



Neutral Citation Number: [2026] UKUT 301 (AAC)
Appeal Number: UA-2025-001755-HS

**IN THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)**

THE UPPER TRIBUNAL HAS ORDERED that, without the permission of the Tribunal, no one shall publish or reveal the name or address of the Appellant in these proceedings or any information that would be likely to lead to the identification of her, her son or any member of their family in connection with these proceedings. Any breach of this order is liable to be treated and punished as a contempt of court.

Between:

AWZ

Appellant

v

Hertfordshire County Council

Respondent

Before: Upper Tribunal Judge Jacobs

Decided on 04 August 2026 without a hearing.

Representation:

Appellant: Represented herself

Local authority: Ian Calderbank, SEND Lead Tribunal Officer

SUMMARY OF DECISION:

Tribunal practice and procedure (including Upper Tribunal) (34.9 – statement of reasons)

Reasons – materiality – tribunal made mistake in assessing evidence – effect on reasons as a whole.

[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 OF UPPER TRIBUNAL

On appeal from the First-tier Tribunal (Health, Education and Social Care Chamber)

Reference: EH919/23/00141

Decision dates: 21 August 2024 and 20 June 2025

Panel: Tribunal Judge A Ocan and Specialist Members B Mars and C Harris

As the decision of the First-tier Tribunal involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(i) of the Tribunals, Courts and Enforcement

Act 2007 and the case is REMITTED to the tribunal for rehearing by a differently constituted panel.

REASONS FOR DECISION

1. This case is about the Education, Health and Social Care Plan for AWZ's son. He has a range of disabilities that give rise to special educational needs that require special educational provision.

A. The original decision

2. The case first came before the First-tier Tribunal in July 2024; its decision was made on 21 August 2024. The tribunal dealt with speech and language therapy. In explaining how it assessed the evidence, recording in paragraph 34 of its written reasons that it did 'not agree to the wording proposed by [witness 1] as we note that he did not actually meet' AWZ's son.

3. AWZ applied for permission to appeal to the Upper Tribunal. The application came before Tribunal Judge Southby. On 20 January 2025, the judge remitted the case to the tribunal under the review power in rule 49(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (SI No 2699) and section 9(4)(b) of the Tribunals, Courts and Enforcement Act 2007. The purpose of the remittal was:

- (1) specify the written evidence that was available to the panel when the Tribunal deliberated, and
- (2) consider the issue of Speech and Language Therapy.

B. The subsequent decision

4. The case came back before the same panel and it made its decision on 20 June 2025. It accepted that it had made a mistake in paragraph 34 by saying that witness 1 had not seen AWZ's son.

5. It then dealt with a joint report written by witness 2 and witness 3. The tribunal accepted the evidence in that report and gave five reasons for doing so. The first reason began:

[Witness 2] confirmed that she assessed [AWZ's son] and that she administered a formal assessment using an assessment tool. As part of that assessment, she administered the SPLINGO Receptive Language Assessment ...

6. AWZ's first ground of appeal was that this reasoning contained a mistake of material fact in that witness 2 had never met or assessed her son and could not have administered the SPLINGO. I gave permission to appeal on that and other grounds.

C. Analysis

7. I am grateful to Mr Calderbank for clarifying the type of reports that are written by witness 2. The form of report depends on her involvement with the child. She writes on her own behalf when she has assessed the child, but only as joint author when she has not herself assessed the child. As the report in this case was a joint one, the tribunal was wrong to find that she had assessed AWZ's son and administered the SPLINGO.

8. I note that the tribunal had referred to witness 2 in the original decision. It said:

34. ... We also noted that [witness 2's] evidence was that [AWZ's son] can in fact concentrate for 30 mins. We preferred her evidence because this was based on a face to face assessment. ...

42. ... The panel preferred [witness 2's] evidence and her recommendations as they derive from assessment and information obtained from someone who was working with [AWZ's son]. ...

Unlike in the subsequent decision, the tribunal did not say that witness 2 had herself assessed the child.

9. Mr Calderbank has argued that the tribunal was acknowledging that witness 3 rather than witness 2 had carried out the assessment. That may be correct for the original decision, but it is not correct for the subsequent decision. The tribunal's reasons should record the reasoning of the panel. The wording in the subsequent decision can only be read in one way. The tribunal found that witness 2 had met and assessed AWZ's son.

10. In appeal ground 3, AWZ says that witness 2 told the tribunal that she had not directly worked with AWZ's son. I have not checked that statement, so I do not rely on it to make my decision. However, if that is what witness 2 said to the tribunal, it is all the more surprising that the tribunal made the mistake that it did.

11. I have to decide whether my reasoning so far requires me to set aside the tribunal's decision. I have applied the approach commended by Neuberger LJ (later Lord Neuberger) in *HK v Secretary of State for the Home Department* [2006] EWCA Civ 1037:

45. ... Where a fact-finding tribunal has decided to reject evidence for a number of reasons, the mere fact that some of those reasons do not bear analysis is not, of itself, enough to justify an appellate court setting the decision aside. In such a case, the appellate court has to decide whether it would be just to let the tribunal's decision stand. That question will normally be answered by considering whether one can be tolerably confident that the tribunal's decision would have been the same on the basis of the reasons which have survived its scrutiny. In the present case, as I understood it, both counsel accepted that that was the right test, and that seems to me to be correct.

46. ... the issue cannot be resolved simply by asking how many of the Tribunal's reasons survive. The issue has to be determined partly by reference to the probative value of those reasons, both in absolute terms and by comparison with the rejected reasons, and objectively, but also subjectively, in the sense of seeing what weight the tribunal gave to the various reasons it gave. The issue also has to be determined bearing in mind the overall picture including reasons which a tribunal would have had, but which were not expressed. An example would be the impression made by a witness (a factor which is not, in my view, high in the hierarchy of cogency, especially in an asylum case which will normally involve an appellant from a very different cultural background from that of the Tribunal).

12. The mistake that I have found relates to one part of the tribunal's reasoning. It gave five reasons for accepting the evidence of witnesses 2 and 3. The mistake I have found removes one of those reasons. The tribunal did not explain how witness 2's personal involvement contributed to its overall assessment of the joint report with witness 3. It must have had some significance because the tribunal made a point of stating it as one of its reasons. It was not merely a background fact. And the tribunal added to what it had said about witness 2 in the original decision, which must also be significant. The tribunal also gave as two of its other reasons that witness 3 had been working with AWZ's son

and that she liaised with staff in school weekly. That makes three out of the five reasons that mention some degree of personal involvement. And the remaining two reasons both refer to witness 3's evidence. I conclude that witness 2's personal involvement with the assessment was a significant factor in the tribunal's reasoning, although by no means the dominant one or a decisive one.

13. The tribunal went on to give ten reasons why it preferred the report of witnesses 2 and 3 to that of witness 1. It had accepted the mistake in relation to his contact with AWZ's son, but did not explain how that contact was relevant to its assessment overall. It did, though, mention it as background to, or part of, some of its reasons for preferring the evidence of witnesses 2 and 3. That aside, the reasons consist largely of short comments on the limitations in witness 1's evidence, supported by quotations from his report. The tribunal did not, though, bring those points into a focus to show their combined effect, nor set up a comparison with the favourable points it listed for the joint report.

14. It may be possible to discern why, taking the evidence of all three witnesses as a whole, the tribunal preferred the evidence it did. But that is not the purpose of a tribunal's reasons. Taking account of the factors I have set out as a whole, I consider that the test set out in *HK* is met and the decision must be set aside.

15. The case is remitted to the First-tier Tribunal.

**Authorised for issue
on 04 August 2026**

**Edward Jacobs
Upper Tribunal Judge**