsion is being considered, including:

(i) The Principal shall convene a consultation meeting;

(ii) At that meeting, the implications of expulsion and the future provision of suitable education for the pupil must be discussed;

(iii) The parents must be informed in writing of the date of the meeting and its purpose;

(iv) Any neglect or refusal on the part of the parents to take part in the consultation meeting would not prevent it taking place or a recommendation for expulsion being made;

(v) Following this meeting, the parents must be informed that the Principal or Chair will report to the next meeting of the Board of Governors, the date and time of which they must be made aware;

(vi) The parents must be invited to make written and/or oral submissions to the Board at the meeting at which expulsion is to be discussed. Such written submissions and notification of their intention to make oral submissions should be received by the Board no later than eight days before the meeting;

(vii) If the parents indicate an intention to make oral submissions, they must be advised in writing of the time at which to attend the Board meeting and must be afforded an opportunity at that meeting to make an oral submission;

(viii) Following discussion by the full Board of Governors of all the evidence, the minutes of the meeting must record any decision taken including a decision to expel, and the reasons for it;

(ix) Where a pupil is expelled, written notice is given to the parents of the decision and of the right to appeal, including the time limit and appeal requirements.

The Factual Background

[15] On 27 November 2020, the appellant's parents were notified by the Principal of a consultation meeting on 7 December 2020 at which the possibility of expulsion would be discussed, as well as future educational provision. It was made clear that the parents had the right to make oral or written representations to the meeting. The guidance notes which accompanied this letter referred to a number of possible outcomes, including returning to school on certain terms.

[16] Prior to that meeting taking place, the parents were informed by letter dated 30 November that a meeting of the Board of Governors, to consider the findings of the consultation meeting, would take place just two days later on 9 December 2020. The parents were again invited to make a written or oral submission although no reference was made to the eight day time limit set out in the scheme.

[17] Due to symptoms of Covid-19, the parents were unable to attend the consultation meeting. When they contacted the school they were informed that the meeting would proceed without them. As a result, the appellant's mother submitted a detailed written submission which focussed on the alternatives to expulsion.

[18] The minutes of the consultation meeting referred to the written submission but do not set out any discussion of alternatives to expulsion. The conclusion is that the Principal would be recommending expulsion to the Board on 9 December.

[19] Again, the appellant's parents were unable to attend the Board meeting due to the requirement to self-isolate. The minutes of this meeting state:

> "The Board considered the alternative options available. There was discussion about the impact on teaching staff, other pupils and on [the appellant] of each of the available options. The potential impact of [the appellant's] return to school and how that could be managed, was considered."

[20] The unanimous decision of the Board to expel the appellant was communicated by letter dated 10 December 2020. This included the following statements:

(i) The behaviour warranted expulsion as outlined by the 'Education Authority Scheme for the Suspension and Expulsion of Pupils'; and

(ii) Under Article 39 of the Education and Libraries (NI) Order 1993 the parents had a right of appeal to an Appeals Panel of the Board of Governors.

[21] Both these statements were simply wrong and no explanation has been provided as to how these errors occurred. The Education Authority Scheme has no application to voluntary grammar schools who, by virtue of Article 49(1) of the 1986 Order, are obliged to create their own scheme. Article 39 of the 1993 Order inserted a new version of Article 49 into the 1986 Order, including the right of appeal to the Tribunal. No reference is made to any appeal to an Appeals Panel of the Board which is not surprising since the decision to expel is itself a decision of the full Board of Governors.

[22] As a result of this erroneous interpretation of the legal position, an appeal hearing of dubious standing did take place on 12 January 2021. On this occasion, the appellant's parents were able to attend in person and make representations.

[23] On 18 January 2021 the parents were informed that the appeal panel had decided to uphold the decision to expel the appellant. The same error in relation to the Education Authority Scheme was repeated in this letter. No reference was made at all to the parents' right to appeal this decision to the Tribunal.

[24] In the event, an appeal was pursued to the Tribunal with the benefit of legal advice.

The Decision of the Tribunal

[25] The Tribunal heard the appeal on 24 February 2021 and met again over further days to consider the evidence and submissions. A considerable volume of written material was submitted, and the Tribunal heard oral representations on behalf of both the appellant and the school, from both the Principal and the Chair of the Board.

[26] On 16 March 2021 the Tribunal dismissed the appeal and gave its written reasons. It made the following findings:

(i) There were 'a number of issues' with the school's expulsion procedures but the appeal hearing was capable of dealing with any deficiencies;

(ii) Prior to the behaviour which led to his expulsion, there had been a difficult history between the appellant and the school;

(iii) There was no dispute as to the subject behaviour, rather the parents contended that he should have been given some punishment short of expulsion;

(iv) The school had considered alternatives to expulsion but due to the seriousness of the behaviour and the impact on pupils and staff, there were no other viable options available;

(v) In particular, the Tribunal accepted the impact on the appellant's biology teacher as outlined in her statement;

(vi) The Tribunal held that the Governors' decision to expel was reasonable and proportionate taking into account all the circumstances.

The Decision of the High Court

[27] The appellant instigated an application for judicial review seeking to challenge the decision of the Tribunal which proceeded by way of a 'rolled up' hearing before Rooney J. He granted leave but dismissed all the grounds of challenge, finding as follows:

(i) The Tribunal did carry out a careful investigation as to whether alternatives to expulsion were considered by the school;

(ii) These options ought to have been detailed in the minutes of meetings, including the reasons for rejecting them, but the Tribunal was entitled to find that such considerations did take place;

(iii) Whilst the letters of 10 December 2020 and 18 January 2021 from the school referred to the Education Authority Scheme, the learned judge was satisfied that the Tribunal applied the correct scheme in coming to its decision;

(iv) The Tribunal decided the matter de novo and applied the correct criteria in deciding that expulsion was reasonable and proportionate in all the circumstances;

(v) The procedural irregularities evident in the school's procedures did not disadvantage the appellant at the Tribunal hearing;

(vi) There was clear evidence before the Tribunal that the appellant's behaviour had the potential to cause significant harm;

(vii) Any previous procedural errors were cured by the demonstrably fair Tribunal hearing.

The Grounds of Appeal

[28] Before this court, the appellant's grounds of appeal were limited to claims that the learned judge erred in law in:

(i) Determining that the Tribunal had acted reasonably in concluding, against the weight of the evidence, that the school had carried out a careful investigation into the potential alternatives or lesser sanctions, and that there were no other viable options; and

(ii) Concluding that the Tribunal applied the correct scheme.

Standing

[29] A preliminary issue was raised before the judge at first instance as to whether the appellant had the appropriate standing to bring the application for judicial review or whether his parents ought to have been the applicants. This was not ultimately determined by Rooney J.

[30] The point derives from a schools admissions case, *Re Anderson* [2001] NI 54 where it was held that the proper parties to seek relief in such circumstances were the parents of the disappointed child. However, in the context of school expulsion, Girvan J in *Re Shay Lappin's Application* [unreported, 15 March 2006] held that the impact of expulsion on a child was such that it gave rise to a sufficient interest for it to be the proper applicant.

[31] We respectfully agree with the analysis of Girvan J. In school admissions, the right of parental choice is enshrined in Article 9 of the Education (Northern Ireland) Order 1997. In such circumstances, it is not surprising that the parents would be the parties with sufficient interest to bring judicial review proceedings in respect of an admission decision. By contrast, whilst the parents of a minor pupil are given the right to pursue an appeal to the Tribunal, the impact on the child is such that he or she has standing to challenge the outcome of a Tribunal decision in the courts.

Consideration

[32] It is evident that there were a number of significant failings in the school's procedures. These are alluded to in the Tribunal decision but not set out in any detail. Paragraph 7 of Schedule 2 to the 1994 Regulations expressly mandates the Tribunal to consider whether the school's procedures were properly followed. Any adverse finding does not result in a particular outcome but in order to satisfy the statutory requirement, the Tribunal ought to have:

(i) Identified the source of the procedures, namely the 2017 School Scheme;

(ii) Set out the key requirements in terms of principle and procedure set out in paragraphs 2.1 and 2.2 of the Scheme;

(iii) Ascertained to what extent there had been a failure to comply with these requirements;

(iv) Identified whether any prejudice was caused to the pupil or his parents;

(v) Considered whether any such harm or prejudice could be rectified at the appeal hearing; and

(vi) Analysed how any breach of procedural requirements was taken into account with other factors in arriving at the conclusion of the appeal.

[33] In this case, therefore, the Tribunal ought to have expressly set out that the requirements of the Scheme were not followed in these respects:

(i) The parents were denied an opportunity to make oral representations at the consultation meeting in circumstances where they wished to attend;

(ii) The parents were denied an opportunity to make oral representations at the Board of Governors meeting in circumstances where they wished to attend;

(iii) The school ignored the policy of the scheme which clearly foresaw a period of time of at least eight days between the respective meetings, in light of the obligation on parents to furnish written submissions and give notice of intention to make oral submissions;

(iv) The minutes of neither meeting reflected in any detail the substance of the issues discussed;

(v) The letters from the school to the parents of December and January referred to the wrong Scheme;

(vi) The parents were not informed of their statutory right of appeal to the Tribunal and the relevant procedures and time limits.

[34] The caselaw supports the proposition that procedural deficiencies are not fatal but are just one matter for the Tribunal to take into account. In *Re DR* [supra], the Court of Appeal in England & Wales held:

> "If, of course, in any particular case the prior procedural unfairness can be shown in some way to have tainted the subsequent appeal process, then the appeal decision itself will necessarily be unsustainable. As Lord Wilberforce

> said in *Calvin v Carr* (see paragraph 29 above) there may be cases where 'the defect is so flagrant, the consequences so severe, that the most perfect of appeals or re-hearings will not be sufficient to produce a just result.' No doubt Lord Keith had that passage in mind when he said in *Lloyd v McMahon* that 'there may be cases where the procedural defect is so gross, and the prejudice suffered by the appellant so extreme, that it would be appropriate to quash [the first-tier] decision on that ground.' Save in circumstances such as those, however, I for my part find it difficult to think of any case in which a decision reached upon an otherwise fairly conducted appeal by an independent tribunal following a full merits hearing should be impugnable by reference to unfairness at an earlier stage." [para 43]

[35] This approach was followed by Horner J in *Re NM* [supra] when he found:

> "The applicant had a fair hearing before an independent tribunal, EPAT, comprising experts in the educational field. Any complaint about unfairness or error arising from the decision of the Board … was eradicated by the applicant's appeal hearing." [para 14]

[36] We entirely agree with this line of reasoning. In any case alleging procedural unfairness, it is incumbent upon an applicant for judicial review to demonstrate that some failure to follow policy or implement fair procedures resulted in some harm or prejudice to him. If an unfair procedure is followed by a fair appeal then the latter can 'cure' the former, save in the case of a particularly egregious or flagrant breach.

[37] Another of the statutory requirements imposed by the Regulations is that the question of future educational provision be considered. The involvement of the parents, the school and the Education Authority at the initial consultation stage indicates that such provision may be either within or without that particular school.

[38] We agree with Rooney J that the minutes of both the consultation meeting and the subsequent Board meeting deal inadequately with the question of future educational provision, whether this is concerned with alternatives to expulsion or the consequences of expulsion. However, the question of whether such discussion and consideration actually took place was a question of fact for the specialist Tribunal carrying out its statutory function under paragraph 7 of Schedule 2 to the 1994 Regulations.

[39] The Tribunal found that the school had considered alternatives to expulsion, having received evidence orally from the Principal, the Chair of the Board and the appellant's parents. It also had email correspondence from the representatives of the Education Authority who had attended the consultation meeting. This was an

entirely rational conclusion which was open to the finder of fact to make. There is no basis for such a finding to be impeached by way of judicial review.

[40] Further, Rooney J made an express finding, at para [25]:

> "the Tribunal did carry out a careful investigation as to whether alternatives to expulsion were considered by the school."

[41] We remind ourselves of the comments made by Lord Kerr in *DB v Chief Constable of the PSNI* [2017] UKSC 7 in relation to the role of appellate courts in relation to first instance findings of fact. Even where such facts are found on the basis of affidavits rather than oral evidence, "the case for reticence on the part of the appellate court … remains cogent."

[42] It is clear that Rooney J took into account all the relevant material in arriving at this conclusion and no basis for impeaching his finding was identified to us. We therefore reject this ground of appeal.

[43] As set out above, there are manifest and inexplicable errors in the correspondence from the school relating to the decisions to expel the appellant insofar as the wrong scheme is identified.

[44] The evidence before us revealed that the school's scheme of April 2017 was compliant with the 1995 Regulations and it was before the Tribunal since it was exhibited to the affidavit of Dr Campbell, the Chair of the Tribunal.

[45] The Tribunal's decision refers to "procedural anomalies" and it is regrettable, for the reasons set out above, that these were not particularised and addressed in the decision. However, on the evidence before him, Rooney J concluded that the Tribunal applied the correct scheme. Again, this was a rational decision open to him and we see no basis for an appellate court to intervene.

[46] In any event, it is unclear how it is said that the application of the Education Authority Scheme would have benefitted the appellant. The material section relied upon, clause 5.8, clearly envisages expulsion both on the basis of a 'last straw' in a pattern of offending and as the result of a 'one-off' offence. We do not see that the two schemes were materially different on this issue. Ultimately, the question of the merits of the decision was a matter within the jurisdiction of the Tribunal and there is no ground to impeach that finding.

Conclusion

[47] For these reasons, the appeal is dismissed and the decision of Rooney J affirmed. We will hear the parties on the question of costs.

[48] Having had the opportunity to consider the relevant procedures in detail, and identified the shortcomings noted in this judgment, we propose to issue some guidance both to schools and the Tribunal in relation to the exercise of their respective roles in this important area. That guidance is to be found at Annexes A and B to this judgment.

ANNEX A – GUIDANCE FOR SCHOOLS

(1) Controlled schools must familiarise themselves with, and apply, the scheme prepared by the Education Authority;
(2) Maintained schools must familiarise themselves with, and apply, the scheme prepared by the CCMS;
(3) Voluntary and integrated schools must prepare their own scheme specifying the procedures to be followed which must comply with the requirements of the Schools (Suspension and Expulsion of Pupils) Regulations (Northern Ireland) 1995;
(4) Principals and Board of Governors should ensure compliance with the provisions of such a scheme, including, in particular, engaging in consultation with parents;
(5) Such consultation must include consultation about the future educational provision for the pupil, whether or not he is expelled from the school;
(6) Parents should be afforded every reasonable opportunity to participate in such consultation, both in writing and in person, and if a parent is unavailable to attend a consultation meeting, it should be postponed to another date or time, within a reasonable period, to permit representations to be made;
(7) If a parent neglects or refuses to take part, then such consultation may proceed without them but the school should take all reasonable steps to satisfy itself that the parents are aware of the consultation and its purpose;
(8) If, following such consultation, the principal determines that he will propose expulsion to the Board of Governors, a meeting of the full Board should be convened to consider that proposal;
(9) Careful attention should be paid to any provisions in the scheme relating to time limits or periods associated with such meetings;
(10) Parents should be afforded every reasonable opportunity to participate in the Board meeting, both in writing and in person, and if a parent is unavailable to attend the meeting, it should be postponed to another date or time, within a reasonable period, to permit representations to be made;
(11) If a parent neglects or refuses to take part in the meeting, then it may proceed without them but the school should take all reasonable steps to satisfy itself that the parents are aware of the meeting and its purpose;
(12) If there are disputed issues of fact, the Board of Governors must conduct a reasonable enquiry into the allegations and make such findings as it can to resolve the disputes;
(13) Detailed and accurate minutes should be taken of all meetings, setting out the representations made, the factual issues, the evidence considered and the reasons for any decision taken;
(14) Only the Board of Governors may make a decision to expel a pupil;
(15) If a decision is made to expel, the principal must immediately communicate this in writing to the parents and inform them (or the pupil if he is aged 18) of the right to appeal to the Tribunal, and how and when such an appeal must be lodged.

ANNEX B – GUIDANCE FOR THE TRIBUNAL

(1) The Tribunal should always remind itself and the participants that it is an independent specialist body, established by statute, which makes a fresh decision as to whether or not a pupil should be expelled;
(2) The Tribunal is not limited to a 'review' of a school's decision to expel but rather considers all the evidence and representations and arrives at its own decision;
(3) The Tribunal can only make one of two decisions – either to dismiss the appeal or allow the appeal and direct the re-admission of the pupil;
(4) In relation to its procedure, the Tribunal should always ensure compliance with Schedule 2 to the Schools (Expulsion of Pupils) (Appeal Tribunals) Regulations (Northern Ireland) 1994;
(5) Paragraph 7 of Schedule 2 requires the Tribunal to consider three issues in particular:
    (i) Any representations made to it by the appellant and the expelling authority;
    (ii) Whether the procedures in relation to expulsion of pupils from the school were properly followed;
    (iii) The interests of other pupils and teachers in the school.

(6) In relation to procedures, the Tribunal should identify the particular scheme which is being applied and set out its relevant provisions. It should then consider whether there was compliance with those provisions and, if not, set out the failures to comply. In relation to each failure, the Tribunal should consider what effect this had on the process and whether any adverse impact can be rectified;
(7) In relation to the interests of other pupils and teachers, the Tribunal should set out the evidence received on this issue and its findings in this regard;
(8) If there are disputed issues of fact, the Tribunal should set out what these are, the evidence considered by it in relation to those, and its findings;
(9) The Tribunal should identify the witnesses from whom it heard and summarise the evidence which they gave;
(10) The written reasons of the Tribunal should explain the basis for its ultimate decision.