[2016] AACR 47

**(SM v Secretary of State for Work and Pensions and BM (CSM)
[2016] UKUT 245 (AAC))**

Judge Knowles QC **CCS/1649/2015**
20 May 2016

Child support – variation – "just and equitable" – whether sums spent on extras for activities taking place on school sites to be taken into account

The mother, the parent with care, applied for a variation of the child support maintenance (CSM) originally awarded by the Child Support Agency (CSA) on the basis that the appellant, the non-resident father, had assets which had not been included in the assessment. That assessment was for two children, but one subsequently moved to live permanently with the appellant. The appellant appealed against the revised award for the remaining child, arguing that it was neither fair nor equitable as it took no account of his voluntary payments towards various expenses. At the First-tier Tribunal (F-tT) hearing the appellant submitted that, in addition to the school fees, he had paid for a variety of extras, including music lessons, school trips, and bus fares, on the understanding that the mother would withdraw her application for CSM. The F-tT rejected that appeal, holding that the variation was reasonable and that it had seen no evidence for the alleged agreement or for the extra expenses (the CSA had failed to forward to the tribunal the invoices it had received from the appellant). Among the issues before the Upper Tribunal was whether sums spent on extras for activities taking place on school sites were items "in connection with instruction or training" which could be taken into account in deciding whether a variation of child support was just and equitable, despite being excluded for child support purposes under section 8(7) of the Child Support Act 1991.

Held, allowing the appeal, that:

1. the phrase "in connection with" in section 8(7) of the 1991 Act should be given its ordinary natural meaning as something that connects or joins or links. That connection must be direct rather than indirect. Although the extra expenses could not influence the maintenance calculation, there was no reason why they could not be classified as voluntary payments if they were made within the timeframe required by section 28J(2) of the 1991 Act (paragraph 34 to 36);

2. to determine whether a payment was "in connection with" instruction or training required a fact-specific consideration of the "extra" alleged and whether it was directly "in connection with" instruction or training. Weight should also be placed on whether the "extra" was properly considered to be optional or extra-curricular. In the instant case those considerations required the decision-maker to make findings about the status of each of the items for which the father paid, and the amount (paragraph 38);

3. payments directly connected to instruction or training fall to be excluded, either as a voluntary payment or as an extra, but there was nothing in the 1991 Act, or the Child Support (Variations) Regulations 2000, to prohibit taking into account payment of extras not linked to schooling, including voluntary payments, in a just and equitable determination. That test provided a largely unrestricted discretion to take account of the whole of the financial circumstances relevant to both the parent with care and the non-resident parent: *DB v CMEC (CSM)* [2010] UKUT 356 (AAC). However it must be applied within the context both of the child support scheme as a whole and of the matters contained in section 28F, 28E of the 1991 Act and in regulation 21 (paragraphs 42 to 43);

4. the CSA ignored the issue of voluntary payments in its submission to the F-tT and the tribunal erred in failing to consider whether the father had made any voluntary payment within the meaning of section 28J. That factor was not excluded from consideration by regulation 21(2)(f) of the Regulations and it would have been relevant to any assessment of whether it was just and equitable to agree a variation (paragraphs 44 to 46);

5. the CSA's failure to provide all the relevant evidence to the F-tT about a crucial issue constituted a breach of natural justice amounting to a material error of law (paragraphs 48).

The judge set aside the decision of the F-tT and remitted the appeal to a differently constituted tribunal to be re-decided in accordance with her directions.

DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

Decision: The appellant's appeal is allowed.

The decision of the First-tier Tribunal sitting in Poole dated 2 February 2015 under file reference SC238/14/00391 involved an error on a point of law and is set aside.

Pursuant to section 12(2)(a) and 12(2)(b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set that decision aside and remit the case for reconsideration by a fresh tribunal in accordance with the directions set out at the conclusion of my Reasons.

REASONS FOR DECISION

The issues in this appeal

1. This appeal raises a number of issues: (a) are sums spent on school "extras" such as school clubs and music lessons/sports activities (which take place on a school site) items "in connection with" instruction or training and therefore excluded from consideration for the purposes of child support by virtue of section 8(7) of the Child Support Act 1991 (as amended) ("the Act")?; (b) can sums spent by the non-resident parent on extras (including school extras) be taken into account in deciding whether a variation of child support is just and equitable?; and (c) can voluntary payments pursuant to section 28J of the Act be taken into account when deciding whether it is just and equitable to agree to a variation? Additionally this appeal demonstrates how the failure by the Child Support Agency to supply all the relevant evidence in its possession to the First-tier Tribunal resulted in an unfair hearing amounting to a breach of natural justice.

2. I have allowed this appeal as the tribunal made material errors of law in its statement of reasons. Accordingly I have set aside the tribunal's decision and remitted the matter for further reconsideration by a fresh tribunal in accordance with the detailed directions set out at the conclusion of these Reasons.

3. The non-resident parent is the appellant before the Upper Tribunal; the Secretary of State and the parent with care are the first and second respondents. For simplicity I call them the father, the Agency and the mother respectively.

Factual background

4. A is the subject child of this appeal. A lived with his mother, the parent with care. A's brother, R, moved from his mother's home to that of his father on 27 January 2014. Both R and A were being privately educated, their parents both having agreed at the time of their divorce that R and A should continue to attend fee-paying schools at both primary and secondary level.

5. The father appealed against a decision made on 26 June 2014 which set the amount of child support maintenance which he was liable to pay for A at £37.14 a week from the effective date of 24 August 2013 and at £31.43 from the effective date of 15 March 2014. The reduction from 15 March 2014 reflected the fact that R was now living with the father.

6. On 16 July 2013 the mother made an application for child support maintenance and, as a result, a maintenance enquiry form was issued to the father on 24 August 2013. The form was returned on 10 September 2013.

7. On 11 November 2013 the mother applied for a variation of child support maintenance on the basis that the father had assets which should be taken into account for the purpose of calculating child support maintenance. The assets in question were (a) a half share in a flat worth £220,000, that share being worth £110,000 and (b) £5,000 of premium bonds. The decision dated 15 January 2014 applied the statutory rate of interest, namely eight per cent, to those assets in order to produce a theoretical income of £9,200 per annum. This translated into a weekly figure of £176.92 which was added to the father's net income of £255.47 a week. Thus the father's liability for child support maintenance was calculated on the basis of a weekly income of £432.39 (£255.47 + £176.92).

8. On 25 January 2014 the father sent a voluntary payments declaration form to the Agency stating that, in respect of A, he had paid the sum of £2,431.38 to the mother between 24 August 2013 and 17 January 2014. He asked the CSA to treat that sum as a voluntary payment.

9. The Agency's January 2014 decision was referred for mandatory reconsideration and this resulted in a supersession of the maintenance calculation pursuant to Section 17 of the Child Support Act 1991 (as amended). The decision flowing from the supersession was dated 8 April 2014 and removed R from the mother's household since R was now living with his father. The father disputed the calculation which underpinned this decision.

10. On 25 June 2014 the Agency completed a revision of the decision dated 15 January 2014. This removed R from the initial effective date of 24 August 2013 and thus meant that the father was liable to pay child support maintenance in respect of A alone.

11. The June 2014 decision was a revision of the decision dated 15 January 2014 and was the decision under appeal. The tribunal said that it could not take account of any change of the parties' circumstances which post-dated 8 April 2014.

12. The father appealed on the basis that the variation on the basis of assets sought by the mother was neither fair nor equitable, as regard should be had to the sums he paid towards R and A's expenses such as music lessons, school trips, bus fares, school uniform and so on. This amounted to a sum of £4,820.02 which he had agreed to pay in October 2013. In his letter dated 7 July 2014 the father listed other costs that he had paid which were referable to R and A's needs. These included travel costs associated with contact, mobile phones and laptops for both boys, haircuts, sports kit, and the costs of rugby club membership/sports tours.

13. At the tribunal hearing on 2 February 2015, the father said that, in addition to paying the school fees for R and A, he had paid the extra expenses associated with school such as music lessons, school trips, bus fares and so on, the sum being £4,820.02. He said that it was the mother's responsibility to pay these expenses but he had agreed with her that he would do so if she withdrew her application for child support maintenance. In contrast, the mother denied having agreed to abandon her claim for child support and also denied agreeing to pay the extra expenses associated with school.

14. After hearing oral evidence from the father and the mother, the tribunal decided that it was just and equitable to agree to a variation on the basis of the father's assets and dismissed his appeal.

15. The father was refused permission to appeal by the First-tier Tribunal on 13 April 2015. However I gave him permission to appeal on 8 June 2015. Though the Agency made written submissions supporting the appeal, it was necessary to hold oral hearings on 30 November 2015 and 11 May 2016 as there continued to be disagreement between the father and the mother about the outcome of this appeal.

16. Both the father and the mother appeared in person and the Agency was represented by Miss Blackmore of counsel. I am very grateful to all of the parties for the helpful manner in which they made their submissions to me.

17. At the conclusion of the second hearing I told the parties of my intention to allow this appeal and set aside the tribunal's decision since it was materially flawed in a number of respects. I explained that, unfortunately, there were significant gaps in the evidence such that I was unable to re-make the decision myself. No party disagreed with my decision that the matter should be remitted for reconsideration by a fresh tribunal.

18. I have read all the evidence and the submissions in the bundle very carefully and I listened to all that each party said to me at both hearings.

The tribunal's decision

19. Before the tribunal it was not in dispute that the father had assets worth £115,000. His income from self-employment as calculated by the Agency was also not in dispute.

20. The tribunal found that the father's flat was not being retained for a reasonable purpose pursuant to regulation 18(3)(b) of the Child Support (Variations) Regulations 2000 (SI 2001/156) ("the Variations Regulations"). It correctly identified that it had to consider how far the contributions made by the father to the extra expenses associated with school could be taken into account in deciding whether a variation of child support maintenance on the basis of the father's assets was both just and equitable.

21. Because of the manner in which the father and the mother gave their evidence, the tribunal found that it was difficult to discern if there had been any true agreement between the parties as suggested by the father. Additionally the tribunal rejected his submission that the variation would be likely to result in either A having to leave private education or the father abandoning his self-employment.

22. The tribunal found that, although the father had consistently said he had taken responsibility for invoices addressed to the mother itemising the extra expenses associated with school, he had failed to produce these invoices to the tribunal. It concluded that, in the light of all these factors, it was just and equitable to agree to the variation on the ground of assets sought by the mother.

The relevant law and case law

23. What follows is a summary of the law and case law relevant to this appeal. This appeal was largely concerned with the significance of the payments made by the father in respect of the additional or extra expenses associated with A.

24. Section 28F(1)(b) of the Act imposes a duty on the Secretary of State for Work and Pensions not to agree to a variation unless "it is the Secretary of State's opinion that, in all the circumstances of the case, it would be just and equitable to agree to a variation". The welfare of any child likely to be affected by a variation is a relevant consideration (see section 28F(2)). Section 28E(2) sets out the context for agreeing a variation, namely that parents should be responsible for maintaining their children whenever they can afford to do so and that, where a parent has more than one child, the obligation to maintain any one of them should be no less of an obligation than the obligation to maintain the other of them.

25. Regulation 21 of the Variations Regulations sets out factors which are to be taken into account in determining whether it would be just and equitable to agree to a variation. These include (a) whether a variation would be likely to result in a relevant person ceasing paid employment or (b) the extent of the non-resident parent's liability to pay child maintenance under a court order or agreement in the period prior to the effective date of the maintenance calculation (regulation 21(1)(a)(i) and (ii)). Where an application is made on the ground that the case falls within one of the "special expenses" grounds set out in regulations 10 to 14 of the Variations Regulations, there are additional matters to take into account which are set out in regulation 21(1)(b).

26. Finally regulation 21(2) also prescribes matters which are not to be taken account in determining whether it would be just and equitable to agree to a variation. These include the contact arrangements with the qualifying child and whether these are being adhered to; responsibility for the breakdown of the relationship between the parent with care and the non-resident parent; and whether the non-resident parent has failed to pay child support maintenance or maintenance pursuant to either a maintenance order or a written maintenance agreement.

27. The child support legislation leaves to the courts the power to make orders that a parent pay tuition fees for a child's education (section 8(7) of the Act). Variation in respect of boarding school fees is possible (see regulation 13 of the Variations Regulations). Upper Tribunal Judge Jacobs in the case *of DB v CMEC (CSM)* [2010] UKUT 356 (AAC) held that "the express legislative division of responsibility between the courts and the Commission indicates that school fees are a matter for the courts and not to be taken into account under the just and equitable test" for variations (see paragraph 34).

28. Finally section 28(J) of the Act makes provision to ameliorate the problems for non-resident parents that arise when arrears build up whilst their liability for child support maintenance is being calculated. It applies where there has been an application for a maintenance calculation under either section 4(1) or 7(1) of the Act; where the CSA has not made a decision under either section 11 or 12 of the Act or where it has not decided not to make a maintenance calculation; and where the non-resident parent has made a voluntary payment (see section 28J(1)). Voluntary payments are defined in section 28J(2) as being a payment on account of the child support maintenance which the non-resident parent expects to become liable to pay following the determination of the application and which are made before the maintenance calculation/decision on the application for maintenance has been notified to the non-resident parent.

29. Those voluntary payments are then offset against arrears of child support maintenance. If the amount of the voluntary payment exceeds the arrears, this is dealt with under section 41B(1A) and (7) as overpaid child support maintenance.

The issues arising in this appeal

(a) The status of the additional expenses

30. In this case, the father produced an invoice (page 96) addressed to the mother from the school which A attended. There was apparently no dispute that the father paid this invoice in the sum of £2,431.38. A number of items were listed, including payment for music lessons and for the Duke of Edinburgh Award Scheme. Some of the items listed were a little unclear: these included something called Young Enterprise, the daily minibus run and Gate House disbursements. The schedules which supported some of the listed items were not produced. The invoice also included a significant sum outstanding from previous bills.

31. Further the father stated at page 66 of the bundle that he paid for haircuts, all expenditure associated with A's sporting activities, laptops and mobiles (including money to run the mobile), pocket money, and music lessons. The mother confirmed to me at the second hearing that both she and the father had agreed that A should undertake a wide variety of extra-curricular activities such as music lessons and sport. She also confirmed that the father would pay for A's haircuts.

32. The Agency proceeded on the assumption that all of the above items paid for by the father could not be taken into account in the child maintenance calculation. That is indeed correct but it was not the whole picture. The Agency never considered whether any of the items could be taken into account in considering whether it was just or equitable to make a variation decision. Though the tribunal mentioned the extras as matters which it had to consider in deciding whether a variation was both just and equitable, it failed to differentiate between each item so as to establish whether an item could legitimately be taken into account or whether it was excluded because it was directly connected with A's education. That was a material error of law.

33. I asked the parties to consider the status of the additional expenses paid for by the father and, in particular, to consider whether these were expenses "*incurred in connection with the provision of ... instruction or training*" for A. If they were, section 8(7) of the Act would apply so that these could not be taken into account in considering whether it was just and equitable to make a variation decision.

34. The Agency submitted that the phrase "*in connection with*" contained in section 8(7) of the Act should be given its ordinary natural meaning as something that connects or joins or links. The connection must be direct rather than indirect. Neither of the other parties dissented from that approach. I agree with this approach to the wording of section 8(7).

35. Were the extra items paid for by the father items which were connected to A's education? The Agency made the general submission that many parents pay extra money for their children to attend pre and post school clubs, on-site peripatetic music lessons and on-site sports clubs. Sometimes the school runs the activity and sometimes it is contracted out to other providers. Whether a child attends a state school or a fee-paying school, these "extras" should be treated the same way. In general, the Agency would not normally consider these types of payment to be "*in connection with*" instruction or training so that they are excluded from consideration altogether. However there is no mechanism by which they could be taken into account in the maintenance

calculation. Such payments would also not normally be classified as "*voluntary payments*" because of the restrictive nature of the payments allowed under section 28J and the timeframe in which those payments have to be made.

36. I agree that it is desirable that these "extras" should be treated in the same way no matter what sort of school a child attends. It must also be correct that the maintenance calculation does not take such payments by the non-resident parent into account when determining the rate at which child support maintenance must be paid. However I am not so certain that such "extras" cannot be classified as voluntary payments if they are made within the requisite timeframe required by section 28J(2). They are not made "*in connection with*" instruction or training and thus not excluded by section 8(7) and they may also be regarded as a payment in lieu of child support maintenance as long as payment for the "extras" is made to the parent with care (thus falling within regulation 3(b)(i) of the Child Support (Voluntary Payments) Regulations 2000 (SI 2000/3177)). I note that the case of *DB v CMEC* referred to in [26] above suggested that the payment of school fees might be taken into account as a voluntary payment under section 28J. Even if that is not a correct proposition, it seems to me that "extras" which are not in connection with instruction or training are not excluded from being classified as a voluntary payment. Payments within regulation 3(b)(i) of the Voluntary Payments Regulations are made in place of ("in lieu of") child support maintenance and thus payments for "extras" are likely to be items of expenditure on which many parents with care might choose to spend any child support maintenance due to them.

37. I address the issue of voluntary payments later in these Reasons.

38. How might a decision-maker determine what is or is not a payment "in connection with" instruction or training? The Agency submitted that this required a fact-specific consideration of the "extra" alleged and whether it was directly "in connection with" instruction or training. Weight should also be placed on whether the "extra" is properly considered to be optional or extra-curricular. I agree.

39. Applying those considerations to the facts of this case, some of the items listed on the invoice were not "in connection with" instruction or training such as the Duke of Edinburgh Award Scheme. This is accepted by the Agency. Additionally the Agency accepted that extra-curricular sport would not usually be "in connection with" instruction or training and that private physiotherapy treatment connected with that sport was never likely to be "in connection with" instruction or training. I accept those concessions by the Agency. However there is a lack of information about many of the other items listed on the school's invoice for A which makes it difficult for a decision-maker to determine whether these can properly be categorised as "extras".

40. It should not be forgotten that the father also paid for haircuts, sport and music lessons. That he did so is not in dispute as I have recorded in [31] above. There are other items not listed on the invoice from the school where a dispute might arise as to whether the father made the payment and, if so, how much that was.

41. The tribunal which reconsiders this case will need to make findings about the status of each of the items for which the father paid and the amount of the same. Those which are directly connected to instruction or training fall to be excluded either as a voluntary payment (if they are listed on the invoice in the mother's name) or as an extra which could be taken into account in determining whether it is just and equitable to order a variation.

(b) The status of extras in variation decision-making

42. The Agency submitted that payment of extras by the father not linked to A's schooling could be taken into account when determining whether it would be just and equitable to make a variation decision. This included extras falling into the specific category of voluntary payments as well as other extras. Neither party dissented from that submission.

43. I agree. There is nothing in the Act or the Variations Regulations to prohibit such items from being taken into account in a just and equitable determination. As Upper Tribunal Judge Jacobs commented at [34] of *DB v CMEC* (see reference above), the just and equitable test provides a largely unrestricted discretion to take account of the whole of the financial circumstances relevant to both the parent with care and the non-resident parent. However that test must be applied within the context both of the child support scheme as a whole and of the matters contained in section 28F, 28E of the Act and in regulation 21 of the Variations Regulations.

(c) Voluntary payments

44. It is clear that the father sent a form to the Agency in late January 2014 setting out the voluntary payments he had made in respect of A to the mother (page 71). The form is at page 72 of the bundle. He also sent the invoices referred to on that form to the Agency on 15 February 2014 (page 94). The Agency failed to respond to that form as can be seen by the father's email dated 13 April 2014 (page 76). Its submission to the tribunal ignored the issue of voluntary payments in its entirety. Moreover the bundle it provided to the tribunal failed to include copies of the invoices sent by the father.

45. Likewise the tribunal too failed to consider whether the father had made any voluntary payment within the meaning of section 28J. That factor is not excluded from consideration by regulation 21(2)(f) of the Variations Regulations and I find that would have been relevant to its assessment of whether it was just and equitable to agree a variation. By failing to do so, the tribunal materially erred in law.

46. The tribunal which reconsiders this appeal will need to determine (a) which parent had the responsibility for settling the invoices issued by A's school since the mother disputed that this was her responsibility; (b) what items on that invoice were extras not connected to instruction or training and the amount thereof; (c) the amount of any offset arising by reason of section 28J voluntary payments against arrears of child support maintenance; and (d) whether any such voluntary payments should be taken into account when determining the just and equitable test.

(d) Breach of natural justice

47. I have already recorded that the Agency had failed to include in the bundle the copies of the invoices paid by the father. The Agency accepted that this had occurred and that the tribunal was inadvertently misled by the omission of evidence relevant to the appeal. This was in breach of the specific requirement in rule 24(4)(b) of the Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008 (SI 2008/2685) which provides that "the decision maker must provide with the response…copies of all documents relevant to the case in the decision maker's possession unless a practice direction or direction states otherwise".

48. The tribunal rejected the father's case in part because he had not produced any invoices in the mother's name. In fact he had but the tribunal had not seen them. The failure to provide this relevant evidence to the tribunal about a crucial issue in this case constituted a breach of natural justice. That fact alone amounted to a material error of law. I would have allowed the appeal on this issue alone.

(e) A variation on the ground of contact expenses?

49. In the father's letter of appeal, he said that he paid for all of the travel associated with contact. The Agency's submission to the tribunal stated that "there was no legislation to allow for the amounts referred to" by the father (page 3). The Agency accepted before me that this statement was wrong as contact costs are a ground of variation under regulation 10 of the Variations Regulations.

50. Did the mention of contact costs in the letter of appeal amount to a request for a variation? Paragraph 16 of *DB v CMEC* (see above) states:

> "The parent with care never actually applied for a variation. What happened was that the decision-maker treated her as having applied. That was entirely proper. Decision-makers are under a duty to have regard to the substantive nature of an application rather than its legal form. That beneficial approach was encouraged by the Social Security and Child Support Commissioners for over half a century: see R(I) 15/53 at [4] and R(I) 50/56 at [18]. It has been applied, for example, to treat a letter of appeal as an application for a variation: see CCS/1838/2005 at [15]. The decision-maker acted under this duty by treating the parent with care's letter of 4 December 2006 as an application for a variation. It was not so worded but its contents referred to the non-resident parent's life-style, which is one of the grounds for a variation."

51. I accept the Agency's submission that the Agency and therefore the tribunal had before it a request for a variation on the grounds of contact which had not been properly determined. I find that the tribunal erred in law by making no findings about contact costs and failing to determine an issue which was properly before it. In so doing, the tribunal materially erred in law.

(f) One final matter

52. The tribunal said that it could not take account of any changes in parties' circumstances since 8 April 2014, the date of the second of the two decisions which had been revised. That statement was incorrect for the reasons set out below. I did not invite or hear argument on this issue as (a) it was marginal to the main issues with which this appeal is concerned and (b) this appeal is to be remitted for reconsideration by a fresh tribunal. What follows is intended to assist the parties and that tribunal when it comes to reconsider this appeal.

53. A decision by Upper Tribunal Judge Jacobs explains clearly the effect of an appeal against a revised decision (see paragraphs 8–12 of R(CS) 1/03). Section 20(7)(b) of the Act prevents an appeal tribunal from taking account of circumstances which were not obtaining at "*…the time when the decision or assessment appealed against was made*". Therefore, when considering an appeal against a revised decision, a tribunal is prevented from taking account of changes of circumstances that occurred after the date when the original decision was made even if those changes occurred before the date on which that decision was revised.

54. In this case the tribunal is thus prevented from looking at changes of circumstances after 15 January 2014, the date of the original decision. It is however entitled to take account of later evidence about the circumstances obtaining on 15 January 2014.

55. I do not know why the tribunal made this error. It is possible that it was confused by the supersession decision dated 8 April 2014. The fresh tribunal should take care to determine matters as they were on 15 January 2014 and the mother and father should bear that date in mind when they provide their respective statements and evidence for that tribunal (see my final direction below).

Disposal

56. For all the reasons set out above I allow this appeal and set aside the tribunal's decision. I remit the matter for reconsideration by a fresh tribunal in accordance with the directions set out below.

57. Though the father has succeeded in this appeal, this should not be taken as an indication that he will be successful at any rehearing.

58. Both the father and the mother will need to provide a great deal more evidence to the tribunal in order that it might make detailed findings of fact. This will inform the exercise of its discretion about whether it is just and equitable to direct a variation in all the circumstances of this case. Additionally I require the Agency to comprehensively update its submission to the tribunal once the other parties have had an opportunity to adduce their additional evidence. It should pay careful attention to the contents of these Reasons.

CASE MANAGEMENT DIRECTIONS

59. The appeal should be considered at an oral hearing.

60. The new First-tier Tribunal should not involve the tribunal judge who was previously involved in determining the appeal on 2 February 2015.

61. The father shall send to the tribunal office within one month of the issue of this decision a detailed narrative statement addressing the issues in this case and exhibiting the following:

a) A copy of the court order made at the conclusion of the ancillary relief proceedings together with any subsequent order varying the same;

b) evidence of any family agreement between the father and the mother about the payment of maintenance/ school fees or the payment of school "extras" for A;

c) evidence of the sums spent by him on travel to contact with A;

d) evidence, if available, about the pattern of contact between himself and A from about July 2013 to January 2014;

e) evidence of his expenditure on "extras" for A (to include the schedules referred to in the invoice at page 96 of the bundle and any evidence about how and for what the sum still owing from previous invoices was calculated);

f) and evidence that he paid the invoice at page 96 of the bundle.

62. The mother shall one month after receipt of the father's statement send to the tribunal office a statement in reply. She is at liberty to exhibit any documentary evidence in support of her statement. If possible, she shall produce evidence of the payment by her of any monies to the father as set out in paragraph 9 of the First-tier Tribunal's Reasons (page 89).

63. The Agency shall one month thereafter send to the tribunal office an updated submission addressing both the totality of the evidence in this case and the legal issues.

64. The mother may, should she wish, send any written comment on the Agency's submission to the tribunal office three weeks after she receives it.

65. The father may, should he wish to do so, send any written comment on the Agency's submission and any submission from the mother to the tribunal office three weeks after the mother's submission is due.

66. The differently constituted tribunal must conduct a complete rehearing of the issues that are raised by this appeal and, subject to the tribunal's discretion under section 12(8)(a) of the Social Security Act 1998, any other issues that merit consideration.

67. The tribunal must deal with any procedural questions, as may arise, on their merits.

68. The tribunal must consider all aspects of the case, both fact and law, entirely afresh.

69. The tribunal must not take into account any circumstances that were not obtaining at the date of the decision appealed against – see section 20(7)(b) of the 1991 Act – but may take into account evidence that came into existence after the decision was made and evidence of events after the decision was made, insofar as it is relevant to the circumstances obtaining at the date of the decision.