



DECISION

Date of Birth:	2009	
Appeal of:	The Parents	
Against:	The Responsible Body	
Date of hearing:	2023	
Persons present:	The Parent	<i>Parent</i>
	Parental Representative	<i>Parental Counsel</i>
	RB Representative	<i>Headteacher</i>
	RB Legal Representative	<i>RB Counsel</i>
	RB Witness	<i>ALN Support Officer</i>
	RB Witness	<i>Learning Support Assistant</i>

1. The Child is aged fourteen. They live with their parents. In September 2020 they started at Secondary School. At that time, they did not have a statement of special educational needs. No information was provided to the Secondary School by the Primary School prior to their transfer to secondary education and enquiries were made of the head teacher there. The Child's file was sent to the School and contained 3 IEPs, which were provided to us on the second day of the hearing. Those documents from years 4, 5 and 6, revealed that the Child had a diagnosis of autism but beyond that they provided very little information. None of them were signed, either by the Child's parents or the Child themselves. The Secondary school became concerned about the Child's presentation and made a referral for statutory assessment. We did not have sight of the education advice which was submitted for the purposes of that assessment, but we did have a copy of the Child's statement in the bundle.
2. The Child's transfer to secondary school occurred just six months after the start of the COVID lockdown and it is undoubtedly the case that the limitations which were imposed at that time adversely affected the Child and the process of building a relationship with their teachers. This is a matter to which we will return below.
3. The Child arrived at secondary school with an attendance history, which at 80%, was concerning however it dropped to 12% in year 7. When we enquired as to why there was no IEP for the Child in Secondary School, we were told that the local authority advised that one was not necessary as the focus of attention should be on improving attendance. We were informed that there was an attendance plan but again, this was a document we did not have in the

bundle. At the end of Summer term in 2021 the school took steps to prepare for the return of pupils after the break, the detail of which we shall consider later. On return to school in September 2021, the Child's attendance again was extremely poor.

4. At the start of the hearing we asked Parental Counsel to summarise their case as we were anxious to identify the parameters for the hearing. They told us that the approach of the school to supporting the Child was too rigid and although some of the behaviours described in the bundle had been present in the previous academic year it was the application of the school's COVID policy which was the catalyst for the failings alleged. Parental Counsel told us that in short, the school's application of the one-way system which was put in place to reduce the possibility of COVID transmission was too rigid, that there was lack of involvement of the Child and their Parent in the planning of arrangements for them and that the school disregarded their needs. Parental Counsel also indicated that they wished to amend the case to include a claim for breach of section 15. They conceded that that had not been pleaded. Attempts on the previous day to agree that amendment had failed. Asked why such a request came literally at the 11th hour when previous counsel had been involved and had even prepared the case for hearing they told us that they had tried to get an answer but couldn't.
5. RB Counsel opposed permission to amend. They submitted that the responsible body had prepared its case in response to what was pleaded and they argued that if we were to permit the amendment it will be necessary for the responsible body to respond in writing and that therefore a further adjournment would be required. They were right of course to point out the breach of s15 had not been pleaded at the outset.
6. We gave permission to Parental Counsel to rely on breach of section 15. The factual basis for this claim was detailed and set out in the papers. Those self same facts would form the basis for any breach of section 15 and we were not satisfied that there would be prejudice to the responsible body if we were to allow the application. We recognised that time should be allowed to RB Counsel to give further thought to their preparation. We also bore in mind that two days had been allocated to this case and there would be ample opportunity at the end of the evidence for RB Counsel to prepare to address us on the legal tests for breach. We were not satisfied that it was necessary for there to be a response in writing and therefore we saw no basis for granting an adjournment.

The Parent

7. The Parent told us that in year 7 the Child had been happier and that they were able to go anywhere they wanted in the school. The Parent felt the one-way policy which was put in place for the start of the autumn term 2021 was too rigid and that it was devised to suit the convenience of staff and did not allow for the Child's needs. There had been some kind of one-way system in year 7 but it was not imposed as rigorously. The Parent told us that the new

one-way system made the Child very anxious often to the point where they couldn't sleep. Asked what could have helped to make things better for the Child, the Parent told us that the provision of alternative arrangements to what they described as the black and white application of the one-way system, would have helped.

8. Overall the Parent felt that staff were negative about the Child and that in their discussions about them they were simply compared to other students. Asked what other alternatives could have been suggested the Parent was somewhat vague, suggesting that they could have been more understanding and that the school should not have been so bossy. They told us that they made the recordings using a phone in the Child's school bag because what teachers were saying to them was different to what the Child was saying.
9. The RB Counsel questioned the Parent about the historical context for their complaints and they pointed out that the Child's refusal to use the side door was a long-standing problem. They pointed the Parent to email correspondence which was sent in September 2020 about the Child's reluctance to use the side door. The Parent said that they could not remember. They were also taken to their e-mail at that time explaining that in the September of each school year the Child finds adaptation extremely difficult and that it takes them months to settle usually until the May or June. The Parent said that they may have exaggerated about that. They conceded that the Child had been offered tours of the school but said they would have benefited from more. It was suggested to them that tours of the school were offered whenever the timetable was changed but they said that wasn't always the case.
10. The Parent did accept however that the schools aim was to reduce anxiety for the Child for example it was clear that moving against the one-way system increased anxiety, as did being amongst crowds. They accepted also that the school regularly sought external advice. Asked why the Child did not trust the school the Parent told us it was because they wouldn't listen to what they wanted. They wanted more freedom to choose what to do. They did not believe that the Child was offered alternatives to the one-way system. They felt that on return to school in September 2021 the damage was done in the first two weeks. When it was pointed out to the Parent that the Child's attendance figures were extremely poor for the school year starting September 2020, they responded that those figures weren't always accurate but they didn't offer any explanation as to why that might be so. When it was suggested to them that the school were adjusting their response to the Child constantly they felt that there was some adjustment but that it wasn't consistent. They then criticised the ALN Support Officer, suggesting that if the Child had a good day the ALN Support Officer felt that they would simply be able to walk through a crowd the next day. They then accused the ALN Support Officer of lying in respect of their conversation about students using the glass tunnel joining the buildings.

The ALN Support Officer

11. The ALN Support Officer confirmed that the one-way system had been introduced in September 2020 and that it had not changed for the beginning of the school year in September 2021 although in light of advice from Government and Welsh ministers, a more disciplined approach was taken due to the return of all students full-time. The only changes for the Child came about because of changes to their timetable which meant they were in different rooms. In the previous year they had been taught in using the bubble system whereas from September 2021 teaching would be in subject groups.
12. The ALN Support Officer did not accept that planning for the Child failed to include the parents. They told us that both the Child and their parents contributed to all of the decisions, and they rejected the suggestion that plans were agreed by staff and then presented as a *fait accompli* to the parents. The ALN Support Officer reminded us of the size of the school site and the number of pupils. It was, they said, a difficult process to decide how the Child could move around. They told us that the parents were open to suggestions from the school and did not object to plans but rather took the approach of 'let's try it and see'.
13. Within the first week of return to school the plan for the Child was adapted so that they would use the entrance which provided the shortest route to whichever classroom they were heading for. The ALN Support Officer was asked about the incident outside the head teacher's office, which the Child recorded on their phone. They told us that as the Child came out of their DT lesson they turned against the one-way system and was walking into the crowd. They were not distressed at this point. They then made their way round to the area outside the headteacher's office and sat there. In their statement as they describes asking the Child to wait until the crowds are gone and their response was to become angry and tell them that they could do whatever they wanted. In their oral evidence they told us that they had never said anything like that to them before, nor had they ever been to the head teacher's office. They followed them there and waited until the Headteacher became free.
14. Asked why there was no IEP for the Child, The ALN Support Officer told us that their attendance was too low for that and that the local authority had advised that the focus of the school should be on drawing up and implementing an attendance plan as a priority.

The Headteacher

15. The Headteacher told us that much thought gone into the one-way system and that it was policed firmly. They had never seen any non-compliance and there were very few reports of the same from members of staff. In anticipation of the return to school following the change in government policy, the Child attended on the 3rd and 4th of September to walk around the site. Term started on the

7th of September. The one-way system has been in place the year before, the students knew it well and it worked successfully. Hence there were no changes made after the end of term in July. The only changes for the Child were because their timetable changed and the Headteacher felt that a lot of work had been done with the Child to show them their new routes.

16. In respect of the conversation which the Child recorded, the Headteacher denied telling them off and said that they were following the advice of the inclusion team which was that the Child should be given very clear choices. They described their approach as nurturing and their tone as positive. Looking back now with the benefit of the transcript they felt that what they said may have seemed cold and so perhaps they could have used different words, although they did not accept that on the recording they sounded insistent that the Child should make eye contact with them. It was something that they wanted as they stated eye contact builds up a relationship. At the time they did not have any relationship with the Child as they had not met them previously. They told us that they followed the nurturing approach which is advised in the Child's statement but then subsequently conceded that they had not seen their statement. They pointed out that date was only the Child's third day in school.
17. The Headteacher was referred to the entry in the notes from the complaints meeting dated 4.11.21 where it states that if there was a need to leave the building quickly because of distress the member of staff could use the most convenient route even if that meant going against the one-way system. The Headteacher did not accept that this was something which could apply for day-to-day routines but rather, told us that it is for exceptional circumstances when there was a matter of safety or emergency. They saw the dividing line as whether the Child or indeed any child was going to a lesson or needed to be taken out of the building immediately. They did not accept that this approach was an illustration of the flexibility that could have been applied to the Child generally.
18. The Headteacher also denied the Child's circumstances were not reviewed and they relied on the number of emails which detailed the individualised arrangements for the Child.
19. Asked about the general arrangements for supporting ALN students the Headteacher told us that the ALNCo is the strategic lead and the ALN Support Officer is the lead on implementation. The ALN Support Officer also takes the lead in preparing IEPs and one page profiles. Responsibility for risk assessments does not lie with any particular member of staff and depends on what is being considered. The Headteacher told us that they did not know how many students with ALN and/or statements there were in their school. There are 400 sixth form students in the school and at various times during the day some of them will have free study and may well be in the corridors or communal areas. The Headteacher did not feel it would have been right to have taken the Child against the one-way system in order to avoid those students as they felt that even if it was just 5 yards one time, it will be 8 the next, 10 the next and so on. They were asked why couldn't the Child have

been taken along the corridors before they filled up at change of lessons. Their answers were that the boundaries were very clear and that the school could not make exceptions.

The Learning Support Assistant

20. The Learning Support Assistant told us that they got to know the Child in the summer term of 2021 and it was clear that when they were in school they were committed to supporting them. They encouraged them to use the one way system to get to lessons but he would simply refuse or want to leave school. They said that when he did become upset he went in whichever direction he wanted and they followed them. They could not always see a clear trigger for the Child's anxiety but sometimes it was a short lived other times the Child would want to go into a space that was quiet and other times he would simply turn around and walk in the opposite direction to get out. And they told us that they never saw extreme distress but he did tend to put their head down when they were at all anxious. They tried to offer them alternative choices when they thought they weren't needed sometimes he would respond to them and others they would not. They fed back daily to the ALN Support officer.

Our conclusions

The background

21. Before we turn to the specifics of the claim, we wish to make plain that we found parts of this decision to be difficult and finely balanced. The case focuses on the events which unfolded in the Autumn term of 2021, however those events did not take place in a vacuum and there are complexities and a troubling history which cannot be ignored. The Child left primary school with an established diagnosis of autism and some concern about their attendance record. Once he began at Secondary School, that attendance record worsened significantly, despite the Parent telling us that the Child enjoyed year 7 and that he managed the COVID restrictions well. The school made a referral for statutory assessment. We did not have the advantage of seeing the education advice for that assessment. We did, however, have the report which was submitted by an Educational Psychologist, on 7.7.21. They advised on the support which the Child requires and makes only the briefest reference to the possibility of the Child attending a different school. That was, they said, a matter which had been raised in discussions between the school and the parents. They did not take the matter any further in their advice. Their report was dated a couple of weeks before the end of the Summer term yet we have the entry in the CPOMS dated 20.9.21, just two weeks into the new school year, which states that the statutory assessment pack which was submitted to

the local authority contains “... a clear recommendation from the school that the Child needs a smaller placement or specialist resource”. An entry in the CPOMS on 2.9.21 notes that the parents did not support specialist placement but wanted the Child to adapt to mainstream school (p258).

22. There was then, at the start of term, a complicated mix of unaddressed extremely poor attendance, a conflict of opinion as to placement, stringent government guidelines for managing the spread of COVID infection and a pupil, approaching adolescence, who was happy to tell staff “*I can do what I like*”.
23. The school had the most difficult task on their hands to put in place a workable agreement which could get the Child into the school building and from one lesson to another. We do not know how the relationship between the Child's parents and the school soured, but it stood out to us that there was a lack of trust on the part of the Parent and it must have been the case that the Child was acutely aware of it. Creating and maintaining a trusting relationship is of course a two-way process and we were concerned that the Parent's perception of simple events was tainted by a degree of suspicion which was a barrier to genuine co-operation. We have in mind the occasion when the Parent challenged the ALN Support Officer about pupils they believed to be ignoring the one-way system in the glass bridge between two separate parts of the school building. The ALN Support Officer explained that it just appeared that way and that within the glass bridge, the one-way system was still in force, yet the Parent refused to accept the explanation. Rather than try to work together with the school, the Parent accepted what the Child said at face value and took a demanding and unrealistic approach to staff, at times in the Child's presence. It would be an understatement simply to describe that as a regrettable choice on the Parent's part. They were quite frank with the ALN Support Officer at the start of the Autumn term 2021 that they did not trust staff, and before us even went so far as to label the ALN Support Officer as a liar. We expressly reject that allegation. There was nothing which the ALN Support Officer said to us which gave the slightest indication of dishonesty.
24. The start of the Autumn term brought with it considerable additional challenges for managing the safety of pupils and staff. The bubble system which had been in use during lockdown was to be abandoned and all children were returning to school full-time, but the risk of COVID transmission remained as a threat to public health. Steps were taken in the Summer term of 2021 by the ALN Support Officer to introduce the Child to the arrangements he would face on return to school in September and the Child had a dry run through the one-way system just before school started on 6.9.21. Despite that preparation it became immediately apparent that there were significant problems in supporting the Child into their classes, which brings us to the schedule of allegations which the claimant says illustrates the failings of the school, which amounted to discrimination.

The schedule

14.9.23

25. The main facts of this incident do not appear to be disputed. There was, by 14.9.21, already an agreement in place with the parents that the door used by the Child would be dependent upon the location of their first lesson. The ALN Support Officer explains in their statement at paragraph 59, which we accept, that using the side entrance would mean a greater distance for the Child to get to the relevant classroom and a greater likelihood that he would pass other children in the corridors, both of which were triggers for distress.

15.9.23

26. The Learning Support Assistant reports that the Child had just enjoyed their first lesson of the day and that they were taking them to classroom L33. The CPOMS note of the incident (p253) even records the Child as exchanging pleasantries and seeming in a good mood. The Learning Support Assistant then describes moments of panic and the Child turning around into the one-way system and then going into the nurture room, where he becomes distressed. The CPOMS note which we accept as accurate, is detailed and sets out the joint efforts of the Parent and the ALN Support Officer to support the Child. We do not accept the simplistic assertion in the schedule, that moving with the one-way system caused the Child to miss a lesson.

16.9.21

27. From the contemporaneous notes it is clear it took some time for the Child to feel sufficiently confident to get out of the car. When he did, he insisted that only the ALN Support Officer should take them to art. They almost made it to the art room but the bell went, and it was this, not the route that he had taken, which caused the Child to become anxious and to retreat into the office (p251).

17.9.21

28. The Child's day got off to a very positive start, which included using the one-way system with the ALN Support Officer, and only appears to have taken a downward turn when the Child asked if he could walk against the direction but the ALN Support Officer explained to them that it was important that they stick to it to keep people safe from COVID, at which point they said to them that they have had COVID and he doesn't care about anyone else (see contemporaneous note p250). The ALN Support Officer described them as walking out of the classroom, not in a state of distress, and turning the wrong way out of the door against the flow of the other students towards the headteacher's office. The diary note describes them as becoming angrier and stressed as events progressed.

29. In their diary entry for this incident (p260) the Parent states "*The Child went against one way. Sent to head office. Intimidated*". This appears to be a

sequence of disobedience followed by punishment, but we are satisfied that it was nothing of the sort. We accept what the ALN Support Officer says and what is recorded in the CPOMS, in respect of the sequence of events. The Child was not sent to the headteacher's office, they chose to go there of their own accord and chose to turn against the one-way system as they walked out of the classroom. They made their way to the head teachers office followed by the ALN Support Officer and was content to sit in the foyer area.

30. Which brings us to what happens when the Headteacher arrives. We have the transcript and the recording of the conversation which took place between them and the Child. The facts are not disputed and we will return to this matter below.

20.9.21

31. The schedule states that the Child asked to go in by the tuck shop entrance against the one-way system and that the Learning Support Assistant refuses, but immediately suggests two alternative routes that could get them to their humanities lesson on the top floor. This is entirely consistent with the plan for the Child to use the door which is most convenient to any particular lesson (p249). We note in respect of this exchange that the Learning Support Assistant describes the entrance that the Child wanted to use as having been very difficult for them previously. Their refusal was not simply based on what they thought might happen, but on what had happened and that refusal was entirely proper.

12.10.21

32. In their schedule the Parent makes no mention of the fact that the Child had successfully made their way to their science lesson using the one-way system with the support of the Learning Support Assistant. It appears from the CPOMS that there was some sort of flood and classes had to be swapped around. From the statement of the Learning Support Assistant, which we accept, it is this which causes the Child to become upset. It is clear from their note in the CPOMS (p235) that it was not the route they had taken which had upset the Child. It wasn't even the fact that the classroom they were going into was rowdy when they and the Learning Support Assistant arrived.

26.11.21

33. The broad-brush nature of this allegation in the schedule bears no resemblance to what happened that morning. The ALN Support Officer deals with this in considerable detail in their statement in paragraphs 65 – 68 and we accept what they says as accurate. The Child was not caused anxiety about the prospect of following the one-way system but rather had been drawn into their parent's erroneous perception that pupils were walking the wrong

way in the glass tunnel that joins school buildings at first floor level. They even joined in their parent's disagreement with the ALN Support Officer. For their part the ALN Support officer did all they could to encourage the Child into school, without success. This incident closed with the Child being witness to their parent questioning the point of bringing them to school and then, at the ALN Support Officer's suggestion that they could come back later for geography which is on the top floor, they were present when their parent said that they would not walk up the stairs and that they doesn't like lifts, when the ALN Support Officer offered that as an alternative. This incident does not support the Parent's allegation of discrimination, on the contrary, it is a compelling illustration of the extent to which the Child's parent was willing to undermine the school's efforts to support them.

2.12.21

34. We are satisfied that the Child wanted to go into school by a quieter way and did not ask if they could go against the one-way system. The CPOMS entry (p217) provides a little more detail than does the Learning Support Assistant's statement and there was no discussion at all about the one-way system other than the briefest of comments from the Learning Support Assistant that the two alternatives they offered followed it. The Child had seen some sixth formers outside the tuck shop and we are satisfied that it was this which caused them to stay in the car. The choice of route had nothing to do with it. (p217).

7.12.21

35. The brief outline of the events of this day as set out in the schedule bears little resemblance to the Learning Support Assistant's description of events in their statement and in their report to the ALN Support Officer which is recorded in the CPOMS (p215). The clear implication from the schedule is that the Child was caused anxiety because they were not offered an alternative route to their maths lesson against the one-way system.
36. The CPOMS contradicts the Parent's version of events. It is the Learning Support Assistant's contemporaneous report to the ALN Support Officer. We bear in mind also at this point that the Learning Support Assistant's written statement in respect of this day came in the form of an addendum due to oversight in their original. The Parent was asked whether they accepted as true what the Learning Support Officer said in their statement and their answer was that they didn't know.
37. On the morning of 7.12.21, the Child did not arrive at the agreed time. The Learning Support Assistant waited outside in appalling weather conditions and described themselves as being soaked through when they came in at 9.25 a.m. They then described what happens when the Child arrived at 10:10 a.m, and from their report in the CPOMS, which we accept as accurate, it is manifestly obvious that their efforts to support them were directly undermined by what

was said by the Parent. The Child got out of the car to go into school with the Learning Support Assistant but their arrival had coincided with lesson changeover time and the corridors became too busy for them to cope with. The Child's refusal to enter school was not caused by either the one-way system or any action on the part of the Learning Support Assistant, but by their late arrival at school at 10.10 a.m. just as lesson changeover started.

Has there been a breach of s15?

38. Looking at this schedule and the Child's history in the round we have concerns about the school's management of their support.

- a. Strategic oversight for ALN pupils was poor. There was no statement from the ALNCo, nor were they called as a witness. It is clear that the day-to-day management of all matters related to the implementation of additional support are delegated to the ALN Support Officer, who has considerable experience, but is not a qualified teacher. That is not a criticism of them. They, and indeed the Learning Support Assistant, impressed us with their individual commitment to the Child, but they appeared to be engaged in a firefighting role as the Child's educational provision was deteriorating rapidly. The ALNCo makes fleeting appearances within the CPOMS records, but as the member of staff with ultimate responsibility for the management of ALN support, their approach should have been more proactive. That strategic deficit also has to be seen alongside the somewhat concerning evidence of the Headteacher namely, that they does not know how many pupils with ALN they has in their school. We are not convinced of the school's total commitment to proactive support for those pupils. Proactive support requires something more, much more, than day-to-day adjustments in the nuts and bolts of any support plan, which brings us to the key error made by the school.
- b. The school was entitled to press for a review of the Child's statement and ought to have done so. We recognise that a number of meetings were called to discuss changes in the day-to-day support plan, but a formal review would have triggered expert advice and would have addressed a situation which could only be described as dire. It is encapsulated in the entry of the ALN Support Officer in the CPOMS dated 20.9.21 where they cites an e-mail from the Headteacher to the local authority's Learning Advisor. The Headteacher notes that the Educational Psychologist, who completed the EP report for the statutory assessment, had told them that they "*would be recommending a small group social communication resource*", but instead made recommendations which were directly at odds with the clear evidence provided by the school. The Headteacher described those recommendations as unworkable and ineffective for the Child (p248). The Headteacher also rang alarm bells about the potential for claims for discrimination, yet it appears that their e-mail was simply ignored by the local authority. On that same day, the ALN Support Officer was writing to CAMHS asking for advice and making a re-referral, after the Child and the Parent had failed to attend the two appointments which were

offered following referral in the previous December. The school found themselves in an impossible position, which simply reinforces our conclusion that they ought to have demanded a review, regardless of the fact that the Child's statement had only just been issued. The Headteacher was asked a straightforward question - why not call for review if the placement doesn't seem to be working? Their answer was that "*We have to have a wealth of evidence for that and they hadn't been in school enough.*" We do not accept that as an adequate explanation. It was the Child's absences and dysregulation, despite all of the efforts to support them, which led to the Headteacher's advice to the local authority's Learning Adviser dated 20.9.21.

- c. A head teacher does not lightly reject as unworkable and ineffective, recommendations as to how a child with additional needs should be supported. It is manifestly obvious to us that there should have been a formal review early in the term. We cannot know what the outcome of such a review would have been, but it would have prevented the piecemeal approach which is seen within the CPOMS records and which allowed a deteriorating situation to go on for too long.

39. Having set out those criticisms it does not follow automatically that there has been a breach of section 15. In all of those matters referred to in the schedule, apart from the incident involving the head teacher, either the ALN Support Officer or the Learning Support Assistant were faced with trying to support the Child in the most difficult of circumstances for which nobody could be wholly prepared. The seriousness of the COVID restrictions was something beyond the experience not just of those individuals but of everybody else. It is unarguable that attempting to reduce the risks of COVID transmission within the school population or their families was a legitimate aim, which was supported by demanding guidance from both central government and Welsh ministers. We are satisfied on balance that the actions of the school were justified in the circumstances and draw back from a finding that there was a breach of section 15 based upon the schedule, subject to what we now say about the exchange between the Child and the Headteacher on 17.9.21. That incident stands alone in that it does not arise from the efforts of staff to encourage the Child either into the school premises or from one lesson to another within the requirements of COVID infection management.

40. What struck us was that at the very start of the exchange, the Headteacher, who was speaking to a young person they had never met, who has autism and a significant, well documented history of distress during the most basic social interaction, required that same young person to make eye contact. In evidence, the Headteacher drew a distinction between wanting eye contact and insisting that it should happen. They went as far as to concede that from reading the transcript, their choice of words could seem cold, but they assured us that their manner was "*not un-nurturing*". We have not only read the transcript but we have listened to the recording. We are satisfied that what might well be an approach to discipline for the vast majority of their students, was inappropriate for the Child. The Headteacher was insistent that they

should make eye contact and they failed to take account of the Child's disability and to make a reasonable adjustment. The Child is a person for whom ordinary social interaction, and in particular anything which makes them the focus of attention, can be a trigger for extreme anxiety, which the Headteacher was aware of. They had seen their difficulty for themselves when on 9.9.21 they had asked the Parent if they could speak to the Child who was sat in the car next to them. They held their bag up to their face and sank down into the seat (p255). When the Headteacher first spoke to the Child, they were not dealing with a matter of public safety and their actions amounted to a breach of s15.

Indirect discrimination, s19

41. There it was a simple question in this case to which there was never a straightforward answer, namely why could the Child not be removed from class early and be taken by the Learning Support Assistant or another member of staff to their next classroom against the one-way system, when there were no children in the corridors. Even if there were one or two milling about, which was a distinct possibility in view of the fact that sixth formers enjoy considerably more free time during the day, those others would be likely to accept that there were special arrangements for the Child. We are satisfied that there was a rigidity to the school's thinking which prevented them from approaching such a question. That rigidity was illustrated graphically when the Headteacher was asked why could the Child not simply be taken just five yards against the one way system to get from one room to another. The answer was that it would be 8 yards next time 10 the time after that and then 20 after that. In short – 'if we make allowances once where will it stop'. Whilst we recognise that the school was willing to change the day-to-day arrangements at the beginning of the Autumn term of 2021, all of those arrangements were circumscribed by a strict approach which was applied to all students, namely the one-way system. We understand why that system was put in place and we have set out our thoughts on that above, but we struggle to see how even the demands of public safety would require the Child to adhere to that system if there was nobody else there.
42. We do not accept what is essentially a floodgates argument as the answer to our question, and we are satisfied that the school treated the Child as they treated all other students in respect of the requirement to use the one-way system. It was a line that could not be crossed and appears to us to be the very mischief at which section 19 of the Equality Act is aimed. The school did not even consider the possibility of a trial, in order to establish whether a more flexible approach could have been taken. The school applied a PCP which put the Child at significant disadvantage. Their anxiety was easily triggered and could be extreme. Their presentation has been described by the Learning Support Assistant as distressing to see, and whilst we cannot be satisfied that the school's policy was the sole cause of the Child's school refusals or distress on the corridor, it was certainly one of them.

Remedies

43. The Parent ties the remedies sought to a simple assertion that the school is responsible for all of the Child's refusals and anxiety between lessons. We have made clear above that we do not accept that premise. There are a number of complicating factors in this case not least of which is the Child's extremely poor attendance record. Others will have to consider such matters in due course. In this claim we order the following:
44. The Headteacher shall write a letter of apology to the Child and the Parent for the incident which occurred on 17.9.21.
45. The responsible body shall write a letter of apology to the Child and the Parent for the strict application of the COVID one-way system and the failure to assess alternatives.
46. The school must ensure that there is effective strategic oversight of ALN provision for all pupils at a senior management level.

Dated June 2023