IN THE UPPER TRIBUNAL **Upper Tribunal case No.** HSW/1425/2018

ADMINISTRATIVE APPEALS CHAMBER

Before: Mr E Mitchell, Judge of the Upper Tribunal

DECISION:

Under section 336ZB(2) of the Education Act 1996, the Upper Tribunal **REFUSES** the appellant, Mr S-G, permission to appeal against the decision of the Special Educational Needs Tribunal for Wales taken on 10 April 2018 (tribunal reference S 00804 04614).

Under rule 14(1) of the Upper Tribunal (Tribunal Procedure) Rules 2008 I hereby make an order prohibiting the disclosure or publication of any matter likely to lead to a member of the public identifying the child with whom these proceedings are concerned. This order does not apply to (a) the child's parent/s, (b) any person to whom a parent discloses such a matter in the proper exercise of parental responsibility, (c) any person exercising statutory (including judicial) functions in relation to the child.

The parties

- *Appellant*: Mr S-G (father of E, a child with a statement of special educational needs)
- *1st Respondent*: Denbighshire County Council ("the local authority")
- *2nd Respondent*: Ms B (mother of E)

REASONS FOR DECISION

Introductory comments

1. The Upper Tribunal does not normally publish on its website a decision on an application for permission to appeal. I have decided to do so in this case for three reasons.

2. Firstly, the Special Educational Needs Tribunal for Wales' conduct of the present proceedings, despite their exceptionally challenging nature, was in my view exemplary, and its statement of reasons, drafted by the Legal Chair Ms J Blackmore, was of the highest quality. Given the wider background to this case, this is something that, in my view, should be publicly acknowledged.

3. Part of that background is two earlier successful appeals to the Upper Tribunal against decisions of the SEN Tribunal for Wales brought by the present Appellant Mr S-G (*SG v Denbighshire County Council & MB* [2018] UKUT 158 (AAC); *S-G v Denbighshire County Council & B (SEN)* [2016] UKUT 460 (AAC); [2017] ELR 99). The present Tribunal decision was made after the Upper Tribunal, in its 2016 decision, remitted the matter for re-determination). In fact, these are the only two appeals against decisions of the SEN Tribunal for Wales to have been decided by the Upper Tribunal in recent years. This brings me on to my second point.

4. The SEN Tribunal for Wales is a relatively small tribunal which, for obvious reasons, decides far fewer cases than the Health, Education and Social Care Chamber of the First-tier Tribunal. Anyone searching Upper Tribunal case law for appeals against decisions of the SEN Tribunal for Wales will discover that every (that is two) published decision involved the tribunal's decision being set aside. However, this should not be taken as representative. The small data set skews the sample. In fact, one could argue that the professionalism shown by the Tribunal in the present case suggests very few of its decisions come before the Upper Tribunal because its management of cases, and its decisions, are acceptable to the parties even though, in every case, at least one party will not have achieved the result sought.

5. The third reason for making this decision available on the Upper Tribunal's website is to mark the Upper Tribunal's condemnation of the Appellant Mr S-G's conduct during the proceedings before the SEN Tribunal for Wales. This is not an exercise in 'naming and shaming' (the decision is subject to an anonymity order in any event) but is intended to show the Upper Tribunal's absolute disapproval of individuals who misuse the special features of education tribunals.

6. The Appellant Mr S-G behaved disgracefully before the SEN Tribunal for Wales. Any reasonable person would be ashamed to have acted in a similar way. He abused the relative informality of tribunal proceedings, using them to create obstructions, ventilate unrelated grievances and as a licence to be offensive. In so doing, he must surely have harmed the interests of other children in Wales given the amount of time that the Tribunal was effectively forced to devote to his case.

7. Mr S-G's earlier successes before the Upper Tribunal may have emboldened him. He seems to think he has an 'ally' who will always take his side. It should be understood that the Upper Tribunal is no ally of a party who misuses education tribunal proceedings in the way that Mr S-G has done.

8. On numerous occasions, Mr S-G drew the Tribunal's attention to the Upper Tribunal's (my own) decision in 2016, painting it as a looming threat to illustrate the dire legal consequences of disagreeing with him. At one point, he wrote this to the Tribunal's Legal Chair, "I have no doubt the Upper Tribunal will have something to say regarding your conduct throughout this appeal". Well, Mr S-G was right about that. I do have things to say about the Legal Chair, and could say a lot more, but everything I have to say, and could say, is entirely positive.

9. I am not surprised, given the Tribunal's professionalism as demonstrated throughout the proceedings, that Mr S-G's conduct did not cause it to lose sight of the interests of the child whose education was at issue. But, nevertheless, the Tribunal is to be commended for always keeping the child's interests at the heart of the proceedings.

When the Upper Tribunal grants permission to appeal

10. The Upper Tribunal will grant permission to appeal against a decision of the Special Educational Needs Tribunal for Wales (hereafter "the Tribunal") if an Appellant has a realistic prospect of establishing that the Tribunal's decision involved a material (relevant) error on a point of law.

11. I conducted a hearing of Mr S-G's application at Manchester Civil Justice Centre on 26 July 2018. Subsequently, he contacted the Upper Tribunal's office stating that, at the hearing, I undertook to give a decision within a couple of weeks. I have a different recollection, which is that I told Mr S-G I could not guarantee a speedy decision given the very large number of documents within the Tribunal files. I was also, at the time, recovering from an injury, which was generally slowing me down, and about to go on holiday, so I very much doubt I would have intentionally led Mr S-G to expect a rapid decision. Clearly, wires were crossed somewhere and I am sorry that Mr S-G has had to wait longer for this decision than he says he expected.

12. Mr S-G represented himself at the hearing of his application. The other parties were notified of the time and date of the hearing and, while permitted to attend, neither did.

The Tribunal's decision

13. Mr S-G's appeal to the Tribunal concerned the contents of his daughter, E's, statement of special educational needs (SEN), in particular the school named in Part 4 of the statement. As was explained in the admirably thorough statement of reasons for the Tribunal's decision, Mr S-G was subsequently permitted to amend his original appeal to include challenges to Parts 2 (description of SEN) and 3 (provision to meet SEN) of his daughter's statement. The local authority also conceded before the present Tribunal that certain parts of the statement, originally issued in 2015, had become out-of-date and required amending.

14. The Tribunal decided to determine the appeal without holding a hearing and gave case management directions to that effect on 22 December 2017.

15. In relation to the statement's description of E's special educational needs, the Tribunal found:

> - while Mr S-G took issue with Part 2 of the statement, "he has not indicated which aspects of [E's SEN] he wishes to challenge and neither has he presented the Tribunal Panel with any evidence that challenges the results from the assessments [described] above notwithstanding the fact that he has been given a number of opportunities to do so via the directions issued in these proceedings" (para. 37 of the statement of reasons);

- "[E] appears to have difficulties in acquiring literacy and numeracy skills, with greater difficulties in acquiring numeracy skills" (para. 39);

- while Mr S-G raised a concern that E might have dyscalculia, he did not provide any supporting evidence despite having been given a number of opportunities to do so (para. 51);

- "from early childhood [E] appears to have had difficulties in acquiring age appropriate speech, language and communication skills" (para. 53);

- while Mr S-G argued for a speech and language assessment, "he has not outlined in any detail what his concerns are in regard to [E's] speech, language and communication skills over and above those already identified in [E's] statement and he has provided no evidence to challenge the evidence that is outlined above in summary form notwithstanding having a number of opportunities to do so" (para. 59);

- while Mr S-G raised a concern that E might have ADD, he provided no supporting evidence (para. 63);

- while Mr S-G referred to E having a chromosome disorder, "he has not…explained the significance of this in the context of [E's SEN] and he has not indicated whether he believes this information should be included within Part 2 of [E's] statement (para. 70);

- Mr S-G expressed concern about E's vision but did not explain why he took no steps to have her sight tested (para. 71);

- Mr S-G had expressed concern about E's weight although it was not clear if that remained a concern (para. 72);

- while Mr S-G stated that he took issue with reports supplied by a Dr Roberts, he did not explain why in any detail nor supply any evidence to support his concerns (para. 73);

- Mr S-G did not explain why he believed E should be assessed by CAMHS (Child and Adolescent Mental Health Services) (para. 75). He did not supply supporting evidence nor was there any other evidence to support the argument that a CAMHS assessment was needed (para's 75 & 76). The latest school reports indicated no concerns regarding emotional needs, behaviour or attitude (para. 78).

16. In relation to Part 3 of E's statement of SEN (educational provision required), the Tribunal's statement of reasons includes the following passages:

- Mr S-G failed to provide a written explanation of his Part 3 case, despite his assertions that the provision within Part 3 was unlawful (para. 91);

- on Mr S-G's initial appeal (2015) he argued that E needed a nurturing environment with maximum opportunities for 1:1 support and small group work, as well as a carefully planned reintegration into a "mainstream situation" (para. 93);

- while Mr S-G argued E was not currently making progress, he did not explain why nor provide supporting evidence (para. 94);

17. In relation to Part 4 of E's statement of SEN (school or type of school), the Tribunal's statement of reasons included the following:

- Mr S-G continued to be strongly opposed to E attending Prestatyn High School (her present maintained mainstream school). In his view, E was not making progress there, was unhappy and bullied, and not provided with the teaching assistant support she needed (para. 119);

- by the culmination of the proceedings, Mr S-G no longer thought that E should attend Rhyl High School, a maintained mainstream school (his stance on the 2015 appeal). Instead, she should attend either Tir Morfa, Ysgol Gogarth or Ysgol Emrys ap Iwan;

- Tir Morfa was a school for learners with moderate learning difficulties (para. 126);

- Mr S-G's preference for Tir Morfa appeared to have declined. On 3 October 2017, the Tribunal gave directions requiring him to clarify which school or type of school he thought should be included in Part 4 of E's statement together with supporting evidence (para. 135). While Mr S-G confirmed he wanted E to attend Tir Morfa, he did not present his case in any detail (para. 137);

- Ysgol Gogarth was a special school for children with moderate to profound learning difficulties as well as children on the autistic spectrum (para. 141). Mr S-G's reason for selecting Ysgol Gogarth was that it was 'out-of-county' so that, if E attended, he would escape the poor relationship that has developed between himself and the local authority and schools in Denbighshire (para. 144). Mr S-G failed to comply with directions requiring him to explain, with supporting evidence, his selection of Ysgol Gogarth (para. 145);

- Ysgol Emrys ap Iwan was a mainstream secondary school. Again, the school was selected by Mr S-G because it was out-of-county and Mr S-G did not comply with directions requiring him to explain, with supporting evidence, why he selected it.

18. The Tribunal decided as follows:

- E's statement of SEN was significantly out-of-date, the local authority having failed to amend it to keep track of her development. The Tribunal ordered a number of amendments to Part 2 of E's statement;

- much of Part 3 of E's statement was too general and lacking in specificity. However, the parties had not provided the Tribunal with sufficient evidence to enable it to remedy all the deficiencies. To avoid further delay, the Tribunal decided not to direct further evidence. The Tribunal noted an impending statutory review and stated that, if either parent thought any new Part 3 provision resulting from the review was not specific enough, they could bring a fresh appeal to the Tribunal;

- the Tribunal did, however, feel it have sufficient evidence on which to base certain amendments to Part 3, which were duly made;

- regarding Part 4 of E's statement, the Tribunal found that the only duly made operative parental preferences were for two maintained mainstream secondary schools (Prestatyn and Rhyl High Schools). Given Mr S-G's failure to set out the reasons for his preferred school, the Tribunal could not undertake a meaningful comparison of the merits of the three schools recently selected by Mr S-G against the other schools. The Tribunal ordered that Part 4 be amended to describe a type of school – "maintained mainstream secondary school" – rather than a specific school.

Relevant events in, and connected to, the Tribunal proceedings

19. To determine this application, I need to set out certain relevant events during the Tribunal proceedings as well as connected activities: Surprising as this may seem, I set out below only the main events:

- 5 September 2016, Prestatyn High School email Mr S-G informing him that Ms B did not consent to E's CAMHS referral
- 6 October 2016: local authority write to Mr S-G about a planned re-assessment of E's special educational needs, including a form for making parental representations
- 18 October 2016: Upper Tribunal issues its decision allowing Mr S-G's appeal against the Tribunal's previous rejection of his appeal against the contents of E's statement. The Upper Tribunal remits the case to the Tribunal for re-determination;
- 15 November 2016: Dr Roberts (associate specialist in community paediatrics) identifies a chromosomal imbalance. Advises genetic testing of parents
- 17 November 2016, Tribunal gives case management directions, which included:
    - Any supplementary case statement and additional written evidence to be supplied by 8 December 2016;
    - Parties to make written representations as to whether the appeal should include a challenge to Parts 2 and 3 of E's statement, and the possibility of naming a type of school in Part 4, by 8 December 2016;
    - Hearing attendance forms to be supplied by 8 December 2016
- 18 November 2016: Mr S-G asks the Tribunal to direct the local authority and Prestatyn High School to co-operate with him so that he could "formulate my appeal". The request was repeated in an email of 20 November 2016;

- 21 November 2016: Mr S-G emails the clerk to Prestatyn High School Governing Body expressing concern that E was not placed on the CAMHS waiting list because insufficient information about her was supplied;
- 21 November 2016: clerk emails Mr S-G stating Ms B did not consent to a CAMHS referral; CAMHS said a referral could be accepted with only one parent's consent but nevertheless E was not placed on the waiting list
- 23 November 2016: local authority inform Mr S-G they intend to proceed with a statutory assessment;
- 29 November 2016: report of annual statutory review of E's statement whose contents included:
    - E was making "pleasing progress" in Maths and English;
    - A document setting out Mr S-G's parental representations, which included: from the little information supplied by E's school, he was concerned that she was not making adequate progress especially in Maths which could well be the result of Dyscalculia yet the school refused to investigate that possibility; he was not, at the time, told that a CAMHS referral was blocked by Ms B; E needs to be assessed for a special school
- 1 December 2016, SNAP Cymru (parental support organisation) email the local authority requesting an urgent dispute resolution service meeting between Prestatyn High School and Mr S-G;
- 2 December 2016: Tribunal issues directions notice whose contents included:
    - A reminder to the parties of their co-operative duties under the Tribunal's Regulations. This was clearly a response to Mr S-G's request for a direction;
    - An explanation that Prestatyn High School were not a party to the proceedings and so not subject to the co-operative obligations under the Tribunal's Regulations. However, the Tribunal would expect the local authority to use all reasonable endeavours to secure that the school provided Mr S-G with relevant information. A direction to that effect was given;
    - Most deadlines in 17 November 2016 directions extended to 16 January 2017
- 8 December 2016: Prestatyn High School write to Mr S-G informing him that his "right of contact with the school removed". But information normally supplied at parents' evenings would be supplied as a summary written report. The reason given was that Mr S-G sent the school 7 emails in 9 working days many of which were lengthy and inaccurate, and had a threatening and bullying tone. Mr S-G was invited to make representations against the removal of the right of contact within 10 working days

- 19 December 2016: local authority decide that the re-assessment of E's needs did not call for any amendment to her statement of SEN;
- 19 December 2016: Mr S-G emails the Tribunal complaining that the local authority breached the recent directions about co-operation. The authority should be "held in default" and sanctioned. He listed the information he required from the local authority: whether they were willing to enter a dispute resolution process; a decision letter regarding E's assessment; confirmation they had received information about E's chromosomal imbalance; whether he would be consulted about E's statement; whether named individuals were permitted to contact him. And from Prestatyn High School he required: confirmation whether they would enter dispute resolution; information about their decision to remove his right to contact the school; why CAMHS were not supplied with information about E; confirmation they had received information about E's chromosomal imbalance; E's attendance records; why the school refuse to meet with him to discuss E's progress; annual review information. This information was essential if Mr S-G was to prepare a case statement by the Tribunal's deadline;
- 23 December 2016: Tribunal issues directions notice whose contents included:
    - The view that Mr S-G could explain in his case statement how Prestatyn High School's removal of his right to contact the school has affected his ability to prepare his case;
    - Local authority required by 9 January 2017 to provide Mr S-G with: confirmation whether they were willing to enter dispute resolution, and whether they had received the chromosomal information; whether they intended to consult Mr S-G about E's statement; whether specified individuals were permitted to contact him and, if not, why; a copy of E's annual review report;
    - A refusal "at this time" to exercise the Tribunal's power to exclude the local authority from a hearing;
    - A direction requiring the local authority to use all reasonable endeavours to secure a written response from Prestatyn High School to address: why information about E was not supplied to CAMHS; confirmation whether chromosomal information had been received; E's attendance record;
- 23 December 2016: Mr S-G emails the Tribunal expressing concerns about the directions given earlier that day: the authority were given too much time to comply;
- 4 & 8 January 2017: Mr S-G emails the Tribunal to complain about the local authority's failure to comply with directions and the latitude given to them by the Tribunal;
- 5 January 2017: local authority apply to the Tribunal for a direction authorising appointment of an independent advocate to obtain E's views;

- 6 January 2017: Mr S-G completes tribunal hearing attendance form. On 15 January 2017, Ms B informed the Tribunal she would not attend a hearing. On 16 January 2017, the local authority informed the Tribunal that they would be represented by counsel at a hearing;
- 6 January 2017: Mr S-G emails the Tribunal requesting that the email be treated as his case statement. The email's contents included:
    - The assertion that he had been impeded in his attempts to obtain supporting evidence;
    - Ms B falsely claimed to be living in a safe house;
    - The local authority failed to comply with directions requiring certain questions to be answered by 16 December 2016;
    - A request that the local authority be "thrown out of the proceedings";
    - The local authority failed to follow through on their commitment to set up a dispute resolution process between Mr S-G and the school;
    - the school's SENCO failed to send him the annual review information to which he was entitled;
    - for three years the local authority had failed to update E's statement so that it had become out-of-date;
    - E's reading levels had regressed since primary school;
    - Request for an extension to the 16 January 2017 deadline for submitting evidence
- 9 January 2017: Mr S-G emails the Tribunal with his views on information recently supplied by the local authority: the refusal to attempt dispute resolution was a breach of section 332B of the Education Act 1996; the CAHMS material showed that the School's SENCO failed to act appropriately; no one contacted him about an assessment of E; no explanation provided of the school's plan for addressing E's bad numeracy report; the School had ignored his Dyscalculia concerns. Mr S-G again requested that the local authority be "thrown out" of the proceedings;
- 14 January 2017: Mr S-G emails the Tribunal expressing concern that his complaints about the local authority's failure to comply with direction had not been dealt with and that a 23 November 2016 assessment letter had not been sent to him;
- 16 January 2017: local authority supply Tribunal with statement of case and supporting documents whose contents included:
    - Request for the Tribunal to amend Part 4 of E's statement to specify a type of school, maintained mainstream secondary school, given that Rhyl and Prestatyn High Schools were both appropriate schools;

- Various assessment documents whose dates ranged from December 2015 to 9 January 2017. The case statement also said that E's Year 8 progress report (up to December 2016) was not yet available;

- 17 January 2017: Tribunal issues directions notice whose contents included:
  - A refusal to either vary the Tribunal's previous directions or exclude the local authority from a hearing;
  - Mr S-G's request for additional time to supply evidence was granted, to a date to be fixed;
  - The view that a direction for appointment of an independent advocate was unnecessary. The local authority had power to arrange an advocate without the need for a direction;
- 18 January 2017: Mr S-G emails the Tribunal. Its contents include:
  - He asks why the local authority have not been required to answer the questions he set;
  - He asks whether the Tribunal are aware that the local authority are withholding information;
  - Assertion he will have to rely on the case statement supplied previously by email;
  - Due to the local authority's failings, he stated that he intended to bring all his evidence to the hearing "as I will not now have the opportunity to look at what I need until I have seen answers and documents";
  - The email would be his last response in advance of the hearing.
- 24 March 2017: Tribunal issues directions notice whose contents included:
  - The view that the case is not yet ready for a hearing to be scheduled;
  - Local authority directed to provide an update on attempts to seek E's views;
  - Local authority directed to clarify the position regarding a reassessment of E's SEN;
  - Local authority directed to use all reasonable endeavours to provide the Tribunal with copies of E's Year 7 & 8 IEPs and any Year 8 progress report, by 7 April 2017;
  - Mr S-G permitted to supply a supplemental case statement, by 5 May 2017. A number of points that he might wish to consider in such a statement were (helpfully) listed;
  - Local authority directed to supply a copy of its school transport policy, by 7 April 2017, and the parents directed to provide information about travel distances to their preferred High Schools, by 5 May 2017;

- A pre-hearing telephone review would be held on a date to be fixed;
- Direction for witness statements to be supplied by 5 May 2017 with the local authority required to supply a statement from a named educational psychologist;

- 25 March 2017: Mr S-G asks the Tribunal to vary the 24 March 2017 directions and states he cannot supply a case statement due to the Tribunal's failure to direct the local authority to answer questions;
- 30 March 2017: local authority case update explaining that a reassessment of E's needs, planned for late 2016, was delayed by difficulties concerning parental consent. On 17 March 2017, the parents were sent (or re-sent) notification that the authority planned to carry out a statutory assessment together with forms for making parental representations;
- 3 April 2017: Mr S-G emails the Tribunal stating he has only just received the 23 November 2016 decision letter;
- 7 April 2017: local authority supply the Tribunal with its school transport policy, E's recent progress reports and IEPs for Years 7 and 8;
- 10 April 2017: Mr S-G emails the Tribunal expressing doubt over the validity of the transport policy he had received;
- 10 April 2017: Tribunal issues directions notice whose contents included:
  - Refusal to vary earlier previous directions;
  - if Mr S-G now wished to argue for a special school in Part 4 of E's statement, he was required to apply for permission to vary his appeal application, provide details of the proposed special school and his reasons why such a placement is sought;
  - the Tribunal was minded to grant Mr S-G's request for an in-person review hearing;
- 24 April 2017: Mr S-G emails the Tribunal stating, amongst other things, that he has the right to have his daughter educated at a special school but the local authority would not allow E to be assessed by Tir Morfa's (special school) headteacher
- 2 May 2017: Tribunal issues directions notice whose contents include:
  - Statement that, given concerns expressed by both parents, travel distance direction put in "abeyance". Instead, parents required to confirm whether their travel to preferred school distance is more than three miles;
  - A refusal to issue further directions for disclosure of information in relation to Mr S-G's relationship with staff at Prestatyn High School;
- 27 April 2017: Mr S-G emails Tribunal to complain he has yet to be provided with E's views;

- 4 May 2017: Mr S-G emails Tribunal arguing its failure to direct further information from the school prevents him formulating his appeal;
- 4 May 2017: witness statement given by the SENCO at Prestatyn High School whose contents include:
    - Description of the educational provision currently made for E;
    - Statement that, while E was currently achieving at Level 3 or 4, a lower grade than that of an average pupil, her progress would be monitored and it was expected that she would be in a position to take GCSE and BTEC examinations in Maths and other subjects;
    - The view that E's test results did not accurately reflect her abilities, particularly in reading, due to her struggles with test environment;
    - The view that, while E's test scores demonstrated little progress, her reading had dramatically improved in fluency and accuracy;
    - E's attendance for the year ending April 2017 was 96.3%;
    - If E were to move schools, it would have a detrimental effect on her education and academic progress
- witness statement given by the additional learning needs co-ordinator at Rhyl High School, undated but supplied together with the Prestatyn SENCO's statement, which describes the special educational provision that would be made if E attended Rhyl High School;
- 5 May 2017: local authority's *ex parte* (without notice) for the SENCO at E's school to give evidence by telephone. The application relies on allegations about Mr S-G's conduct at a tribunal hearing in 2015;
- 9 May 2017: Mr S-G emails the Tribunal expressing a wish to make a formal statement about "lies" in the local authority application of 5 May 2017, concerning events at the 2015 hearing. Mr S-G makes some extraordinary allegations including that counsel for the local authority kicked him at the 2015 hearing;
- 9 May 2017: local authority inform the Tribunal that, while E was able to express her views about her education and schooling to an independent advocate, she did not want her views disclosed. The advocate was satisfied that E was competent to make this decision. The local authority submitted they were bound to respect E's wishes;
- 15 May 2017: Mr S-G emails the Tribunal stating, amongst other things, that:
    - he had not been supplied with the annual review report nor E's IEP of March 2017;
    - while Prestatyn High School's SENCO conceded that E had made little progress, she did not recommended any steps to help her improve;

- at a hearing in 2015, the local authority's counsel did in fact kick him and nearly hit him in the face although Mr S-G "never once said he this on purpose";
- the independent advocate was not qualified to decide whether E was competent to consent to disclosure of her views;

- 16 May 2017, Mr S-G emails the Tribunal stating he is unwilling to supply a North Wales address. When he previously gave such an address to the tribunal, within a week Ms B turned up and tried to kick his door in. Currently, Mr S-G had no idea what was in the tribunal's bundle. The same day, a tribunal official emails Mr S-G to request a delivery address. It seems to me that, from this point onwards, Mr S-G's conduct really started to deteriorate;
- 16 May 2017, Mr S-G emails the Tribunal stating he would not attend the review hearing "due to gender discrimination";
- 24 May 2017: the Tribunal's President issues a direction requiring Mr S-G to provide details of an address to send his copy of the Tribunal bundle or otherwise collect the bundle from the Tribunal's offices at a specified time. The reason for the direction was that Mr S-G "has refused to provide an address for delivery of the bundle". The direction also notes that Mr S-G had informed the Tribunal that he did not intend to attend the pre-hearing review;
- 24 May 2017: Mr S-G sends the Tribunal an extraordinarily rude email, for the attention of the President, stating, amongst other things:
  - He did not refuse to supply a delivery address. Instead, a tribunal official failed to contact him to confirm a delivery date;
  - He would not supply the Tribunal with a delivery address given the door-kicking incident that followed shortly after he previously gave the Tribunal a North Wales address;
  - The Tribunal must be "having a laugh" by suggesting that he collects the bundle from tribunal offices;
  - The President was "pathetic" and "should grow up";
  - The Tribunal should serve the bundle on him personally but if they served them on someone else "like someone saying they are me", he would take legal action;
- 25 May 2017: Mr S-G emails a Ms W, with whom he has some kind of connection, copied to the Tribunal, warning her that, should a bundle be sent to her residence, "it could be related to the recent terror attack in Manchester";
- 7 June 2017: the Tribunal's President directs that the Tribunal bundle is to be served on Mr S-G personally because he had not supplied a delivery address. The President describes Mr S-G's failure to provide a delivery address as unreasonable. In my view, no reasonable person would disagree with that;

- 13 June 2017: Tribunal issues agenda for the pre-hearing review hearing, noting that Mr S-G now intended to attend. On 6 June 2017, Mr S-G had emailed the Tribunal requesting an agenda;
- 13 June 2017, Mr S-G writes an email to a named Tribunal official that was even more shameful than the 24 May 2017 email to the President. I say that because staff do not have, at their direct disposal, the means to deal with abusive and offensive correspondence. The email complained about recent attempts to deliver the tribunal bundle, alleged the delivery was timed to obstruct the intended recipient's work as a nurse, adding that the intended recipient "does not have the luxury of sitting on her backside like SENTW. It goes without saying that her work is far more important than that of a glorified secretary";
- 16 June 2017: review hearing held, attended by all parties (Ms B by telephone);
- 17 June 2017: Mr S-G emails the Tribunal for the attention of the Legal Chair allocated to his appeal. Mr S-G was disappointed with the way in which the Legal Chair conducted the review hearing
    - The Chair allowed Ms B: deliberately to cough when he was trying to speak; and antagonise him by allowing her continually to refer to E as "her daughter";
    - The Chair failed to protect him from antagonistic comments made by one of the participants;
    - The Chair made a "demonstrably false" allegation about the language he used during the hearing;
    - At one point during the hearing, he thought the Chair "must have been smoking something";
    - It was clear what the Legal Chair intended to do next. He knew he would not be getting a fair hearing;
    - He was being victimised for "winning" at the Upper Tribunal
- 19 June 2017: Tribunal issues directions notice following the review meeting whose contents include:
    - Tribunal decides to adjourn a hearing fixed for 14 July 2017 pending completion of the re-assessment of E's needs. The local authority expected the re-assessment to be completed by 20 July 2017;
    - Tribunal decides not to require disclosure of E's views, in accordance with her wishes;
    - Observation that the planned re-assessment had not proceeded smoothly due to difficulties over access to information and participation in the assessment;

- Notes that Mr S-G had not complied with the deadline for supplying witness statements. Deadline extended to 14 July 2017;
- Tribunal refuses to issue a summons requiring the headteacher of Prestatyn High School to give oral evidence. Mr S-G sought his attendance in order to prove that the headteacher was a liar and had maliciously removed his right to contact with the school. The Tribunal decided this would detract from the issues in the case and amount to an abuse of process;
- Tribunal records that the question whether Ms B was living in a safe house was not a relevant matter;
- Tribunal grants the local authority's application for Prestatyn High School's SENCO / Additional Learning Needs Co-ordinator to give evidence at the final hearing by telephone;
- In response to Mr S-G's stated intention to "put evidence" at the final hearing, a reminder that the Tribunal expects the parties to share relevant evidence in advance of a hearing;
- Tribunal decides to consider Mr S-G's application for a direction for disclosure of E's school record once Prestatyn High School had considered his request for a copy. Mr S-G is directed to supply the Tribunal with a copy of his request for disclosure by 14 July 2017;
- "The Tribunal Panel took the view that it was necessary to record that Mr [S-G] repeatedly insulted those participating in the telephone case conference, made reference to the ethnicity and gender of some of the participants, repeatedly took issue and became agitated when attempts were made to bring discussions back on point and repeatedly hectored other participants of the conference call";
- The Tribunal noted that similar conduct could not be tolerated at a final hearing and referred to the Tribunal's President the question whether Mr S-G should be "enabled to pursue his appeal at final hearing and make his views on relevant issues known, whilst ensuring that the other parties…and Tribunal panel members are able to put forward their views free from verbal insult, inappropriate comments and repeated hectoring, so that the Tribunal Panel is facilitated to make an effective determination of this appeal";

- 21 June 2017: Mr S-G emails the Tribunal stating he proposes to return to tribunal offices three packages delivered to Ms W's address (the tribunal bundle has three volumes). I think the reason for Mr S-G's grievance was his claim that he had not given consent for packages to be delivered to that address;
- 22 June 2017: Mr S-G emails the Tribunal to state the packages are being returned unopened;

- 29 June 2017: Mr S-G emails the Tribunal, for the attention of the President, arguing her actions in relation to service of the bundle were harassment and were causing him alarm and distress;
- 30 June 2017: Tribunal President gives an order that the tribunal bundle is deemed to have been served on Mr S-G but, nevertheless, describes arrangements put in place for him to collect a copy of the bundle from the tribunal's offices. The order recounts that, following investigations, the President was satisfied that Mr S-G actively avoided the process server when s/he called at his address;
- 30 June 2017: Mr S-G emails the Tribunal, for the attention of the President, stating that due to her harassment, he had no option but to block her from contacting him. An alternative email address was supplied. This ridiculous email ended with "any further communication from you will be deleted without being sent to me". But, then, on 12 July 2017 the owner of the alternative email address informed the President that "any communication from yourself is to be deleted without any action taken". The final instalment of this surreal episode was Mr S-G's email of 16 October 2017 in which he again requests that the email address be used to contact him, and ends with "I assume you will now stop being pathetic about who can contact me";
- 2 July 2017: Mr S-G emails the Tribunal, for the attention of the Legal Chair. This email was both absurd and offensive in roughly equal measure. Its contents included:
    - The allegation that the Chair was duped by the local authority's counsel at the review hearing;
    - Ms B's views should be treated with caution because she is "uneducated" and had previously been on parenting courses due to neglect;
    - The argument that seeking information about arrangements for E's care was an unwarranted and unacceptable interference in his private life;
    - "fairness does not come into your thinking so please stop trying to deceive yourself" and "your nose is growing bigger by the second";
    - "I have no doubt the Upper Tribunal will have something to say regarding your conduct throughout this appeal";
    - The Chair made a statement that showed she was "clueless"
    - The entire Tribunal panel covered up Ms B's departure from the review hearing with "lies", and the local authority were "lying idiots";
    - "calling members of the panel liars [at the review hearing] is not an insult if it is true";
    - "[at the review hearing] I said woman and I said man I said Scottish and Irish all of which were accurate descriptions of people present, I did not

abuse anyone in this sense and you need to grow up and tell the truth, LIAR";

- "you have clearly discriminated against me on the grounds of gender and I think you are a bloody disgrace for doing so";
- "stop acting thick as I know what remit SENTW have".

- 12 July 2017: Tribunal President warns Mr S-G by letter that he is not permitted to refer in correspondence to tribunal members by their first names (I shall not describe the correspondence that led to this warning). No reasonable person could, in my view, disagree with the President's opinion that members should not be referred to by their first names. But Mr S-G did. His emailed response of 12 July 2017 described the President's warning as "childish" and stated "you are such a joker";
- 11 August 2017: Tribunal issues directions notice whose contents included:
  - Tribunal staff required to supply Mr S-G with the local authority's update on E's re-assessment;
  - Local authority required to supply Mr S-G with copies of the educational record documents obtained from Prestatyn High School, copies having already been supplied to the Tribunal, by 22 September 2017;
  - Local authority required to use its best endeavours to obtain a copy of E's most recent annual school report and sent to the Tribunal and other parties, by 22 September 2017;
- 24 August 2017: Mr S-G makes a "formal complaint" of gender discrimination against the Legal Chair and other alleged deficiencies in her conduct of the review hearing. The President rejected the complaint on 13 November 2017, her letter including the statement that "the Chair dealt with [Ms B's coughing] in a reasonable manner and asked Ms [B] to turn away from the telephone receive if she wanted to cough". The President listened to a recording of the hearing before responding to the complaint;
- Undated letter sent to Mr S-G by the local authority, in response to the directions of 11 August 2017: encloses the educational record obtained from Prestatyn High School and E's most recent annual report. These documents are in volume three of the tribunal bundle;
- 3 October 2017: Tribunal issues directions notice whose contents included:
  - Mr S-G permitted to extend his appeal to include a challenge to Parts 2 and 3 of E's statement but on condition that he provides "full details of each and every amendment and…all supporting evidence on which he wishes to rely" as well as an explanation as to why he thinks such amendments are necessary, by 9 November 2017;

- Mr S-G directed to clarify the school, or type of school, he thinks should be specified in Part 4 of E's statement, by 9 November 2017;
- Local authority directed to supply a written response to the material that Mr S-G was directed to provide, by 7 December 2017
- Local authority directed to supply a copy of E's statement of SEN, as it stood following the recently completed re-assessment, and her most recent school report, by 12 October 2017;
- A warning to the parties that a failure fully to comply with the directions could result in the Tribunal exercising its power to determine an appeal without holding a hearing;

- 12 October 2017: Tribunal refuses Mr S'G's application for the 3 October directions to be varied or set aside, insofar as they imposed obligations on him;
- 13 October 2017: Tribunal issues directions notice which notes that, while Mr S-G said he had not received a copy of E's statement and educational record, Ms B had not raised an issue about non-receipt. Having referred to problems in providing Mr S-G with documents, the Tribunal required Mr S-G to confirm his contact address;
- 18 October 2017: Mr S-G emails Ysgol y Gogarth requesting that his daughter attends the school. No information about E is given apart from that she has a statement of SEN. A similar email is sent to Ysgol Emrys ap Iwan;
- 24 October 2017: Mr S-G emails the Tribunal. The emails contents included:
  - "I have never asked for Parts 2 & 3 to be heard as part of this appeal". He wanted to appeal Parts 2 and 3 separately because he had no faith in the present panel;
  - "I wish for a special school to be named as it is clear that [E] is not making adequate progress and is over 5 years behind in her schooling";
- 5 December 2017: Tribunal makes an interim determination in the light of (a) the local authority's failure fully to comply with a direction requiring supply of E's statement of SEN including appendices; (b) Mr S-G's refusal to comply with the directions requiring him to set out and explain his proposed amendments to Parts 2 and 3 of E's statement; (c) Mr S-G's failure fully to comply with the direction requiring him to clarify the school, or type of school, he wanted specified in Part 4. The interim determination was to decide the appeal in the absence of Mr S-G and the local authority and seek Ms B's consent to decide the appeal in her absence. The parties were given until 12 December 2017 to make representations on the interim/provisional determination;
- 22 December 2017: Tribunal issues directions notice whose contents include:
  - Observation that that the local authority did not object to the interim determination;

- Observation that Mr S-G now wanted the local authority to be in attendance at a final hearing;
- The Tribunal did not accept that Mr S-G's expressed willingness to use a dispute resolution service negated his obligation to set out and evidence his case; Mr S-G had not only failed to comply with the October 2017 directions, he also failed to provide a witness statement from a person on whose evidence he wished to rely as well as evidence about E's current care arrangements;
- Tribunal repeats its previously expressed concern about Mr S-G's conduct
- A final determination given, in materially identical terms to the interim determination, in the exercise of the Tribunal's powers under regulation 36 of its procedural regulations. In exercising that power, the Tribunal directed itself to procedural regulations' overriding objective;
- Ms B would be deemed to consent to a decision in her absence unless she objected by 9 January 2018.

The Special Educational Needs Tribunal for Wales Regulations 2012

19. Regulation 6(1) contains an overriding objective for the entire Regulations, which is to "enable the President or the tribunal panel to deal with appeals and claims fairly and justly". Regulation 6(4) requires the President or a tribunal panel to "manage appeals…actively in accordance with the overriding objective".

20. The parties to an appeal are placed under a number of co-operative duties by regulation 7(1), including to:

(a) co-operate with each other for the purposes of progressing an appeal;

(b) help a tribunal panel to further the overriding objective;

(c) co-operate with the tribunal panel generally.

21. Regulation 6(2) confers power on a tribunal panel to draw such adverse inferences as they think fit from a party's failure to comply with an obligation under regulation 6(1).

22. Regulation 8(1) confers power on a tribunal panel to seek, where appropriate, to bring to the parties' attention the availability of any alternative dispute resolution procedure. If a procedure is used, a tribunal panel may stay an appeal if that is compatible with the overriding objective (regulation 8(2)). Section 332BA(1) of the Education Act 1996 requires a local authority in Wales to make arrangements with a view to avoiding or resolving disagreements between the authority and parents about the exercise of local authority functions under Part IV of the Act (special educational needs). Section 332BA(2) imposes a similar requirement in relation to parents and the proprietors of schools. Section 332BA(7) provides that "the arrangements cannot affect the entitlement of a…parent…to appeal to the Tribunal".

23. Regulation 31(1) confers power on the President or a tribunal panel to give directions about a range of matters including:

(a) the issues which require evidence or submissions;

(b) the nature of the evidence or submissions required;

(c) the manner in which evidence or submissions are to be provided, which may be orally or in writing;

(d) the time by which evidence or submissions are to be provided.

24. Regulation 31(4) permits a tribunal panel to exclude evidence in certain circumstances, including where it was not provided within the time allowed by a direction in a manner that was not otherwise in compliance with a direction.

25. Regulation 32(1) confers power on the President or a tribunal panel to give directions on any matter arising in connection with an appeal, including such directions as provided for in regulation 34 (particulars and supplementary statements) or 35 (disclosure of documents and other material) to enable the parties to prepare for the hearing or assist the President or a panel to "determine the issues". Regulation 32(6) requires a direction to include a statement of the possible consequences for the appeal, as provided for by regulation 36, of a party's failure to comply with a direction on time.

26. Regulation 36(1) confers a number of powers on the President or a tribunal panel if a party fails to comply with a direction in time, including:

(a) where the party in default is the appellant, dismissing the appeal without a hearing;

(b) where the party in default is a local authority, determine the claim without a hearing;

(c) hold a hearing without notifying the party in default, at which the party is neither present nor represented;

(d) where a hearing has been notified, direct that the party in default is not entitled to attend the hearing.

27. Regulation 42 confers a separate power on the President or tribunal panel to determine an appeal without a hearing if the parties give their written agreement or "in the circumstances described in regulation…36 (failure to comply with directions)". Before making a determination under regulation 42(1), the President or panel must consider any written representations already submitted.

28. Regulation 79(8) deals with notices and documents that the Regulations require or authorise the President or tribunal panel to send. The notices and documents may be sent by first-class post, fax or email, or delivered at the address for service supplied by a party or, if no address for service has been specified, the party's last known address. Regulation 79(14) confers power on the President or panel to make an order for substituted service.

Determination of application

29. I now deal with Mr S-G's grounds of appeal. Those set out below in italics were put at the hearing of his application for permission to appeal.

(1) The President's decision refusing permission to appeal to the Upper Tribunal contained numerous flaws

30. Mr S-G argues that many aspects of the Tribunal President's refusal to grant him permission to appeal were flawed.

31. Now that I am considering Mr S-G's application afresh, the President's reasons are not relevant. This is not an application for permission to appeal against the President's refusal to grant permission; it is an application for permission to appeal against the substantive Tribunal decision.

(2) Whether the Tribunal should have postponed determining the appeal while other proceedings were pending before the Upper Tribunal

32. Mr S-G argues that the Tribunal should not have decided the present appeal when another appeal brought by him was pending before the Upper Tribunal. That appeal concerned the Tribunal's refusal to admit an appeal against the local authority's refusal to amend E's statement.

33. Even if the Tribunal was presented with a coherent request to postpone determining the present appeal pending resolution of the proceedings before the Upper Tribunal, it did not err in law by refusing to do so.

34. While the Upper Tribunal proceedings also concerned E's statement, there was no material risk, that needed be guarded against, of inconsistent decisions being made about the contents of her statement. The Upper Tribunal proceedings concerned a technical, albeit important, point about the provisions of the 2012 Regulations about admission of appeal applications. There was no possibility that the Upper Tribunal would decide anything about the contents of E's statement. I do not say the Tribunal was right or wrong to proceed to determine the present appeal. That is not my function, since the Upper Tribunal's jurisdiction is limited to errors on points of law. But I am satisfied that the decision to proceed with the present appeal was neither unfair nor a decision that no reasonable tribunal could have taken.

35. During the Tribunal proceedings, Mr S-G sought to remove Parts 2 and 3 of E's statement from the Tribunal's consideration so that, once the Upper Tribunal proceedings were resolved, those Parts could be considered by a panel in whom he had faith (email of 24 October 2017). No party has the right to pick and choose a judge or tribunal panel. Mr S-G's misguided request was rightly ignored.

(3) Whether the Tribunal erred by failing to accept Dr Roberts' evidence

36. Mr S-G argues that the Tribunal failed to accept Dr Robert's evidence that the cause of E's learning difficulties had not been fully ascertained and "there is a chromosomal issue associated the a [*sic*] vivacious appetite linked to learning difficulties".

37. The Tribunal did not reject Dr Roberts' evidence. What it said in paragraph 70 of its statement of reasons was that Mr S-G had not "explained the significance of this in the context of [E's] special educational needs". That was correct. . Mr S-G did not explain its significance. Also, Dr Roberts' letters provided no detail about the nature of E's learning difficulties, or no additional detail as compared with the other evidence (that is not intended in any way to be a criticism of Dr Roberts). There was no obviously relevant material within Dr Roberts' letters that required the Tribunal, despite the absence of a reasoned request from Mr S-G, to consider whether the letters called for some amendment to Part 2 or 3 of E's statement.

(4) the Tribunal's response to the failure to ascertain the cause of E's learning difficulties

38. Mr S-G argues that, since the cause of E's learning difficulties had not been identified, the case law he relied on before the Tribunal was extremely relevant. *The paediatrician who said the cause had not been identified was not closely involved in E's care. The Tribunal failed to take into account that the inability to identify a cause was linked to Ms B's refusal to agree to necessary tests.*

39. From my own experience of dealing with SEN cases at the Upper Tribunal, I am aware that, sometimes, the precise cause of a child's learning difficulties can be difficult to identify. This fact does not prevent a Tribunal from lawfully identifying a child's special educational needs or the provision required to meet the needs.

40. Needs may be accurately assessed without knowing their precise cause. Once needs are accurately assessed, the necessary educational provision can be fixed. Neither process always requires a precise diagnosis to be carried out lawfully. The case relied on by Mr S-G, *A v Barnet LBC* [2003] EWHC 3368, said "it is important…to identify or diagnose the need before going on to prescribe the educational provision". So, one or the other is required – identification or diagnosis. *A v Barnet LBC* does not assist Mr S-G. He identifies no evidence, put before the Tribunal, to suggest that E's needs were inaccurately assessed due to the absence of a diagnosis. This ground of appeal does not have a realistic prospect of success.

(5) whether Mr S-G requested a special school

41. Mr S-G argues that he never expressed a desire for E to be educated in a special school. What he wanted was for her to be assessed for that type of school.

42. This is an unimpressive semantic argument. But, in any event, in an email of 24 October 2017 Mr S-G informed the Tribunal "I wish for a special school to be named". This ground of appeal does not have a realistic prospect of success.

(6) whether the Tribunal needed further information to make a lawful decision

43. Mr S-G argues that the Tribunal cannot have been fully prepared to make a decision because it said it wanted to request further information.

44. This argument relates, in particular, to Part 3 of E's statement. The Tribunal was critical of the local authority's re-assessment of E's needs because it had not resulted in, at least, necessary up-dating amendments. At this point, I would suggest that Mr S-G

reflects on whether the Tribunal would really have been critical of the local authority if it was, as he argues, pre-disposed against his case.

45. The Tribunal noted that (a) the parties had not supplied it with sufficient evidence to enable it to make all the Part 3 amendments that seemed to be needed, but (b) the next statutory review was imminent. The Tribunal decided to avoid further delay by ordering those Part 3 amendments that it felt able to make on the evidence in the knowledge that further necessary amendments were likely to result from the statutory review. If they did not, or any amendments were considered inadequate, either parent could bring a fresh appeal. This was no more than a sensible case management decision. It was not an unfair approach nor did it involve the Tribunal overlooking any relevant evidence, as is shown by the not insignificant Part 3 amendments that the Tribunal did feel able to make. This ground of appeal does not have a realistic prospect of success.

(7) whether the Tribunal discounted Rhyl High School against Mr S-G's wishes

47. Mr S-G argues that the Tribunal took Rhyl High School 'out of the equation' when he did not say he wanted it taken away.

48. On 3 October 2017, the Tribunal issued directions requiring Mr S-G to clarify the school, or type of school, he wanted named in Part 4 of E's statement. On 24 October 2017, Mr S-G emailed the Tribunal: "I wish for a special school to be named as it is clear that [E] is not making adequate progress". The email went on to describe attempts he had made to contact certain schools. None of those was Rhyl High School. Furthermore, on 27 September 2017, Mr S-G emailed SNAP Cymru, stating, in response to the question, "What would be acceptable outcome(s) for you", that "acceptable would be for my daughter to be educated at a special school". Mr S-G knew that Rhyl High School was not a special school.

49. Given this correspondence, I fail to understand how Mr S-G can properly argue that he continued to pursue Rhyl High School as a Part 4 option. Moreover, the Tribunal's final analysis did in fact involve Rhyl. This ground does not have a realistic prospect of success.

(8) whether the Tribunal could not have taken national curriculum levels into account

50. Mr S-G argues that the Tribunal could not have taken into account national curriculum levels since it did not have before it: an annual review report from December 2017, the latest IEP; and the latest progress report. Had Mr S-G been given the opportunity to attend an oral hearing, he could have told the tribunal that it was proceeding on insufficient evidence.

51. In relation to national curriculum levels, the Tribunal had before it an educational psychologist's report which set out E's assessed and predicted attainment of Welsh National Curriculum Levels for Years 7 & 8. Evidence cannot be updated indefinitely during the course of tribunal proceedings. The Tribunal was fully entitled to proceed to determine the appeal on the evidence before it without requiring supply of even more documentary evidence. It is not as if the tribunal paid little heed to the nearly 1,000

pages of material within the tribunal bundle. Its decision was explained in an exceedingly thorough statement of reasons extending over 73 pages and comprising 417 paragraphs.

(9) the Tribunal's findings concerning E's progress

52. Mr S-G argues that the Tribunal could not properly have found that E was making progress in the light of the SEN Code of Practice's definition of 'adequate progress'; *the Tribunal also failed to take into account evidence that E had regressed in six subjects since Year 8*.

53. The part of the Code relied on by Mr S-G begins: "6.49. Adequate progress can be defined in a number of ways. It might, for instance, be progress which…[followed by a list of educational characteristics]". So, the Code does not purport to mandate a particular method for measuring progress. The Tribunal's analysis of E's progress was not contrary to the Code. And I reject the argument that the Tribunal overlooked any relevant evidence about E's progress. Its statement of reasons includes an exhaustive analysis of the evidence, from a number of sources, about E's progress. The Tribunal, at paragraph 205 of its statement of reasons, records Mr S-G's concerns but also notes that he failed to supply evidence in support of claims made about E's literacy in particular. This ground of appeal does not have a realistic prospect of success.

(10) whether Mr S-G was treated unfairly

54. Mr S-G argues that he was not given a fair opportunity to present his case because: the Tribunal made a flawed decision to decide the appeal without holding a hearing; he did not choose to set out his case on various points, he was told the deadline for doing so had passed; *the Tribunal tried to overwhelm him with multiple case management directions; at a preliminary directions hearing in June 2017, Ms B deliberately coughed because she knew he was partially deaf and wished to obstruct his participation, the Tribunal's response made it clear to him his appeal would not succeed, the case statement stage was not a realistic opportunity because the statements were given many months before the appeal was finally decided; the Tribunal didn't want to hold a hearing because it knew it could not handle his questions*

55. I regret having to express myself in this way but Mr S-G's claim to have been treated unfairly is ridiculous. As the description of the proceedings given above in these reasons shows, the Tribunal tried again and again to accommodate Mr S-G despite his, frankly, preposterous excuses for being unable to receive tribunal papers and his disgraceful – offensive and abusive – emails to tribunal staff, members and even the President.

56. The Tribunal was fully entitled to determine the appeal without a hearing. It did not act unfairly in doing so. Mr S-G was given a full opportunity to set out his case. There were many case management directions given but none had any purpose other than the proper determination of the appeal. Moreover, the quantity of directions given was largely a response to Mr S-G's obstructiveness and misbehaviour. I can only describe as pitiful his attempt to argue that the fairness of the proceedings was affected by coughing at a pre-hearing review nearly a year before the appeal was determined.

(11) whether the local authority withheld relevant evidence

57. Mr S-G argues that relevant evidence held by the local authority was not disclosed to the Tribunal.

58. Mr S-G's written application does not explain what this evidence is only that it "would show that [E] needs to concentrate and also regression in 6 subjects". All child need to concentrate at school so that is a non-point. Since the purportedly withheld evidence is not identified, even though Mr S-G seems to know what it is, I cannot grant permission to appeal on this ground. In any event, the evidence that was before the Tribunal did cover E's pattern of attainment during recent school years. Given the nature of the documentary evidence that was before the Tribunal, I find it almost impossible to see how its careful analysis of E's educational development might have been materially influenced by any other evidence (if it existed).

(12) whether the Tribunal was bound to find that E lived with him

59. Mr S-G argues that the Tribunal could not, in law, make any finding other than that he lived with E given the terms of a joint residence order.

60. The concrete situation on the ground is what matters when domestic arrangements might have a bearing on special educational provision. The Tribunal's correctly rejected Mr S-G's argument that it was required to proceed on the basis that E lived with him 50% of the time.

(13) the Tribunal's approach to Mr S-G's relationship with Prestatyn High School

61. Mr S-G argues that Prestatyn High School's unjustified attitude towards him, *especially the attitude of a new headteacher*, meant that it could not possibly have been considered a suitable school; *the Tribunal failed to take into account his rejected offer of mediation with the local authority and Prestatyn High School; Prestatyn High School's attitude towards him meant he could not obtain the evidence he needed in support of his case*.

62. The Tribunal did not name Prestatyn High School in Part 4 of E's statement, instead it specified a type of provision. It did, however, make findings that Prestatyn High School was a suitable school. Clearly, the relationship between the School and Mr S-G was, to put it mildly, strained. However, that did not compel the Tribunal to make a finding that it was not a suitable school, nor did it require findings as to whether the school's actions towards Mr S-G were justified. The Tribunal's approach, which was to take that difficult relationship as a given (para. 328 of the statement of reasons), was one that it was fully entitled to take.

63. The mediation argument goes nowhere. Given the history, as described in the tribunal papers, any offer to enter into, or refuse, mediation could not have been relied on as evidence that Prestatyn High School was either suitable or unsuitable.

64. Having spent a good deal of time looking through the tribunal papers, it is clear to me that, in late 2016, what Mr S-G mainly sought from Prestatyn High School was further information about the decision to remove his 'right of contact' with the school. He was

not at that stage focused, or as focused, on obtaining information about E. As the proceedings unfolded, disclosure of educational material held by the school became a more prominent issue. But disclosure directions were given and, by and large, complied with – the large resultant body of documentation may be found in volume 3 of the tribunal's bundle. Mr S-G does not identify the evidence that Prestatyn High School prevented him from obtaining. When he did raise the issue of accessing the School's records before the Tribunal, it was dealt with properly and fairly.

65. The grounds of appeal related to Mr S-G's relationship with Prestatyn High School do not have a realistic prospect of success.

(14) whether Tir Morfa is an out-of-county school

66. Mr S-G argues that the Tribunal made a flawed finding that Tir Morfa school is not an out-of-county school.

67. The Tribunal knew that Tir Morfa was maintained by the local authority (para. 349 of the statement of reasons). But, even if it did not, the location of the school could not, in the circumstances of this case, possibly undermine the Tribunal's decision to specify a type of school in Part 4 of E's statement.

(15) whether the Tribunal erred by specifying a type of school

68. Mr S-G argues that the Tribunal was not permitted to name a type of school in Part 4. It had to name a specific school.

69. Mr S-G (wilfully) overlooks the Upper Tribunal's decision on a previous appeal brought by him (*S-G v Denbighshire County Council & B (SEN)* [2016] UKUT 460 (AAC); [2017] ELR 99). That decision explains why, where two individuals with parental responsibility for a child disagree over the maintained school to be named in Part 4 of a statement, it may be open to a tribunal to specify a type of school. I am further satisfied that, in refusing to name one of Mr S-G's preferred schools, the Tribunal did not err in law.

(16) the Tribunal's treatment of CAMHS and other health-related evidence

70. Mr S-G argues that E was referred to CAMHS by the local authority and school, not him. The Tribunal also failed to take into account that certain representations made by him during the statutory assessment were not supplied to the Health Board. These are irrelevant matters so far as this appeal was concerned. This ground of appeal does not have a realistic prospect of success.

(17) the Tribunal erred by refusing to 'throw out' the other parties

71. Mr S-G argues that, since the local authority and Ms B failed to comply with case management directions, the Tribunal wrongly refused Mr S-G's application to have them 'thrown out'.

72. The audacity of this argument is stunning given Mr S-G's appalling conduct during the Tribunal proceedings. The Tribunal was clearly not required to grant the applications made by Mr S-G in early 2017. It gave full reasons for doing so at the time. The reasons

were entirely logical and, in my view, no reasonable tribunal would have granted Mr S-G's applications. Mr S-G also fails to draw attention to the fact that, towards the end of 2017, he in fact asked the Tribunal to require the local authority to attend a hearing.

(18) Ms B's 'consent' to a decision without a hearing

73. Mr S-G argues he was told that Ms B was deemed to have consented to a decision without a hearing but it transpired that she gave consent during a telephone call. There was nothing deemed about that.

74. All I can really say to this argument is - so what. If actual consent was given, what is the problem? There is none. This ground of appeal does not have a realistic prospect of success.

(19) the local authority's re-assessment of E's needs was flawed

75. The local authority's re-assessment was flawed, argues Mr S-G. An educational psychologist supplied a report without meeting E.

76. Mr S-G does not explain how this supposed flaw undermines the Tribunal's decision. This argument has no merit. If the psychologist did not meet E, the Tribunal would have taken this into account. I am confident of that because the statement of reasons shows it left no stone unturned in its analysis of the evidence.

(20) the 'safe house' evidence

77. In an attempt to blacken his character, argues Mr S-G, Ms B lied to the tribunal that she lived in a 'safe house' in 2015. The Tribunal should have investigated this allegation.

78. Mr S-G did enough to blacken his own character without needing to call on Ms B's assistance. The examples set out above in these reasons (i.e. there are more) of the language he used in correspondence with the Tribunal and its staff make that very clear. But, in any event, this is a non-point. Where Ms B lived in 2015 was irrelevant.

(21) Tribunal's treatment of transport costs

79. Mr S-G argues that the Tribunal failed to deal with an issue as to transport costs by wrongly finding such costs to be irrelevant. He supplied case law that a transport agreement was required.

80. As the Tribunal rightly observed, Mr S-G's transport costs argument was raised in connection with his previously expressed preference for Rhyl High School. The Tribunal did not act unfairly by determining that his costs arguments fell away with his pursuit of other schools. But, in any event and as the Tribunal itself noted, on the findings made Mr S-G's school travel costs simply did not arise as an issue (the Tribunal found that Mr S-G had not had direct contact with E for some time).

(22) the Tribunal's treatment of Mr S-G's ADHD opinion

81. Mr S-G argues that t*he Tribunal did not want to hear his opinion that E might have ADHD, rather than a memory problem.*

82. The Tribunal found that Mr S-G had failed to supply any evidence in support of his finding that the description of E's special educational needs in Part 2 of her statement was inaccurate, nor to support his ADHD opinion The Tribunal did 'hear' his opinion but gave it no weight as it was fully entitled to do.

Conclusion

83. None of the grounds of appeal relied on by Mr S-G have a realistic prospect of success. Permission to appeal to the Upper Tribunal is refused.

(Signed on the Original)

E Mitchell

Judge of the Upper Tribunal

27 October 2018