DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)

The DECISION of the Upper Tribunal is to dismiss the appeal by the Appellant.

The decision of the First-tier Tribunal (Health, Education and Social Care Chamber) issued on 11 May 2017, following the hearing on 4 May 2017, under file reference EH938/16/00070, does not involve an error on a point of law.

There is to be no publication of any matter likely to lead members of the public directly or indirectly to identify the child who is the subject of this appeal.

This decision and ruling are given under section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008.

REASONS FOR DECISION

Introduction

1. This appeal turns on the meaning and proper application of the expression "educates or trains" in the context of section 21(5) of the Children and Families Act 2014. This provides as follows:

> "(5) Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision)."

The background

2. This appeal concerns the case of G, a young woman who was aged 17 at the material time. She has a diagnosis of oppositional defiance disorder along with autistic spectrum condition and attention deficit hyperactivity disorder. She has a range of needs, summarised by the First-tier Tribunal ("the Tribunal") in these terns:

> "These include: being socially vulnerable; sometimes showing some risky sexualised behaviours; having very little independence or daily living skills, including managing money; needing reminders and prompting to manage her personal care needs including bathing and brushing her hair; being unable to prepare and cook a simple meal and being unable to go out on her own as she is not safe to be independent" (reasons for decision at paragraph [13]).

3. G's local authority ("the Council") carried out an Education, Health and Care (EHC) needs assessment for G and subsequently issued an EHC Plan (EHCP) for her. G (or in practice her mother on her behalf) then appealed to the Tribunal against Sections B, F and I of the EHCP, i.e. as regards the sections dealing with the statement of G's special educational needs and strengths, the special educational provision required and the educational placement and type.

4. By the time the case got to the Tribunal hearing, the major issues in dispute were whether G required a waking day curriculum (and, if so, with a number of consequential amendments to the provision specified) and also whether G required a residential placement at a special independent school (as G and her mother contended) or whether her needs could be met through a day placement with extra support at her local FE college (as the Council argued).

5. Following a hearing on 4 May 2017, the Tribunal allowed the appeal in part in a reasoned decision dated 11 May 2017. The Tribunal allowed the appeal in terms of ordering some relatively minor amendments to Sections B and F of the EHCP. However, on the central issues of placement and whether there was a need for a waking day curriculum the Tribunal found for the Council.

6. G's mother applied for permission to appeal on the basis that the Tribunal had applied the wrong test in applying section 21(5) of the 2014 Act. It was argued that G's inability to generalise was a learning difficulty which required support both during and after the school day. Further, the support G needed outside the college day related directly to her special educational needs and so fell within section 21(5) as provision which "educates or trains". On 21 June 2017 Tribunal Judge Brayne refused permission to appeal on behalf of the Tribunal, expressing the view that the Tribunal had properly applied *A v Hertfordshire County Council* [2006] EWHC 3428 (Admin) and there was no arguable error of law in its decision.

The proceedings before the Upper Tribunal

7. On 10 July 2017 the representative for G's mother applied direct to the Upper Tribunal for permission to appeal on the papers, which I granted on 8 August 2017. The Council's solicitor and the representative for G's mother – both of whom appeared at the Tribunal hearing – have each made written submissions on the appeal. Both parties are content for the appeal to be decided on the papers. In view of the careful and helpful way the case has been argued on the written submissions by the two representatives, I am not persuaded that an oral hearing will necessarily add any value to these proceedings, whereas it would inevitably increase both delay and costs. I therefore consider it appropriate to decide the appeal without an oral hearing.

The relevant legislative framework

8. Section 20(1) of the Children and Families Act 2014 ("the 2014 Act") provides that a "young person has special educational needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her". Section 20(2) goes on to provide (in part) that a "young person has a learning difficulty or disability if he or she — (a) has a significantly greater difficulty in learning than the majority of others of the same age".

9. "Special educational provision" in turn is defined by section 21(1) for a young person as meaning "educational or training provision that is additional to, or different from, that made generally for others of the same age in … (c) mainstream post-16 institutions in England".

10. "Health care provision" (which is not in issue in the present appeal) is defined by reference to NHS services (section 21(3)), while "social care provision" (which is in issue) is defined as meaning "the provision made by a local authority in the exercise of its social services functions" (see section 21(4)).

11. As already noted, section 21(5) then provides as follows:

> "(5) Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision)."

12. There is some further elaboration of the meaning of "education" and "training" in the 2014 Act's Part 3 interpretation section (section 83(4) and (2) respectively), but not in a way that is relevant for the purposes of the present appeal.

The Code of Practice

13. The Code of Practice issued under the 2014 Act gives the following guidance on the application of section 21:

> **"Responsibility for provision**
>
> *Relevant legislation: Section 21 of the Children and Families Act 2014*
>
> 9.73 Health or social care provision which educates or trains a child or young person **must** be treated as special educational provision and included in Section F of the EHC plan.
>
> 9.74 Decisions about whether health care provision or social care provision should be treated as special educational provision **must** be made on an individual basis. Speech and language therapy and other therapy provision can be regarded as either education or health care provision, or both. It could therefore be included in an EHC plan as either educational or health provision. However, since communication is so fundamental in education, addressing speech and language impairment should normally be recorded as special educational provision unless there are exceptional reasons for not doing so.
>
> 9.75 Agreement should be reached between the local authority and health and social care partners about where provision will be specified in an EHC plan.
>
> 9.76 In cases where health care provision or social care provision is to be treated as special educational provision, ultimate responsibility for ensuring that the provision is made rests with the local authority (unless the child's parent has made suitable arrangements) and the child's parent or the young person will have the right to appeal to the First-tier Tribunal (SEN and Disability) where they disagree with the provision specified."

The relevant Upper Tribunal case law

14. Section 21 of the 2014 Act was the subject of careful and detailed analysis by Upper Tribunal Judge Jacobs in *East Sussex County Council v TW (SEN)* [2016] UKUT 528 (AAC); [2017] ELR 119 (at paragraphs 15-26):

> **F. Direct and deemed special educational provision**
>
> *"Analysis*
> 15. For convenience only, I use the terms direct and deemed special educational provision. Their choice and use carry no significance in the analysis. They are merely useful labels that provide a shorthand to refer to particular provisions.
>
> 16. Section 21(1) and (2) deal with special educational *provision* by defining it as provision that is in addition to or different from that generally made for others of the same age in, for this case, mainstream post-16 institutions. This goes into Section F of the plan: regulation 12(1)(f).

17. Section 20 deals with special educational *needs* by reference to whether the person's learning difficulty or disability calls for special educational provision. These go into Section B of the plan: regulation 12(1)(b).

18. Direct special educational provision is identified under those provisions in the exercise of the local authority's education functions.
19. Section 21(4) deals with social care provision by defining it as provision made by the local authority in the exercise of its social services functions. It goes into Section D of the plan: regulation 12(1)(d).

20. In *London Borough of Bromley v Special Educational Needs Tribunal* [1999] ELR 260 at 295, Sedley LJ noted that educational and non-educational provision were not wholly distinct categories.

21. Section 21(5) recognises this by providing that social care provision is to be treated as special educational provision, and not as social care provision, if it educates or trains a young person. This is what I call deemed special educational provision. Although this subsection reflects what Sedley LJ said, I do not consider it appropriate to interpret it by reference to his remarks. It has to be interpreted in the context of the 2014 Act.

22. Section 21(5) only operates in respect of that part of the person's social care that also educates or trains. It does not apply to all social care, regardless of its effect. Take Theo's back problems. He may need some social care in respect of it, but that does not mean that it becomes special education provision just because other parts of his social care package educate or train him. That would be an absurd result and contrary to the language and intendment of the provision.

23. The result of section 21(5) is that the social care provision becomes special educational provision. That means:

- it is within section 37(2)(c);
- it properly belongs in Section F of the plan and not in Section D; and
- the local authority must secure the provision under section 42(2).

24. When a case comes before the First-tier Tribunal, the local authority may already have applied section 21(5). If not, the tribunal must apply it and, if necessary, move the relevant provision from Section D to Section F. In order to apply section 21(5), the tribunal must identify the person's social care provision – this should be clear from Section D of the plan – and then identify which parts of social care provision educate or train. Any parts that have that effect must be moved to Section F.

25. The nature of the tribunal's task differs between direct and deemed special educational provision. For direct provision, it may make its own decision on what the person's needs are and what provision is called for in the light of those needs. In doing so, it may add to the provision in the plan, amend it, or remove it. For indirect provision, the task is different. The tribunal's only role is to classify the social care provision to filter out that part of the provision that is properly classified as special educational provision under section 21(5). The tribunal has no jurisdiction over the social care provision as such, because section 51 does not provide for an appeal. The tribunal only has jurisdiction in so far as it is properly classified as special educational provision, at which point it comes

> within section 51(2)(c). It has no power to change in any way the provision that remains social care provision under section 21(4). Nor has it power to include social care provision in Section F of the plan. All it can do is to include additional direct special educational provision.
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> 26. Mr Friel produced an extract from Parliamentary debates relevant to section 21(5). Mr Lawson argued that it actually supported him. I don't need to resolve that dispute. I have reached my conclusions without reference to the Parliamentary debates. The wording of the section is clear; there is no need or benefit to go beyond the wording."

15. I respectfully agree with that analysis, albeit with one slight gloss, which relates to paragraph 21 of that passage, dealing with section 21(5) of the 2014 Act. The Education Act 1996 ("the 1996 Act") included no such equivalent provision. Upper Tribunal Judge Jacobs, having noted that section 21(5) reflected the observations of Sedley LJ in *London Borough of Bromley v Special Educational Needs Tribunal*, did "not consider it appropriate to interpret it by reference to his remarks. It has to be interpreted in the context of the 2014 Act".

16. It is, of course, right that section 21(5) needs in the first instance to be interpreted in the context of the 2014 Act. But that process of interpretation must be undertaken in context rather than in splendid isolation. I am fortified in that conclusion for two reasons.

17. The first concerns the observations of Upper Tribunal Judge Ward in *Devon County Council v OH (SEN)* [2016] UKUT 292; (AAC) [2016] ELR 377. Having considered sections 20 and 21 of the 2014 Act alongside their predecessor provisions in the 1996 Act, Judge Ward held as follows:

> "33. In the light of these substantially common features around the very building blocks of the special educational needs regime, I proceed on the basis that the legislative intention was in general terms for a continuity of approach, except where the 2014 Act provides a specific reason to conclude otherwise. Subject to that note of caution, authorities on concepts common to both regimes will continue to be relevant."

18. The second reason concerns the status of the Explanatory Notes to the 2014 Act. As Lord Steyn observed in *Westminster City Council v National Asylum Support Service* [2002] UKHL 38; [2002] 1 WLR 2956:

> "… The starting point is that language in all legal texts conveys meaning according to the circumstances in which it was used. It follows that the context must always be identified and considered before the process of construction or during it. It is therefore wrong to say that the court may only resort to evidence of the contextual scene when an ambiguity has arisen...
>
> …
>
> Insofar as the Explanatory Notes cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed, such materials are therefore always admissible aids to construction. They may be admitted for what logical value they have. Used for this purpose Explanatory Notes will sometimes be more informative and valuable than reports of the Law Commission or

> advisory committees, Government green or white papers, and the like" (at paragraph 5).

19. In that context I can have regard to the Explanatory Notes to the 2014 Act (as they relate to section 21(5)), paragraph 169 of which states (emphasis added) that "Health care provision or social care provision which educates or trains the child or young person is to be treated as special educational provision (rather than health care or social care provision). *This reflects the precedents set by case law in relation to the current special educational needs legislation*."

20. It follows in my view that the pre-2014 Act case law can be instructive in terms of making the distinction between what is ultimately assessed to be special educational provision or non-special educational provision respectively under section 21(5).

The case law under the Education Act 1996

21. An illuminating starting point is the decision of the Court of Appeal in *London Borough of Bromley v Special Educational Needs Tribunal*. In the context of both the delineation of the boundary between educational and non-educational provision and the appellate role, the judgment of Sedley LJ in the *Bromley* case was helpfully summarised by HH Judge Gilbart QC in *R (on the application of A) v Hertfordshire County Council* [2006] EWHC 3428; [2007] ELR 95 as follows:

> "[24] I draw the following from that judgement and from that final passage in particular. First, there is an area of overlap between education and care. Provided that activities which could only be described as special educational provision are treated as education (and therefore must be provided under s 324(5)(a)) or can only be described as care (in which case they fall under s 324(5)(b)) it is for the judgment of the decision maker whether they amount to education or care or both. Secondly, the court will not interfere with the expert judgment of the tribunal if it has reached a properly reasoned decision. That judgment includes whether the activity in question is intelligibly to be regarded as educational or non-educational."

22. I interpose here that the references to section 324(5)(a) and (b) of the 1996 Act in the passage cited immediately above appear to be a misprint for section 324(5)(a)(i) and (ii). In addition, *R (on the application of A) v Hertfordshire County Council* was a case in which the parents' argument was that their severely disabled daughter needed a residential school where she would live throughout the year and that her educational needs included a need for provision outside normal school hours. On the principal ground of appeal, HH Judge Gilbart held as follows:

> "[26] Mr Grodzinski [for the parents] seeks to argue that anything which helps D learn what to do is to be regarded as education, and because the evidence from those reports said that she should be looked after on a 24 hour basis, therefore such provision is (a) educational, and (b) must be provided. I consider that that goes too far. It would mean that every time D is assisted to any degree which in fact helps her learn by repetition, that amounts to educational provision, and that the Local Education Authority is required to provide it throughout her waking day. I regard that as unrealistic as a firm rule from which no departure can ever be permitted. Whether a particular case calls for it is a matter for judgment on the facts of that case, and not a matter for a prescriptive rule. It is pre-eminently a matter of fact and degree, and whether it applied in D's case was a matter for expert judgment.

> [27] In my view, the best judgment of what is needed in a particular case is that of the specialist tribunal whose members must take into account, but are not bound to accept, the evidence before them. It is for the tribunal to determine whether what would occur outside school hours is best to be described as education or care. It is also for it to determine whether the achievement of the defined objectives in Pt 3 of the Statement of Educational Needs reasonably requires educational provision outside school hours. It is for it also to determine whether a residential school, or a particular school, would have harmful or positive effects on the child in question. It is not bound to accept any particular witness's evidence or any particular report. In this case it had expert evidence on both sides and it was entitled to form its own view. It had concerns about D living away from home, and it also rejected the case put before it that D needed to have educational provision outside school hours. In my judgment, that was a decision which it was entitled to come to having read the reports and heard evidence from the two educational psychologists and others."

23. Subsequently, in *Learning Trust v MP* [2007] EWHC 1634 (Admin), Andrew Nicol QC, sitting as a Deputy High Court Judge, observed that "the need for consistency of approach is not the same as a need for an educational programme beyond the normal school day" (at paragraph [40]). Moreover:

> "[43] It is axiomatic that a Statement of Special Educational Needs must be directed at the child's *educational* needs. It is not the function of the Special Educational Needs provision to provide for a child's social needs (at least not those which are not also educational needs). As Wall LJ said in *W v Leeds City Council* [2005] EWCA Civ 988, [2005] ELR 617 at 51:
>
> > "In a case such as the present, the tribunal in my judgment, had to tread a delicate line between properly informing itself of the 'full picture' relating to C, and limiting its decision to a careful assessment of C's special educational needs within that full picture."

In *London Borough of Bromley v Special Educational Needs Tribunal* [1999] 3 All ER 587, [1999] ELR 260 at 295, Sedley LJ said:

> "Special educational provision is, in principle, whatever is called for by a child's learning difficulty. A learning difficulty is anything inherent in the child which makes learning significantly harder for him than for most others or which hinders him from making use of ordinary school facilities … It is when it comes to the statement under section 324 that the LEA is required to distinguish between educational provision and non-educational provision; and the prescribed form is divided up accordingly. Two possibilities arise here: either the two categories share a common frontier, so that where the one stops the other begins; or there is between the unequivocally educational and the unequivocally non-educational a shared territory of provision which can be intelligibly allocated to either. It seems to me that to adopt the first approach would be to read into the legislation a sharp dichotomy for which Parliament could have made express provision had it wished to do so, but which finds no expression or reflection where one would expect to find it, namely in section 312. Moreover, to impose a hard edge or common frontier does not get rid of definitional problems: it simply makes them more acute. And this is one of the reasons why, in my judgment, the second approach is then to be attributed to Parliament. The potentially large intermediate area of provision which is capable of ranking as educational or non-educational is not made the subject

> of any statutory prescription precisely because it is for the local education authority, and, if necessary, the SENT, to exercise a case by case judgment which no prescriptive legislation could ever hope to anticipate."

24. Finally, at least as regards the previous case law, the application for permission to appeal in the present case sought to rely on *S v SENDIST and Solihull MBC* [2007] EWHC 1139 as authority for the proposition that supporting the practice of generalising skills outside the college day is by definition a form of special educational provision. As I indicated when giving permission to appeal, I do not consider this decision advances matters to any significant degree. True, the first instance tribunal in that case had concluded that "generalisation is an educational need: the ability to generalise is an outcome but the inability to do so is a learning difficulty and therefore a special educational need." However, Holman J allowed the parents' appeal in *S v SENDIST and Solihull MBC* on the basis that there was a lack of the necessary specificity in the tribunal's statement of the required educational provision for the child in question. The High Court's decision was accordingly very much confined to its facts. As Holman J observed in opening his judgment:

> "… I wish to stress very clearly at the outset of this judgment that my decision, although on a point of law, is ultimately very fact specific. I do not intend by this ex tempore judgment, at the end of a hearing which has been very time constrained, to indicate any proposition of law which is not already the subject of decided authority. What I say in this judgment must not be relied upon as any form of precedent in any other case" (paragraph 1).

The grounds of appeal and the submissions before the Upper Tribunal

25. It is not in dispute that both the Council and the Tribunal accepted that G needed support outside the college day to generalise skills that she was taught at college. Beyond that, the parties' arguments can be summarised as follows.

26. The representative for G's mother argues that any such social care provision which supports the ability to generalise necessarily educates or trains and so is educational provision by virtue of section 21(5) of the 2014 Act. It is further submitted that the Tribunal did not explain why the support to meet G's needs outside the college day would not be provision which educates or trains. It was argued that such provision could only be delivered in a setting which extended beyond the normal college day and included residential provision.

27. The Council's representative argued that the Tribunal had applied the correct legal tests and had properly explored in evidence whether the need to generalise living skills resulted in a need for an *educational* programme outside college hours. It was further contended that the Tribunal's explanation was sufficient in the light of both the evidence and submissions received by the Tribunal.

The First-tier Tribunal's decision and reasoning in this case

28. The Tribunal explained its decision not to agree to the proposed amendments for a waking day curriculum in the following terms:

> "34. [The parent's representative] submits that a waking day curriculum is necessary as G needs intensive teaching over the whole day not just during college hours in order that she can gain the necessary skills required to enable her to stay safe, interact constructively with her peers and develop essential life skills. [The Council's representative] argues that [the College] can make the provision for G to gain such skills within the college day and the support needed

> outside those hours is support from social care rather than educational provision.
>
> 35. Section 21(4) of the Children and Families Act 2014 provides that social care provision means the provision made by a local authority in the exercise of its social services functions and Section 21(5) provides that health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision).
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> 36. The issue for us is therefore whether it is necessary for G to have an extended extracurricular educational programme continuing after the end of the college day, bearing in mind the fact that G needs consistency of approach in her dealings with adults outside of college as well as inside college does not necessarily mean that this is an educational need which should be met with educational provision beyond the college day in a residential setting.
>
> 37. In our judgement G does not require teaching outside of the college hours but does require support in order to help her generalise the skills she is taught at college. We therefore agree with the view of [the Council's educational psychologist] and the LA that G requires support, including social care provision, rather than educational provision outside the college day. In this respect we note that [the parent's educational psychologist] does not go so far as to suggest that G requires a waking day curriculum stating instead that her needs are likely to best be met from a waking day curriculum."

29. It is also this passage – paragraphs [34] to [37] of the Tribunal's reasons – at which the Appellant's grounds of appeal are exclusively directed. There is undoubtedly an overlap in provision

Upper Tribunal's analysis

30. The challenge to the Tribunal's decision in the present case is essentially put in two ways. The first is the argument that the Tribunal misdirected itself in law as to the proper application of section 21(5) of the 2014 Act. The second is the contention that the Tribunal then failed adequately to explain the reasons for its decision.

31. As to the first ground, I am not persuaded this is made out. The Tribunal plainly directed itself properly as to the relevant legislative provisions (see paragraph [35] of its reasons at paragraph 28 above). It neatly and concisely summarised the parties' respective contentions (see paragraph [34]). It then reformulated the statutory test in terms of framing the issue it had to decide (see paragraph [36]) and briefly explained its reasoning as to why it concluded the out of college provision was non-educational rather than educational in nature (see paragraph [37]). In doing so, the Tribunal noted also that the parent's educational psychologist's evidence was to the effect that a waking day curriculum was optimal (but, by inference, not actually necessary to meet G's needs adequately).

32. Nor is it sufficient to say that support by way of social care provision to improve G's ability to generalise skills learnt at college in out of college time is by definition education or training in such skills and so special educational provision by virtue of section 21(5). Rather, that is to beg the question, the question being whether the social care provision in question falls on the "education or training" side of the line or the "support" side of the line. That is a question for the specialist Tribunal to determine in the light of its own expertise. As *R (on the application of A) v*

Hertfordshire County Council shows, this is ultimately a question of fact and degree. One cannot simply work from the premise that any support which helps a young person learn what to do is necessarily to be regarded as a form of education (or training). As HH Judge Gilbart held in *Hertfordshire County Council* (see paragraph 22 above):

> "… the best judgment of what is needed in a particular case is that of the specialist tribunal whose members must take into account, but are not bound to accept, the evidence before them. It is for the tribunal to determine whether what would occur outside school hours is best to be described as education or care. It is also for it to determine whether the achievement of the defined objectives in Pt 3 of the Statement of Educational Needs reasonably requires educational provision outside school hours. It is for it also to determine whether a residential school, or a particular school, would have harmful or positive effects on the child in question. It is not bound to accept any particular witness's evidence or any particular report. In this case it had expert evidence on both sides and it was entitled to form its own view."

33. In keeping with the Explanatory Notes to the Act, I do not regard section 21(5) as in any way marking a departure from the principles established in the existing case law. There has long been acknowledged to be an overlap between the provision of education and care. It is only social care provision that "educates or trains" which is to be treated as special educational provision under section 21(5) (or as Upper Tribunal Judge Jacobs terms it in *East Sussex County Council v TW (SEN)*, 'deemed special educational provision'). Whether the social care provision "educates or trains" or merely supports or assists is ultimately a factual assessment for the specialist Tribunal.

34. As regards the second ground, I start by acknowledging that the Tribunal's reasoning on this issue (and extracted above) is perhaps somewhat compressed. However, I also bear in mind the observations of Lloyd Jones LJ in *Department for Work and Pensions v Information Commissioner and Zola* [2016] EWCA Civ 758 at paragraph [34] about the role of the First-tier Tribunal (albeit in a different jurisdictional context and dissenting on the outcome but not on this point):

> "Given such expertise in a Tribunal, it is entirely understandable that a reviewing court or Tribunal will be slow to interfere with its findings and evaluation of facts in areas where that expertise has a bearing. This may be regarded not so much as requiring that a different, enhanced standard must be met as an acknowledgement of the reality that an expert Tribunal can normally be expected to apply its expertise in the course of its analysis of facts."

35. It is also important to read the Tribunal's decision and reasons as a whole. In that context I note the Tribunal's finding of fact that G's engagement with College was high, that she was progressing academically and in particular her social interaction skills had improved (at paragraph [19]). The Tribunal also had evidence from the Council's educational psychologist to the effect that G needed a social care package of support outside college to help her generalise life skills (at paragraph [22]). The Tribunal knew that G had undergone a social services assessment which had recommended a modest personal budget for way the case for a social care package by way of supervisory support when out (at paragraph [17]), building on what had already been provided privately (at paragraph [14]). In addition, the case for a residential placement had primarily been put at the hearing with a focus in terms of ensuring G's safety. Indeed, the final agreed version of the EHCP working document

put to the Tribunal by the parties listed under Section D (social care needs) simply that "G needs to be safe in the community and to be able to communicate within the family". The Tribunal then adjudicated on the contested passages in Section F, excluding those that were predicated on a waking day curriculum. I accordingly conclude that the Tribunal's reasoning was sufficient, taking its decision as a whole.

Conclusion

36. For the reasons explained above, I conclude that the decision of the Tribunal does not involve any material error of law. I must therefore dismiss the appeal.

Signed on the original
on 13 October 2017

Nicholas Wikeley
Judge of the Upper Tribunal