



Neutral Citation Number: [2026] UKUT 398 (AAC)
Appeal No. UA-2026-000685-HSW

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

SWANSEA CITY AND COUNTY COUNCIL

Appellant

- v -

Ms DE

Respondent

Before: Lady Poole and Sir Gary Hickinbottom
Hearing date: 22 September 2026
Mode of hearing: Hybrid

Representation:

Appellant: Laura Shepherd of Counsel
Respondents: In person (remote) and by supplementary written submission

On appeal from

Tribunal: Education Tribunal for Wales
Tribunal Case No: A01000725
Tribunal Venue: Remote hearing
Decision Date: 17 February 2026

SUMMARY OF DECISION

This case concerns a child aged fourteen with diagnoses of autism spectrum disorder, attention deficit hyperactivity disorder, oppositional defiant disorder and hypermobility. After placements at two different schools had failed, in the sense that the child stopped attending, the Council put in place an individual development plan which met the child's identified additional learning needs by additional learning provision involving the transition of the child back into a mainstream school.

The child's parent, the respondent, brought an appeal to the Education Tribunal for Wales in relation to the contents of the individual development plan. The tribunal allowed the appeal. The local authority then appealed the tribunal's decision. The main ground of appeal was that the only expert evidence before the tribunal (from an

educational psychologist) was to the effect that it was not inappropriate for the additional learning provision for the child to be made in school; a transition to mainstream school was possible. The Council argued that there was no proper basis lawfully to reject that evidence. In particular, the Council relied on the failure of the tribunal to give the expert witness a proper opportunity to answer their concerns about her evidence, and the absence of adequate reasons for rejecting it.

The Upper Tribunal concludes that the tribunal materially erred in law in the way in which they dealt with the expert evidence. In particular, they failed to give the expert a proper opportunity to respond to their concerns; and they also failed to give proper reasons for rejecting that evidence.

Permission to appeal is therefore granted, the appeal allowed, the decision of the tribunal set aside, and the matter remitted to the 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

Permission to appeal is granted. The appeal is allowed. The Education Tribunal for Wales erred on a point of law in its decision dated 17 February 2026. The decision is set aside and remitted to the tribunal for reconsideration. Initially, the matter should be referred to the President of the Education Tribunal for Wales for directions for a rehearing before a differently constituted tribunal panel.

REASONS FOR DECISION

Introduction

1. The child at the heart of this appeal was born on 17 November 2011. He is now fourteen years old, and called **F** in this decision. He has diagnoses of autistic spectrum disorder ("**ASD**"), attention deficit hyperactivity disorder ("**ADHD**"), oppositional defiant disorder ("**ODD**") and hypermobility.
2. In September 2023, F started at School A, a maintained mainstream secondary school; but he attended that school for only 17 days. In 2024, he was the subject of a managed move to School B (another maintained mainstream secondary school), during which time he was taught for some hours each week in a nurture room separate from the mainstream classes. Attempts were made to encourage F to attend for longer periods and to join his mainstream peers, but without significant success. By July 2024, the placement was recommending education outside teaching in school. F remains out of school.
3. The relevant local authority which is the appellant in this appeal ("**the Council**") initially assessed F as not having additional learning needs ("**ALN**"). F's mother ("**Ms DE**"), the respondent in this appeal, was successful in overturning that decision after appealing to the Education Tribunal for Wales (the "**ETW**"). In that

appeal decision, a differently-constituted ETW panel noted that F had emotionally based school avoidance.

4. As a result, the Council produced an individual development plan (“**IDP**”) dated 31 March 2025. The Council drew on the expertise of Dr Rachel Jones, an Educational Psychologist (“**Dr Jones**”). In the light of her input, the Council was not satisfied that the test for additional learning provision (“**ALP**”) to be made other than in a school in section 53 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 (“**the 2018 Act**”) was met. The IDP proposed that the child should return to School A.
5. Ms DE appealed the IDP to the ETW on several grounds. Her desire is for F to be educated online, ideally at a particular online institution. Integral to her appeal is a challenge to the Council’s decision that the test in section 53 of the 2018 Act for making ALP other than in school was not met. The ETW allowed Ms DE’s appeal, in a decision dated 17 February 2026 (the “**ETW Decision**”). The ETW ordered the Council to amend the IDP in various respects.
6. The Council now seeks to appeal the ETW Decision to this tribunal. The main ground of appeal is that the ETW failed to approach the expert evidence of Dr Jones properly. The Council also argues that the ETW failed to give adequate reasons for departing from Dr Jones’ evidence and recommendation that it was in F’s best interests to return to full-time, mainstream education and that that, with support, could be attained within a short timeframe. In particular, it is submitted that the tribunal did not give Dr Jones (or the Council) the opportunity to respond to the reasons why the tribunal gave for attaching less weight to Dr Jones’ evidence; and they treated other evidence before them as being contrary to Dr Jones’s evidence, whereas that evidence was not. Dr Jones’s evidence (it is submitted) was the only expert evidence the tribunal had before them in respect of F’s ALN and whether those needs could be met in a school or whether they could only be met by ALP other than in school. The Council submits that, in the way in which the ETW dealt with this evidence, it erred in law and materially so.
7. Ms DE submits that there was no error of law, and the Council’s grounds of appeal amount to no more than a disagreement with the ETW’s findings of fact made on the evidence and using their experience and expertise.
8. The hearing of the application for permission to appeal was set down on a “rolled up” basis. That meant that we would hear submissions from both parties and, if permission were granted, then, on those same submissions, we would determine the appeal as well.
9. The hearing was held on 22 September 2026. It was hybrid, in that Miss Laura Shepherd (Counsel for the Council) appeared in person, but Ms DE appeared by way of video link from North Wales. The video link was not perfect; and, whilst we understand Ms DE could hear the proceedings, she could not be heard consistently or effectively. We allowed her to make further written submissions in response to the Council’s submissions which, once the recording of the hearing was available to her, she did on 22 September and 1 October 2026. In reaching

this decision, we have taken into account submissions at the hearing together with all of the written material before us.

The Law

10. The definition of ALN is found in section 2 of the 2018 Act, which provides:

- “(1) A person has additional learning needs if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or otherwise) which calls for additional learning provision.
- (2) A child of compulsory school age or person over that age 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, or
 - (b) has a disability for the purposes of the Equality Act 2010 (c. 15) which prevents or hinders him or her from making use of facilities for education or training of a kind generally provided for others of the same age in mainstream maintained schools or mainstream institutions in the further education sector.
- (3) A child under compulsory school age has a learning difficulty or disability if he or she is, or would be if no additional learning provision were made, likely to be within subsection (2) when of compulsory school age.”

11. ALP is defined in section 3(1) of the 2018 Act, which provides (so far as relevant):

“‘Additional learning provision’ for a person aged three or over means educational or training provision that is additional to, or different from, that made generally for others of the same age in—

- (a) mainstream maintained schools in Wales...”

12. Section 10 of the 2018 Act describes an IDP as:

“a document that contains—

- (a) a description of a person's additional learning needs;
- (b) a description of the additional learning provision which the person's learning difficulty or disability calls for....”

13. Section 53 deals with provision of ALP otherwise than in schools. It provides:

- “(1) A local authority may arrange for the additional learning provision described in an individual development plan it maintains for a

child, or any part of that additional learning provision, to be made other than in a school.

- (2) But a local authority may only do so if it is satisfied that it would be inappropriate for the additional learning provision to be made in school."

14. When applying section 53 of the 2018 Act in cases before it, the ETW must endeavour to give effect to the intention of the legislature expressed through the text it has used. The wording of section 53 reflects a policy choice by the legislature favouring ALP being made in schools rather than elsewhere, such as at home. (That policy choice is consistent with the duty on the Council to favour education for children at mainstream maintained schools under section 51 of the 2018 Act). Factors such as social inclusion, community, equal opportunity, breadth of curriculum, and longer term development of social and life skills, underlie this policy choice. Under section 53, ALP is only to be made other than in a school if it is "inappropriate" for ALP to be made in a school. There can be a variety of reasons why making ALP in a school is inappropriate; examples might be if a child is in hospital for a lengthy period, or where the child being in a school is incompatible with efficient education of others with whom they would be educated. A broad evaluative judgment considering all the circumstances of the case is needed when determining appropriateness (*TM v London Borough of Hounslow* [2009] EWCA Civ 859 paragraph 26). The circumstances may include the child's educational needs, medical history, reaction to educational provision, facilities available both inside and outside school, parental wishes, comparative cost and professional opinion. Under section 53(2) it is for the local authority to be satisfied of inappropriateness, before making ALP other than in school. While the Council ought to take into account the views of a parent and child (under section 6 of the 2018 Act), those views are not determinative; ultimately the legislature has entrusted the decision about inappropriateness to the Council (and, on appeal, the ETW).
15. The key question is therefore whether it would be inappropriate for F's ALP to be made in school (the "**section 53 issue**"). Inappropriateness is an issue on which expert evidence may well be needed; and that evidence is likely to be important, if not crucial. Experts consulted by local authorities are expected to be balanced and impartial, and to take into account the best interests of the child. In this case, the Council instructed an expert educational psychologist to give an opinion on the section 53 issue. The ETW, as a specialist tribunal, may, using its own expertise, reject expert evidence; but, if it does so, it must (i) be clear that it is rejecting it; (ii) give the parties an opportunity to comment on the tribunal's thinking and challenge it; and (iii) give reasons for rejecting it (see, e.g., *L v Waltham Forest London Borough Council* [2003] EWHC 2907 (Admin) at [14]).

Initial Points

16. First, both the parties and we were hampered in this appeal because of the absence of a recording or transcript of the ETW hearing. Hearings in the parallel jurisdiction in England in the First-tier Tribunal (Health, Education and Social Care Chamber) are, generally speaking, audio-recorded. Hearings in ETW are not.

Miss Shepherd for the Council submitted that cases such as this, in which the way in which oral evidence was treated by tribunal is challenged, are made more challenging for all parties by the absence of a full record of the evidence, an issue compounded by the fact that instructing solicitors, by convention, do not attend hearings where Counsel is instructed unless the attendance of a solicitor can be justified as necessary. Further, many tribunal users are unrepresented. The result is that no detailed note of the hearing (notably, of the evidence) is available on appeal.

17. We understand that to record a hearing, in any form, has cost implications. However, we consider that the absence of a full record of proceedings in the ETW is a matter which might usefully be reconsidered.
18. Second, Ms DE criticised the Council for blaming her and/or F for his non-attendance at school. We deal with that matter below (paragraph 28(vii) and (viii)).

The Evidence

19. The only expert witness evidence in relation to the section 53 issue came from Dr Jones, who was specifically instructed to deal with it. There is no doubt that, as an educational psychologist, she was qualified to do so.
20. Dr Jones prepared two reports, dated 25 March 2025 and 12 August 2025. The first report was prepared after she had met F but without any psychological assessment (because F was unable or unwilling to engage in an assessment), but the second was prepared with the benefit of an online assessment. F was still unable or unwilling to engage with any in-person assessment. Dr Jones made clear in her reports that the absence of any in-person assessment made consideration of the section 53 issue more difficult.
21. The 12 August 2025 Report concluded:

“[F] is a delightful young man, and it was pleasure to be able to meet with him again. He is articulate and can express his views clearly. [F] appears to be solution orientated and was able to identify strategies that can aid him in school.

[F] clearly has a strong desire to fully experience different areas of learning, including hands on lessons such as music and cookery. [F’s] appetite for academic learning needs to be satisfied via a broad and stretching curriculum. He has academic curiosity which needs to be satisfied. It is also important for [F] to be provided with opportunities to develop his emotional literacy, social skills and receptive and expressive language.

[F] has some frustrations over uniform, managing resources and navigating the school environment. These frustrations can be successfully overcome with relatively minor adaptations and support. Having considered [F’s] level of functioning across all areas, and

listening carefully to his views shared during consultation, it is evidence that a mainstream school that is responsive to the areas of need outlined in this report would be more than capable of meeting [F's] educational needs.

[F] has not attended full-time education for a significant period of time. It is imperative that he is supported to reintegrate into school quickly. He is entering year 9 in September during which he will be expected to choose which GCSE subjects he is going to study in years 10 and 11. The opportunity to experience the full curriculum prior to making these choices is important. Moreover, it is well established that the longer a child is out of education, the more entrenched this can become. It is understood that [F] has been reviewed by CAMHS who have not identified any need for their involvement. Similarly, though [F] expressed some worries regarding school during assessment, it is not anticipated that this would be a barrier to his reintegration into school provided the right support is in place. It would be reasonable to anticipate some anxiety when returning to school after a significant period of absence, but with careful monitoring and encouragement this should subside quite quickly.

The information that [F] has shared has been used to help identify areas of strength and need. Having reviewed all available information it is clear that a return to fulltime, mainstream schooling is in [F's] best interests. [F's] desire to attend school and his functional abilities indicate that this is achievable, and can be attained in a short time frame...".

Dr Jones also gave oral evidence before the ETW.

22. In addition, the evidence before the ETW included:

- (i) A report of Tracey Barnard-Dadds dated 16 March 2015, a member of the Council's ALN Inclusion Team who is a Specialist Teacher for Speech, Language and Communication Difficulties/ASD. She attended the first meeting of Dr Jones with F and Ms DE. The report set out recommendations based on that meeting, an email from F and the reported results of school-based assessments; and it focused on how school staff might use strategies and resources to develop matters such as F's social communication and emotional regulation. The report was premised on F's ALP being made in school.
- (ii) A statement of an Associate Assistant Headteacher of School A, who is also the strategic and operational lead for ALP at the school ("**Ms G**") dated 19 September 2025. Ms G had known F since September 2023, having been involved in meetings involving his educational needs, liaising with F and his family, the Council (over his managed move to School B), external professionals and home tuition concerning progress. She had drafted the reintegration plan for F's return to School A. In Ms G's opinion, "[School A] is able to provide ALP to meet [F's] needs"; and she set out what that

provision would include (e.g. an ASD specialist working with F on a plan of support when F becomes frustrated or anxious) and how F's needs could be addressed at the school. Ms G also gave oral evidence.

- (iii) Evidence from F's Council home tutor.
- (iv) Two earlier reports from another Educational Psychologist, Bernita de Wet, covering assessments on 24 March, 15 May and 12 June 2023, at a time when the focus was supporting F in School A. Dr Jones took those reports into account, but they did not address the section 53 issue. They dealt with the issue of how best to support F (and increase his attendance) at School A. There is nothing in these reports which suggests that it would be inappropriate for F's ALP to be made in school.
- (v) A report by the CAMHS Single Point of Access Team dated 28 March 2025 which identified resources of support which might be helpful for F, and an Occupational Therapy ("OT") Summary Report dated 5 June 2025 which identified strategies which might be helpful. Neither report considered the appropriateness or otherwise of ALP being made in school.
- (vi) A National Youth Agency Service report setting out F's views, notably:

School

- I do not want to attend school because I find it hard to be around so many other people.
- I also find it hard going between so many classes.
- I have difficulty in changing from my uniform to my PE kit and back to my uniform.
- I don't want to attend a school if it is in a building.
- I want to have online learning from the local authority.

Local Authority

- I want the local authority to listen to what I have to say. They ask me a lot of questions but ignore my responses.
- I do not want to attend any meetings or assessments face to face; I want all meetings to be online.
- The options and responses they gave me are not good enough. I keep saying I only want online learning, and not to return to school, and they are not listening."

That was supplemented by F's handwritten note in which he set out his views about the Council and School A (consistent with the above); emails

from Ms DE stating that F has “no intention of returning to [School A]”; and the oral evidence of Ms DE that she does not think that school is appropriate for F due to his anxiety around school attendance.

The ETW Decision

23. The ETW rejected Dr Jones’s evidence that it was not inappropriate for F’s ALP to be made in school. The ETW said:

“13. The Tribunal was unimpressed with the evidence of Dr Jones. The Tribunal recognise that she was unable to carry out a full in-person assessment. Miss Shepherd indicated during the case management process, that the [Council] did not consider it necessary to carry out such an assessment in any event. However, we consider her report to be of little use and attach little weight to it, as it failed to acknowledge [F’s] short period of time at [School A] (she stated in evidence that she was aware he had limited attendance but not of the specific details), failed to consult with it therefore consider fully the opinions or experience of his tutors, failed to observe him during tuition (which could have been arranged virtually), failed to consider or consult with the previous professionals who had input into [F’s] experiences such as [School B] (who by July 2024 were recommending provision of education other than in school and noting that [F] had emotionally based school avoidance), or Dr de Wet, the OT service, who had emailed Dr Rees as part of the IDP process, or CAMHS which noted [F’s] limited ability to communicate and indeed [F’s] own views expressed to her clearly in their first meeting around online school and his wish to complain to the Children’s Commissioner. Dr Jones did not appear to make any connection to [F’s] diagnoses and presentation. This failure to triangulate [F’s] needs meant her conclusion that [F’s] needs could be met at a mainstream school, including [School A] lacked sufficient support.

14. Dr Jones stated she was not asked to consider anything more widely other than [F’s] capability for attending school and there was no evidence that this was not appropriate. The Tribunal were told that she questioned [F] using cards that were specifically designed for pupils who were experiencing difficulties with school attendance. When asked to explain her view of the differences between what [F] expressed to his advocate and his mother and his written evidence in the bundle with her findings, Dr Jones stated that [F] did not express a preference for an online school to her; as [Ms DE] pointed out, this was factually incorrect, he did so in their initial meeting in March 2025. Dr Jones does not appear to have explored further when [F] expressed views around his wishes and feelings and schooling. For example, when he got lost in school, had few friends, had issues with clothing, the fact that adults did not listen to him, and he was unable to be always in school. In her conclusions Dr Jones noted that CAMHS did not identify any need for their involvement. She failed to note however, that within their letter they noted that [F] struggled to identify what anxiety meant to him. Dr Jones made no connection to [F’s] diagnoses and his inability to express himself and his difficulties in attending school.

15. In her oral evidence she indicated, for the first time, that [F] could attend smaller classes in a maintained mainstream school, of between 15-25 children but the first thing she would recommend in terms of transitioning [F] back to [School A] was face to face tuition. It was put to her that [F] had been asked to attend face to face tuition and this was being offered regularly, with tutors who had built a rapport with him, but that he did not attend. Dr Jones was unable to offer a credible solution to this problem”.
24. The ETW gave little weight to the evidence of Ms G (the specialist teacher from School A), on the grounds of “the short length of time that [F] was in her school and the views expressed by [Ms G] in her evidence which do not appear to offer any insight or understanding of [F’s] need” (paragraph 33). Ms G had given evidence that F displayed no problems during his 17 days at the school, except (e.g.) problems with books etc which were not untypical of many children entering secondary school (paragraphs 31 and 33). The tribunal considered she had glossed over possible difficulties which had been described by Ms DE and other evidence from School B, the OT involvement and the EP involvement during primary school; and she had made no connection between F’s diagnoses and his difficulties (paragraph 33).
25. On the other hand, the ETW found Ms DE “to be a measured and credible witness”, who stated that “[F] needs online learning as he cannot access a physical school”. The tribunal agreed with her criticism of Dr Jones that, in her meetings with F, Dr Jones did not reflect F’s idea that a school was not a physical school building and ignored his wishes (paragraph 28). Those wishes were dealt with in a section of the ETW Decision headed “[F’s] wishes and feelings and parental views”, as follows:
- “54. We have considered [F’s] wishes and feelings, he wishes to undertake his learning online, and note his strong and consistent view, as expressed to his advocate, his mother, in his own written words, in his first meeting with Dr Jones in March 2025, and to his tutors in relation to face to face learning. He has had the opportunity to build good relationships with his online tutors but is unable to meet them in person.
55. We do not accept that this is simply a choice he has been ‘allowed’ to make and the Tribunal does not accept the [Council] position that [F] has not given, and neither has [Ms DE], a reason as to why he will not attend school, that [Ms DE] has asserted that he ‘will not attend’ and that therefore [F] has been allowed to entrench that position over time by the adults around him. The Tribunal consider this argument to be misconceived. A young man with the recognised ALN of ASD, ODD and ADHD who has displayed issues around school attendance and necessitated external professional involvement since his primary setting, cannot, in our view, be said simply to be making a conscious choice to not attend school for no good reason. The Tribunal is concerned that the [Council], including the two EPs involved in this case, have failed to appreciate the connection between [F’s] recognised ALN and his ability to express himself [F] ought not to be expected to be able to verbalise or indeed understand himself, the reasons for not being able to attend school and why his placement at [School A] failed...”.

We return to this passage below (paragraph 28(vii) and (viii)).

26. In the part of the ETW Decision applying the provisions of section 53 of the 2018 Act, the ETW stated that it used its expertise as a specialist tribunal to determine that [ALP] could be accommodated online (paragraph 52). It relied on its expertise as a specialist tribunal to find that no school could provide access to a full curriculum and peer group online which the ETW considered to be the ALP required, given F's issues with attending school (paragraph 56). The ETW used its own specialist expertise to reach the conclusion that it would be inappropriate for F's provision to be made in any school, so that the section 53 test for provision to be made other than in school was met (paragraph 57). The ETW therefore rejected the expert evidence of Dr Jones and instead relied on its own specialist expertise.

Discussion

27. We agree with Miss Shepherd's submissions that, regrettably, the ETW erred in law in the manner they approached the evidence in this case.
28. In coming to that conclusion, we have taken particular account of the following,
 - (i) Dr Jones' evidence was the only expert evidence before the ETW directly addressing the issue of whether it was inappropriate for F's ALP to be made in school.
 - (ii) Whilst the tribunal could reject that evidence, they could only properly do so if they had indicated their concerns to Dr Jones, given her an opportunity to respond to them and then explained in their reasons why they rejected that explanation. Whilst the ETW Decision refers to Dr Jones' oral evidence in response to some matters raised, there is no evidence that she was asked about other matters relied on by the ETW in rejecting her evidence. For example, the ETW criticised her for failing to engage with other relevant persons as relied on by the tribunal in its Decision (paragraph 13 set out in paragraph 23 above). They did not confirm that she had not engaged, in circumstances in which she had given oral evidence of her opinion having had access to a bundle containing evidence from people listed by the ETW. Even if the ETW had been correct she did not engage, it did not find out why; and whether any such failures were (in Dr Jones's view) material. Given that Dr Jones's evidence on this issue was the only available expert evidence, we consider this failure of the tribunal alone sufficient to render its decision unlawful.
 - (iii) We also agree with Miss Shepherd's submission that the ETW gave weight to other evidence that it could not properly bear.
 - (iv) First, the ETW Decision at paragraph 14 (quoted in paragraph 23 above) suggested that the Child and Adolescent Mental Health Services ("**CAMHS**") letter of 28 March 2025 (which referred to the fact that F had "struggled to identify what anxiety means to [him]" during a discussion) was an indication that he was experiencing school-related anxiety which he was

unable to articulate. However, on a fair reading, the CAMHS letter has as its purpose identifying various projects and supports outside school which could support F and his family. It cannot be construed as undermining Dr Jones's opinion on the section 53 issue on the basis that she failed to consider that F was incapable of articulating his anxiety in school. That would be to read far too much into what that letter actually said.

- (v) Similarly, second, the ETW were incorrect to construe what an Occupational Therapist said in an email of 10 June 2025 (that "all reasonable strategies to help [F] in a busy school environment have been suggested") as a professional opinion that F could not cope with a mainstream school setting; still less that it was inappropriate for ALP to be made in school. As Miss Shepherd submitted, it was simply an indication that F had no specific identified OT needs requiring further intervention on their part at that time; the accompanying report made it clear if F had specific skills he wanted to work on there could be a re-referral to the OT service.
- (vi) Third, in criticising Dr Jones's failure to make a connection between F's diagnoses and his difficulties in attending school, the ETW appear to have put considerable weight on the evidence of Ms DE and F himself as to his wish not to attend (physical) school and his inability to do so (see, e.g., paragraph 14 of the ETW Decision, set out in paragraph 23 above). The wishes of F and his mother are of course a relevant consideration when considering the section 53 issue (section 6 of the 2018 Act), as is their evidence of matters such as F's presentation at school. However, whether a condition impacts on functional abilities (such as an ability to attend school, and so whether it is inappropriate to provide for ALN in a school) involves an objective question of whether (and the extent to which) there is a causal connection between the two (*B v St Dominic's Grammar School* [2025] UKUT 48 (AAC) at [40], itself relying on *Pnaiser v NHS England and Coventry City Council* [2015] UKEAT 137; [2016] IRLR 170 at [31]). The fact that a child has not in fact attended school, and the wishes and understanding of the child and/or his parents, provide at best only limited assistance in determining that objective question.
- (vii) We agree with the ETW's comments that, if and insofar as the Council has sought to blame Ms DE or F for non-attendance at school, that is to be decried (see, especially, paragraph 77 of the ETW Decision): there is no evidence that Ms DE and F have not sincerely expressed their wishes and feelings, or been driven by anything other than what they consider to be F's wishes and best interests to be. There is no evidence in this case that would support "parent blame", let alone "child blame" in circumstances in which the child is vulnerable.
- (viii) However, as we have indicated above, there are limits on the extent to which those matters bear on the issue of whether it is "appropriate" for F to be educated other than in a school. In particular, it cannot be assumed that, simply because a child has had a diagnosis of ADHD and/or ASD, then they will have any or any particular ALN which will be satisfied only by the provision of some particular ALP. Each case – each child – requires an

objective and evidence-specific exercise to identify the necessary ALN and then the ALP that is necessary to respond to those needs under the statutory scheme. The views of the child, and parent(s), are of course relevant to that issue; but their assessment of whether ALP can, with support, be delivered in school is only one circumstance to be taken into account when determining appropriateness. It may carry little if any weight, when compared with expert evidence on that issue.

- (ix) That means that, where a tribunal rejects expert evidence on the section 53 issue, they must give clear reasons. Those reasons should properly explain why expert evidence on this issue has been rejected and why (if this be the case) lay evidence or evidence from those who are not experts in respect of this issue has been preferred to that focused expert evidence. We accept the submission of Miss Shepherd that, in this case, the ETW Decision does not give a reasonable basis for rejecting the evidence of Dr Jones. It is intrinsic in the statutory test under section 53 that the views of the child and parent(s) are not determinative of the issue of appropriateness. In this case, the ETW Decision failed to identify any substantial evidence which ran contrary to the conclusion of Dr Jones that it was not inappropriate for F's ALP to be made in a school. The tribunal's reasons for rejecting Dr Jones' evidence were legally inadequate.
29. The ETW made findings based on its expertise (at paragraphs 52 and 56), which led to its conclusions about the test in section 53 of the 2018 Act being met. The ETW may use its specialist knowledge when evaluating evidence before it, and deciding what evidence to accept or reject and what reasonable inferences to draw from it. It is not the law that all of the ETW's findings must be put to the parties for specific comment before a decision is issued. However, while the ETW is entitled to reject expert evidence and reach its own conclusions, in a case where there is only one source of expert opinion on a key issue before the ETW, it is likely to be unfair if the ETW's reservations about the expert's evidence, and its own alternative findings, have not been put to parties for comment. The rationale for these requirements of procedural fairness is that the ETW may be assisted in reaching a more reliable decision by its provisional views being exposed to scrutiny before they crystallise into findings, and the appearance of justice is also promoted. In this case, the ETW erred in law in its approach to the evidence of Dr Jones and its application of the test in section 53 of the 2018 Act, by behaving procedurally unfairly.

Conclusion and Disposal

30. The Council's main ground of appeal, based on the ETW's approach to expert evidence, succeeds. Section 12 of the Tribunals, Courts and Enforcement Act 2007 (the "**2007 Act**") applies to this appeal by virtue of section 81 of the 2018 Act. For reasons given above, the ETW Decision involved the making of an error on a point of law within the meaning of section 12(1) of the 2007 Act. The Council's appeal is therefore allowed, and we set aside the ETW Decision.
31. In those circumstances, Miss Shepherd submitted (in our view, rightly) that we could not remake the decision, and the matter should be remitted to the ETW for

reconsideration and redetermination. We make such an order. In the first instance, the matter should be considered by the President of the ETW with a view to making any necessary directions for the rehearing before a differently constituted tribunal panel. We were informed that there is due to be a review of the IDP on 21 October 2026, and the President may wish to take into account the outcome of that review when making directions about a rehearing. Given that the case is to be reconsidered, it is not necessary to determine the Council's other grounds of appeal on points of law.

The Honourable Lady Poole
Chamber President

Sir Gary Hickinbottom
President of Welsh Tribunals
sitting as a Judge of the Upper Tribunal

Authorised by the Judges for issue on 19 October 2026