

Subject:**Curriculum Complaints Tribunals****Circular Number:**
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- Principals and Boards of Governors of all grant-aided schools and Institutions of Further Education;
- Education and Library Boards;
- Council for Catholic Maintained Schools; and
- Council for the Curriculum, Examinations and Assessment.

Summary of Contents:

The purpose of this Circular is to describe the effect of Article 33 of the Education Reform (NI) Order 1989, and the Curriculum (Complaints Tribunal) Regulations (NI) 1992, and to provide guidance for complainants and respondents on how complaints will be handled.

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Governor Awareness:
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PART A: PURPOSE OF CIRCULAR AND REMIT OF COMPLAINTS TRIBUNALS

Introduction

1. Article 33 of the Education Reform (Northern Ireland) Order 1989 (the 1989 Order), a copy of which is available in every school, places a duty on Education and Library Boards (hereafter referred to as boards/board) to appoint complaints tribunals, in accordance with Regulations made by the Department, to hear and determine complaints about the actions or omissions of boards and also of Boards of Governors of schools in respect of the school curriculum and related matters. The Department has now made such Regulations, the Curriculum (Complaints Tribunals) Regulations (Northern Ireland) 1992 (SR 1992 No 457), which provide for the establishment and membership of complaints tribunals and outline the procedures they are to follow. The purpose of this Circular is to:

- describe the effect of Article 33 and the Regulations; and
- provide guidance for complainants and respondents on how complaints will be handled.

2. The Department expects that in the vast majority of cases the concerns of parents will continue to be handled on an informal basis within schools and that the formal complaints procedure will only be used as a last resort should informal discussions with the school authorities not lead to a satisfactory outcome. Similarly, in respect of complaints or potential complaints about the actions of a board, the parties should first attempt to resolve the issue informally through discussions with appropriate officers of that board.

3. Reference to the complaints tribunal machinery and procedures, and advice on how to make a complaint, must be included in schools' prospectuses, as required by the Education (School Information and Prospectuses) Regulations 1991.

4. The guidance contained in this Circular does not constitute an authoritative legal interpretation of the Regulations: that is exclusively a matter for the Courts.

5. Copies of the Regulations are available from The Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD. A copy of the Regulations, together with a copy of this Circular, will be sent to every school for inclusion in its compendium.

Statutory Power

6. Under Article 33(1) of the 1989 Order, each board is obliged to appoint a tribunal to hear and determine any complaint to the effect that the board itself or the Board of Governors of a relevant school has acted or is proposing to act unreasonably in the exercise of any power conferred or in the performance of any duty imposed on it by or under -

- those Articles of Part III of the 1989 Order which impose duties on boards or Boards of Governors in relation to the curriculum;
- Articles 147-149 of the 1989 Order, which apply to boards only and which place duties on them in relation to the provision of training for teachers in schools and institutions of further education and for members of Boards of Governors of schools; or

- any other statutory provision relating to the curriculum for grant-aided schools.

A complaint may also be made where a board or a Board of Governors has failed to discharge any such duty.

Matters with the authority of Tribunals

7. The Regulations apply to a board or a Board of Governors of a “relevant school”. A relevant school is defined in Article 33(11) of the 1989 Order as:

- a controlled school managed by the board;
- a maintained school maintained by the board;
- any other voluntary or grant-maintained integrated school situated within the board area.

8. The elements of the Northern Ireland Curriculum which may be the subject of a complaint to a tribunal are listed in paragraph 9 below. The overriding duty on schools is to provide a balanced and broadly-based curriculum, which promotes the spiritual, moral, cultural, intellectual and physical development of pupils and prepares them for the opportunities, responsibilities and experiences of adult life. Within this curriculum, schools must teach the statutory programmes of study as they are progressively introduced and observe the “areas of study” and “reasonable time” requirements as they are brought into force from 1992 to 1995. The boards’ duties are also listed in paragraph 9 - their responsibilities lie chiefly in the areas of training and curriculum support.

9. The areas within the remit of the tribunals (which, except where otherwise noted below refer wholly to Boards of Governors), include the following:

- the provision of a curriculum which meets the requirements of Article 4;
- the progressive implementation of the Northern Ireland Curriculum including programmes of study, areas of study requirements, reasonable time requirements, cross-curricular themes, and compliance with Orders and Regulations made about its requirements and exceptions to its provisions (Articles 5,6,7,8,11(1) and (2), 13 and 15);
- the provision for pupils of compulsory school age of courses leading to an external qualification only if that qualification and the associated syllabus or syllabus criteria have been approved (Articles 9 and 11(1)(d)) - this will become compulsory as from the 1993/4 school year;
- the determination and maintenance of a written statement of curriculum policy (Article 10);
- the consideration of appeals by parents about the temporary withdrawal of pupils from part or all of the curriculum provisions of Articles 5, 6 and 8 (Article 17);

- compliance with Regulations and/or schemes of management relating to the provision of information including the attainment of the objectives of Education for Mutual Understanding (Articles 31 and 125(2)(h) and (i));
- the operation of charging policies in relation to the curriculum (Articles 128-138);
- in the case of a board, its duty in respect of the requirements of Article 11 (Article 11(3));
- in the case of a board, the provision of advisory and support services in relation to the curriculum and staff of grant-aided schools, including in-service training for teachers (in both schools and further education colleges) and Governors (Articles 29, 147, 148 and 149);
- in the case of both boards and Boards of Governors, compliance with any direction arising out of an inspection under Article 102 of the Education and Libraries (Northern Ireland) Order 1986 (the 1986 Order) as amended by Article 30 of the 1989 Order, for example, the Education (Pupil Records) Regulations (Northern Ireland) 1990 and the Education (Individual Pupils' Achievements) (Information) Regulations (Northern Ireland) 1991.
- in the case of both boards and Boards of Governors, compliance with any other statutory provisions relating to the curriculum, for example, the Education (Pupil Records) Regulations (Northern Ireland) 1990 and the Education (Individual Pupils' Achievements) (Information) Regulations (Northern Ireland) 1991.

Matters outside the authority of Tribunals

10. Any cause for complaint which fails to be considered by an appeals procedure other than the Curriculum Complaints Tribunal procedure can never come within the scope of the Regulations (for example, a complaint relating to admission to secondary school can only be considered by an Admissions Appeal Tribunal).

Institutions of Further Education

11. Complaints against the governing body of an institution of further education in the carrying out of its duties may not be considered by a Curriculum Complaints Tribunal. Such complaints should be made initially to the governing body, then to the board, and finally to the Department.

Special Educational Needs

12. The complaints machinery provided for in Article 33 does not apply in the case of curricular provision made on foot of a child's statement of special educational needs, or where parents are dissatisfied with the content of the statement or with the board's statementing procedures under Articles 29-34 of and Schedule 11 to the 1986 Order. This legislation makes separate provision for parents to make representations to the board about the special educational provision specified in their child's statement of special educational needs, and provides for a final right of appeal to the Department.

However, Article 33 does apply to all other curriculum-related matters (except, for the time being, Religious Education - see paragraph 13 below) within special schools.

Nursery Schools and Religious Education

13. Complaints relating to nursery schools and nursery classes in primary schools are currently outside the tribunals' remit by virtue of Article 35(6) of the 1989 Order. Similarly, complaints about the provision of Religious Education or collective worship are dealt with under the separate complaints procedure set out in Article 23(2) of the 1986 Order.

The Department intends to bring both nursery and religious education within the remit of curriculum complaints tribunals in due course.

PART B: CONSTITUTION AND MEMBERSHIP OF COMPLAINTS TRIBUNALS AND CRITERIA AND PROCEDURES FOR HANDLING COMPLAINTS

Constitution of Complaints Tribunals

14. The Regulations provide for the constitution and procedure of complaints tribunals. Any procedural matters not specifically prescribed in the Regulations will be determined by the board. Tribunals will be convened by the board on an ad hoc basis, and two or more tribunals may sit simultaneously. Although set up by a board, a complaints tribunal is not a committee of the board and must be constituted in accordance with the Regulations. A complaints tribunal is, therefore, fully independent of board control.

Membership of Complaints Tribunals

15. Each tribunal will consist of three members drawn from a panel of persons established by a board for that purpose. A tribunal shall comprise the following:

- one person appearing to the board to represent the interests of the controlled schools in its area;
- one person appearing to the board to represent the interests of the maintained, voluntary or grant-maintained integrated schools in its area. Panel members from among whom the representative of such schools will be selected will have been appointed after consultation with the Council for Catholic Maintained Schools (CCMS) and such other bodies as the board considers appropriate;
- one person who is acquainted with the education arrangements in the area of the board, has experience in education, or is a parent of a registered pupil at a relevant school.

A tribunal shall not, however, include any person employed by a board otherwise than as a full-time teacher.

Criteria and Procedures for handling Complaints

16. Where attempts to settle the complaint informally have failed, or where a formal appeals procedure has been followed and the complainant is dissatisfied with the decision of the Board of Governors, the complainant should be supplied with the complaints tribunal's address (which will normally be the board's headquarters address), a copy of this Circular and any other relevant information about complaints procedures.

17. The complainant should set out the complaint in writing, making clear exactly what the complaint is, and send it to the relevant board. The board should (if not already done so) immediately set up a tribunal to hear the complaint and pass the letter of complaint to it. Receipt should be acknowledged promptly by the tribunal, which should immediately send a copy of the complaint to the respondent with a request that he should submit a response in writing within a specified timescale.

18. A complaint will be heard in private except where the board determines otherwise.

19. The complainant may, if he or she so wishes, make an oral presentation to the panel to supplement the written complaint. The purpose of this presentation will be to enable the complainant to bring out more fully the nature and detail of the complaint. At any such hearing the complainant may choose to be accompanied by a friend or representative. Likewise the respondent may nominate a representative to make an oral presentation. The chairman of a complaints tribunal will determine the order of the oral presentations to the tribunal.

20. All complaints should be dealt with as quickly and efficiently as possible. The length of the period will vary with the gravity and complexity of the complaint and the urgency with which it needs to be settled. However, all complaints should be settled within a period which is reasonable in all the circumstances. Urgent complaints should be identified as such by the board and given priority. If it becomes clear that the investigation will take some time, the complainant should be informed. In all circumstances, the complainant should receive as a matter of courtesy, a communication from the tribunal at least once every four weeks indicating the tribunal's progress to date on the complaint.

21. Consideration of a complaint will need to be directed towards establishing whether a board or a Board of Governors is carrying out its statutory functions reasonably and within the law and meeting its obligations so far as practicable; or whether this is not the case, and some remedial action is required. In considering that question it may be necessary to examine whether:

- a board's or Board of Governors' policy is consistent with its legal obligations;
- its actions, and those of its staff are consistent with its policy; and
- the actions of its staff are consistent with that policy.

22. If the complaint is outside the scope of the Regulations the complainant should be advised about any other appropriate steps which he or she can take.

23. A board should designate an officer to be secretary of a complaints tribunal and provide such other secretariat services as may be required.

24. When the complaint has been fully investigated and considered the tribunal will notify all parties of its determination in writing, giving:

- an explanation of the conclusion, the reasons for it, and any action taken or proposed to be taken;
- details of any requirements on the part of the respondent to take particular actions to resolve the complaint; and
- details of any further recourse available.

Miscellaneous

25. Only the members of a complaints tribunal are eligible to claim travel and subsistence allowance, in line with rates for board members as determined by the Department from time to time. Complainants and respondents are responsible for their own expenses arising out of any proceedings.

26. Each board should make arrangements to monitor the number and nature of complaints made to a complaints tribunal under the Regulations, the time taken to deal with them and their outcome. This information should be included in an annual return to the Department, which should relate to school years and be submitted by the end of each October following. Such information may be published, in aggregate form, from time to time but publication will not include reference to any named individual.

Recourse to the Department

27. Where a board or Board of Governors against which a complaint has been upheld does not comply with the ruling of a complaints tribunal, the tribunal may refer the matter to the Department. After consultation with all the parties involved the Department, where appropriate, will give such directions under Article 101 of the 1986 Order as it considers expedient.

28. Where a tribunal finds in favour of the respondent, but the complainant remains dissatisfied, the complainant may ask the Department to give directions under Article 101. The Department will not, however, consider any complaint within the scope of the Regulations unless it has first been heard and determined by a complaints tribunal.

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