Neutral Citation Number: [2026] UKUT 31 (AAC)
Appeal No. UA-2025-000786-HS

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

East Riding of Yorkshire Council

Appellant

- v -

Sienna Bowers

Respondent

Before:	**Upper Tribunal Judge Citron**
Hearing date:	5 December 2025
Mode of hearing:	Cloud Video Platform

Representation:

Appellant:	by Paul Greatorex of counsel, instructed by solicitor for East Riding of Yorkshire Council
Respondent:	by Stephen Broach KC and Samuel Moss of counsel, instructed by Rook Irwin Sweeney LLP

On appeal from:

Tribunal:	First-Tier Tribunal (HESC Chamber) Special Educational Needs and Disability
Tribunal Case No:	EH811/24/00039/V
Hearing dates:	11 February and 11 March 2025
Decision date:	18 March 2025

SUMMARY OF DECISION

85. SPECIAL EDUCATIONAL NEEDS
85.4 Special educational provision

This was an appeal by the local authority against the First-tier Tribunal's ordering inclusion of a certain number of hours per week of golf coaching and gym training, in Section F of a young person's EHC plan (which sets out the special educational provision required). The Upper Tribunal held that inclusion of the golf and gym provision was an error of law, because it did not have the necessary nexus with the young person's special educational needs, as set out in Section B of her EHC plan. The necessary nexus is that the special educational needs set out in Section B must call for, and require, the special educational provision in Section F. The decision of the

First-tier Tribunal was set aside as respects Section F, and also as respects Section I, as Section I could not be determined without knowing the special educational provision required, set out in Section F. Those matters were remitted to a fresh tribunal for reconsideration.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal referred to above involved the making of an error on a point of law. Under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement Act 2007 I set the decision aside as respects its determination of the appeal against Sections F and I of Ms Bowers' EHC plan and remit the case to a fresh panel of the First-tier Tribunal (HESC Chamber) (SEND) for reconsideration of those matters. I direct that the file be placed before a salaried judge of that tribunal for case management directions to be given.

REASONS FOR DECISION

1. In what follows references to

    a. the "**tribunal**" and to the "**tribunal decision**" are to the First-tier Tribunal and its decision as referred to above;

    b. numbers in square brackets are to paragraphs of the tribunal decision (unless otherwise indicated);

    c. "**section**" or "**s**" are to sections of the Children and Families Act 2014;

    d. "**regulations**" are to the Special Educational Needs and Disability Regulations 2014.

The tribunal decision

2. The tribunal decision provided the following background:

    a. The appeal to the tribunal was made under s51.

    b. Ms Bowers was 18 years old at the time of the tribunal proceedings; she had a diagnosis of a severe language disorder; she had difficulty with understanding and using spoken and written language; she presented with a significant gap between her chronological age and her general developmental age; this impacted on Ms Bowers academically, socially and emotionally.

c. Ms Bowers had attended a mainstream secondary school and worked with and in the 'enhanced resource'. A sixth form placement in the school "broke down" and for 19 months Ms Bowers was educated off site, although on the roll for the school.

d. As at the time of the tribunal proceedings, Ms Bowers was having Maths and English online tuition at home, paid for by her parents. Her parents were also paying for golf tuition, golf club membership and golf competition entry fees for Ms Bowers, who was a talented golfer who played for her county and wished to become a professional golfer.

3. The tribunal decision framed the issues to be determined, as follows:

a. issue 1: very minor issues in Section B (of Ms Bowers' EHC plan) regarding some additional wording suggested by Ms Bowers;

b. issue 2: whether Ms Bowers should attend a post 16 college, or instead have an 'education other than in school/college' "package";

c. issue 3: whether the golf aspect of the 'education other than in school/college' "package" requested by Ms Bowers could be defined as education;

d. issue 4: whether Ms Bowers required a personal assistant for 20 hours a week.

4. The tribunal decision determined issue 1 in Ms Bowers' favour.

5. Addressing issue 2, the tribunal decision identified s61 as the relevant statutory provision and, in its summary at [13], answered the question asked by s61(2), thus: it would *not* be appropriate for "the provision" to be made in a post 16 college ("the provision" here refers to the special educational provision necessary (in this case, for Ms Bowers), as spelled out in s61(1)). In its summary at [13], the tribunal specified that 'education otherwise than in post 16 college' – which is what s61 mandates, where the 's61(2) question' is answered in the way it was by the tribunal in this case – was required to enable Ms Bowers to engage with her English and Maths studies.

6. Issue 3 was framed as whether the "golf package" requested by Ms Bowers was 'education' or not. The tribunal decision found (at [18]) that the "golf coaching and practice" and the "gym training" requested by Ms Bowers *was* education (but the competitions were not). At the end of [18], the tribunal decision determined that competitions and associated travel costs requested by Ms Bowers would not be included in the 'education other than in school/college' "package" (clearly indicating that the other parts of the "golf package", would).

7. On issue 4, the tribunal decided that Ms Bowers did not require a personal assistant to be provided in Section F of her EHC plan.

8. Under the heading 'Decision Summary', the tribunal decision in the first sentence of [20] reiterated its conclusion that s61 was engaged, and, in the same sentence, said that it agreed "an EOTIS/C package". The next sentence of [20] noted the overall number of hours a week that "package" should comprise, according to Ms Bowers (34 hours), to be made up of 3 components: online tuition (13 hours), online face to face tuition (1 hour), and golf provision (20 hours). In [21] and [22] the tribunal decision presented its view on the number of hours the "package" should comprise, concluding with a total of 22½ hours a week, to be provided during term-time (in line with the local post-16 colleges' term dates). At [23], the tribunal decision determined that this total number of hours should be divided thus: 11 hours per week (during term time) of Maths and English (10 hours face to face, 1 hour online), and 11½ hours per week (during term time) split between the golf coaching and gym programme (the split to be determined by the golf coach overseeing the programme).

9. In the order at the end of the tribunal decision, in addition to the changes to Section B of Ms Bowers' EHC plan, the tribunal ordered that Section F of the plan be amended

> by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document and making the following amendments: An EOTIS/C Package to be included, as amended by the tribunal as set out above and in the attached amended WD [working document]

10. It was also ordered that Section I be left blank.

Summary of Sections B and F of Ms Bowers' EHC plan, as amended by the tribunal

11. The introduction to Section B of Ms Bowers' EHC plan, as well as mentioning the points about Ms Bowers' needs at paragraph 2b above, stated that the developmental gap between Ms Bowers and her peers made her "extremely vulnerable" as she moved through her teenage years; social interaction therefore needed to be carefully planned and managed, so Ms Bowers could participate in a safe environment. Under the 'cognition and learning', 'communication and interaction' and 'emotional and mental health' headings in Section B, Ms Bowers had a number of 'barriers to learning', which can be summarised as stemming from the severe language disorder, gap in emotional development, and vulnerability noted in the introduction to the section. Under the 'sensory/physical/medical' heading, only 'strengths' were noted.

12. Section F of Ms Bowers' EHC plan, as amended by the tribunal, included "a package of support that can meet [Ms Bowers'] needs and career aspirations, to include: golf coaching, golf practice, gym programme with personal trainer oversight and membership, and golf club membership"; the provider was to be "a package of support from a Professional Golf Association (PGA) qualified golf coach". I will refer to this part of Section F of Ms Bowers' EHC plan as the "**golf and gym provision**".

13. Section F also included "a bespoke 1:1 education EOTIS/C package working towards achieving qualifications especially in Maths and English".

The grant of permission to appeal

14. I gave permission to appeal on the grounds put forward by the Appellant local authority, namely that

    a. the golf and gym provision was not special educational provision; and/or

    b. the tribunal failed to give adequate reasons for finding that it was special educational provision required by Ms Bowers.

    The remedy sought by the Appellant local authority was that this part of the tribunal decision be set aside; and since the golf and gym provision was "incapable of amounting to special educational provision", there was no need for that issue to be "redetermined" by the Upper Tribunal or the tribunal.

The Upper Tribunal proceedings

15. I am grateful to counsel for both parties (and those instructing and supporting them) for their submissions and assistance to the Upper Tribunal.

16. The powers of the Upper Tribunal in an appeal such as this are limited to deciding whether there was an error of law in the tribunal decision. If there is such an error, the Upper Tribunal may set the tribunal decision aside, and then either re-make the decision or remit the case back to the tribunal for its reconsideration.

Discussion

17. The central issue in this case, as I see it, is whether the tribunal erred in law in exercising its powers under regulation 43(2)(f) to order that Section F of Ms Bowers' EHC plan be amended to include the golf and gym provision. I have concluded that it did so err. I will first set out the steps in my reasoning; I will then explain why I have not been persuaded by certain arguments advanced on Ms Bowers' behalf.

My reasoning

18. Under regulation 12(1)(f), Section F of Ms Bowers' EHC plan must set out the special educational provision required by Ms Bowers.

19. Special educational provision is defined to mean, in this case, educational or training provision that is additional to, or different from, that made generally for others of Ms Bowers' age in schools or post-16 institutions in England (s21(1)).

20. In this case, the tribunal found that the golf and gym provision was educational provision – and that aspect of its decision is not challenged.

21. The aspect of 'special educational provision' which is highlighted in this appeal, is its connection with the special educational needs of the (in this case) young person concerned. Upper Tribunal Judge Ward put it this way in *H v A London Borough* at [22]:

> … the [First-tier Tribunal whose decision was under appeal] noted that special educational provision is dependent on need and in response to a special educational need. That, although not quite how the statute puts it, is unexceptionable in my view: it reflects the words "calls for" in [the definition of special educational needs].

22. The definition Judge Ward was referring to is, in the context of this case, that at s20(1): a child or 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.

23. Essentially the same point was made by Sedley LJ in *Bromley v SENT* at 295E: "Special educational provision is, in principle, whatever is called for by a child's learning difficulty."

24. In my view, the point is further made by the provision in regulation 12(1)(f) that Section F contain the special educational provision *required*: in sum, the special educational provision in Section F must be called for by the young person's special educational needs, and must be required by reason of the young person's special educational needs.

25. It is that connection, or nexus, between the young person's special educational needs, and the special educational provision required, that the tribunal in this case, in my view, overlooked (indeed, it was not on the list of issues the tribunal identified for itself). There is nothing expressly in the tribunal's decision to explain how, or in what respect, Ms Bowers' special educational needs, as set out in Section B, called for, or required, the golf and gym provision. Nor can such explanation reasonably be inferred from the tribunal decision, or even the circumstances of the case, as a whole: the golf and gym provision did not address Ms Bowers' severe language disability, or the developmental gap that made her vulnerable. On the contrary: the educational aspects of the golf and gym provision catered to areas of strength for Ms Bowers, as set out in Section B under the heading 'sensory/physical/medical'. Due to this latter point (the impossibility of inferring any reasonable explanation), I would go further and say that no reasonable tribunal, on the facts of this case, could rationally have decided that Ms Bowers' special educational needs, as set out in Section B of her EHC plan as amended by the tribunal, called for, or required, the golf and gym provision: the connection, or nexus, between them is simply too tenuous.

26. It follows that the tribunal decision erred in law in ordering inclusion of the golf and gym provision in Section F of Ms Bowers' EHC plan.

27. I do not go so far as to say, as the Appellant local authority seems to allege, that the golf and gym provision was incapable, *in any case*, of being special educational provision – it all depends on the young person in question's special

educational needs, and what they call for, or what the young person requires by reason of those needs.

Why I have not been persuaded by certain arguments advanced on Ms Bowers' behalf

28. Two arguments were made on Ms Bowers' behalf, in relation to the proceedings in the tribunal, that can fairly be said to pull in opposite directions:

    a. One argument was that the point about "insufficient nexus" between Ms Bowers' special educational needs, and the golf and gym provision, was a "new point" (i.e. a point of law that was not before the tribunal), and so it was not an error of law for the tribunal to have failed to address it. This was on the basis that, in the tribunal proceedings, the local authority (the Appellant in this case, but the respondent before the tribunal) argued that the golf and gym provision was not education or training (and the tribunal decided against them on this point), but did not argue the "insufficient nexus" point.

    b. The other argument was that the tribunal could not be said to have overlooked the "insufficient nexus" issue (as I now refer to it, for shorthand) because, when it adjourned part-heard on 11 February 2025, its adjournment notice, at paragraph 8, stated that the tribunal "were lacking significant information regarding the proposals for the special educational provision"; it then listed four areas in which evidence was lacking, one of which was expressed thus: "[Ms Bowers] asked for the provision of 20 hours a week of golf training, practice, competitions and golf club memberships to be part of her EOTIS/C package. We had no evidence to explain how the 20 hours of golf proposed by [Ms Bowers] in Section F may meet her special educational needs as set out in Section B"; Ms Bowers was then ordered to present evidence regarding the detail of the provision being requested in Section F of her EHC plan, by 28 February 2025.

29. I do not accept that the "insufficient nexus" issue was a new point of law that was not before the tribunal. The second argument, above, shows that the tribunal were cognisant of it. In any case, the issue, as I have explained in my reasoning above, is inherent to the law governing the content of Section F of Ms Bowers' EHC plan – and this was central to what the tribunal was considering, as shown by its order to amend that section of Ms Bowers' EHC plan. The fact that the parties before the tribunal may have overlooked to address the tribunal on a material aspect of the law that the tribunal was considering, does not mean that the tribunal could ignore that aspect of the law, without fear of erring in law.

30. The second argument, as summarised above, merges with a broader argument that was put on Ms Bowers' behalf, namely that, since the tribunal was cognisant of the "nexus" issue, and since it was a specialist tribunal, it should not be thought to have fallen into error on the issue. Lady Hale's well-known dictum from *AH Sudan v SSHD* [2007] UKHL 49 (Lady Hale) at [30] was cited:

> … This is an expert tribunal charged with administering a complex area of law in challenging circumstances. To paraphrase a view I have expressed about such expert tribunals in another context, the ordinary courts should approach appeals from them with an appropriate degree of caution; it is probable that in understanding and applying the law in their specialised field the tribunal will have got it right: see *Cooke v Secretary of State for Social Security* [2002] 3 All ER 279, para 16. They and they alone are the judges of the facts. It is not enough that their decision on those facts may seem harsh to people who have not heard and read the evidence and arguments which they have heard and read. Their decisions should be respected unless it is quite clear that they have misdirected themselves in law. Appellate courts should not rush to find such misdirections simply because they might have reached a different conclusion on the facts or expressed themselves differently. I cannot believe that this eminent tribunal had indeed confused the three tests or neglected to apply the correct relocation test. …

31. For the reasons set out in my reasoning above, I am satisfied that this is a case where the improbable has occurred and the specialist tribunal has, indeed, misdirected itself in law.

32. I note at this point (because it has some connection with the tribunal's directions of 11 February 2025, referred to at paragraph 28b above) that in the course of the Upper Tribunal hearing, I was sent (by Ms Bowers' representatives)

    a. a copy of an email of 27 February 2025 about Ms Bowers from a PGA Golf Professional who had given her golf lessons for about 10 years; it praised her dedication to golf; it commented that sometimes Ms Bowers' learning difficulties made certain aspects of teaching a challenge, and her results were sometimes mixed due to her finding it difficult to take in information and put into practice; and

    b. an undated letter from a health and fitness instructor at a leisure centre Ms Bowers attended regularly; it said the centre offered a safe environment for Ms Bowers to train in and that staff were aware of her vulnerabilities and needs; that Ms Bowers was now able to train in the gym independently; that Ms Bowers had built her own knowledge of exercise and the body and how best to train for the outcomes she needed for her sport; yoga had been introduced to support injury prevention and Ms Bowers' mental and emotional health.

    I was told these documents were sent to the tribunal on 7 March 2025.

33. It seems reasonably clear that these documents were not before the tribunal: they are not in the tribunal bundle – the latest evidence from Ms Bowers in that bundle appears to be a "tutor report" assigned a date of 26 February 2025 in the bundle index; and I note that the date I was told these documents were submitted, fell a week after the deadline in the directions of 11 February 2025. These documents therefore appear to be "new evidence" before the Upper Tribunal. It does not seem to me fair and just, applying the well-known *Ladd v Marshall* principles, to "admit" them at this (appeal) stage: there seems no good reason for their not having been submitted to the tribunal in time. In any event, even had they been admitted now, they make no difference to the conclusions I have reached here;

whilst they indicate that both golf and gym instructors adapted their provision to Ms Bowers' needs, including her vulnerability, they do not advance matters in terms of showing how Ms Bowers' needs, as set out in Section B of her EHC plan, called for, or required, golf or gym instruction.

34. Another argument advanced for Ms Bowers was that, whilst there does need to be the "nexus" I describe in my reasoning above, between special educational needs and special educational provision, there is no need for a tribunal's reasons to track precisely from the one to the other. I accept this. But the error identified here is not lack of precise tracking: see my reasoning above.

35. A further argument advanced was that, following the line of reasoning in the tribunal decision in its 'Decision Summary' section (see paragraph 8 above), it was no error to assign 11½ hours to the golf and gym provision, because the tribunal had determined that the 'education other than at college' "package" should comprise 22½ hours, and (only) 10 of those hours had been assigned to English and Maths tuition (an (unchallenged) form of special educational provision) – the golf and gym provision was necessary to complete the required amount of time. In my view, this reasoning is flawed, as it is unbridled by the relevant legal provisions: the task, as set by those provisions, is not to decide the number of hours in a "package" (of special educational provision), and then to allocate activities to the package (without considering their nexus to the young person's special educational needs); it is, as I hope my reasoning above indicates, somewhat the other way round – to start with the special educational needs, decide what special educational provision they call for, or require, including, where appropriate, the amount of time to be devoted to them.

Disposal

36. Given the material error of law I have identified, the tribunal decision falls to be set aside. If I were to re-make the decision, I would have no difficulty following the tribunal decision's conclusions on Section B, as these were unchallenged. As to the tribunal decision's conclusions on Section F, clearly the golf and gym provision falls to be removed; however, it seems to me unsafe to re-make the decision about Section F without stepping back and taking a holistic view of what special educational provision is called for, or required by reason of, the special educational needs in Section B; and it is the specialist tribunal, sitting as a panel with specialist members, that is best placed to do that. I have therefore decided to remit the case for reconsideration of the appeal against Sections F and I. The reason I include Section I for reconsideration, despite the tribunal decision not having been challenged on that matter, is that the terms of s61 require that the contents of Section F be known prior to applying that section; it will therefore fall to the tribunal considering the remitted case, to apply s61 afresh in the light of its determination as regards Section F.

37. For completeness, I make clear that I am refusing an application made on behalf of Ms Bowers in a skeleton argument that, in the event that the case was remitted to the tribunal for redetermination, the gym and golf provision be preserved pending a decision on the remitted case; to do so would be inconsistent with my having set the tribunal decision aside on grounds of material legal error. I trust,

however, that the tribunal will use reasonable endeavours to list the remitted case for hearing as soon as possible.

Zachary Citron
Judge of the Upper Tribunal

Authorised by the Judge for issue on 26 January 2026