Tribiwnlys Addysg Cymru | Education Tribunal for Wales

DECISION

Date of Birth: 2010
Appeal of: The Parents
Against: The Local Authority
Date of hearing: 2023

Persons present:

The Parents	*Parent 1*
	Parent 2
The Parent's Witness	*Educational Psychologist*
The Parent's witness	*Clinical Speech and Language Therapist*
The Parent's Representative	*Representative*
LA representative	*Principal Educational Psychologist*
LA Witness	*ALNCo*
LA Witness	*DELCO*
LA Legal Representative	LA *Counsel*
LA Observer	*ALN Manager*

Brief introduction

1. The Child is aged twelve. They live with their parents and they attend the School. The School is a specialist unit for pupils with profound and multiple learning difficulties. The Child started there in September 2018 having transferred from the Active Learning Centre. At the end of the Summer term in 2018 it was agreed that the Child should not attend the junior department of the Active Learning Centre and that are more suitable educational setting was required. The parties are agreed that the Child has significant needs and that placement in a specialist unit is necessary to meet those needs.

Preliminary

2. There are three areas of dispute in this case, namely 1:1 support, therapies and placement. Before we turn to the evidence, we remind ourselves of the detailed submissions made by LA Counsel in respect of the role of expert witnesses. They make two distinct points which we endorse, firstly, that the tribunal must form its own view and is not bound by the opinion of an expert witness, and secondly, that experts must avoid tainting their evidence with any hint of partiality. They refer us to two authorities, namely **BB v LB Barnet [2019] EWFC 53** and **Gallagher v Gallagher [2022] EWFC 53**. They also cite

in support, the words of Lord Hamblen, a Justice of the Supreme Court, from an article in the Law Society Gazette on 20.5.22, where His Lordship expresses concern at the increase, in recent years, in judicial criticism levelled at expert witnesses for being partisan.

3. We agree with LA Counsel that we have a duty, shared with experts and those who instruct them, to maintain the quality and reliability of expert evidence.

1:1 support

4. We emphasise at the outset that we found the evidence of the Educational Psychologist to be poor. Their recommendations in section 10 (p101) are in effect, describing a specialist placement of the kind which is available at both schools, yet they go on in sub-paragraph 10.13 to advise that the Child requires 1:1 support from a dedicated a teaching assistant, both in the classroom and during less structured times. In other words, constantly throughout the day. Their oral evidence in this regard was confusing at best. They told us that the Child needs full time 1:1 support but also told us that the support could be in a group setting. At one point LA Counsel put to the Educational Psychologist that they had dealt with 1:1 support in their report as if they were advising in respect of placement in a mainstream school and they suggested to their that it is rare for dedicated 1:1 support to be provided at a special school. Despite the advice in their report referred to above, the Educational Psychologist's answer was that they were not advising that there should be dedicated support. When challenged by LA Counsel as to how in practice support should be provided, they were unable to offer any detail and simply told us that the Child needs a very high level of support. Pressed later on the point, the Educational Psychologist told us that the Child could be in a group with two or three others with the teacher, the main thing was that they need access to staff. They concluded by accepting that the Child's progress at their current school has been through the staffing ratios and not through a 1:1 approach.

5. In their closing submissions the Parental Representative does not address the distinction between the high level of expert support ordinarily available within a special school or unit, and dedicated 1:1 support.

6. We heard from the ALNCo, who is the ALNCo at School 2. They described the general provision there, to which we shall return later, however in respect of 1:1, it was plain that they and their colleagues take a flexible approach based upon need. They used the term 'fluid' in respect of the approach to day-to-day learning and routines, and they confirmed that sometimes 1:1 support may be put in place if staff feel it is needed at any particular time. They also confirmed that the Child would never be on their own. School 2, like School 3 and School 1, is a specialist unit and to describe a pupil there as receiving 1:1 support can be misleading. Such pupils receive constant support, which may on occasion be 1:1.

7. The Parental Representative in their submission in respect of 1:1 support dwells upon staffing ratios and even suggests to us that we should take into

account the possibility that there may well be delays in employing additional staff if more pupils are enrolled at School 2 at some point in the future. Their submissions are entirely misplaced. A formulaic approach to pupil/staff ratios misses the point raised by LA Counsel during questions, namely, what is the purpose of 1:1 for a child who is supported constantly at a special unit?

8. We agree with the local authority, and indeed the Child's parents, that they will need constant adult support throughout the day from staff who are trained and experienced in supporting children with additional needs including autism. The whole point of a specialist provision is to provide that level of expertise across the entire staff group. This was something the Educational Psychologist could not or would not address satisfactorily. They offered no persuasive evidence in support of the need for additional input over and above what is already there, and their failure leads us to conclude that they simply accepted without sufficient scrutiny, and repeated, the suggestion from the Child's parents that they require 1:1 support. Their summary at para 10.13 of what a dedicated 1:1 teaching assistant would provide is what special schools do all day, every day.

9. We reject the submission that there should be dedicated 1:1 support.

Therapies

10. Before we consider the distinct areas of proposed therapy which are in issue, we remind ourselves of some basic principles. It is long established that the opinion of a single expert is not binding upon us and that cogency comes from reasoning not status. We also bear in mind the similarly long established imperative, not only that experts should be rigorous in maintaining their independence uninfluenced by the pressures of litigation, but also that they must avoid assumptions of fact which allow them to stray into the ultimate issue and must not express an opinion on matters which lie outside of their expertise.

SALT

11. We take as our starting point the written report of Clinical Speech and Language Therapist, the privately instructed speech and language therapist. What we noted, literally, from the face of their written report, was their decision, which was without any kind of explanation, to set out some of the entries in that report in feint type. This was the trigger for enquiry by LA Counsel. Clinical Speech and Language Therapist after some vague answers, explained that *"it's in grey print because it's more of a comment"* on wider matters. LA Counsel referred Clinical Speech and Language Therapist in particular to p205 para 6.3. and asked them why they felt that they should comment on School 3 but not School 2. They told us that it was because that was what they discussed with the Child's parents. They went on to tell us that they took information on School 3 from their website. Although Clinical Speech and Language Therapist had said to us earlier that they were not giving evidence in respect of placement we are satisfied that in the aforementioned paragraph they were doing just that, and that they were doing so in order to support the

aspirations of the parents. Their decision to ignore School 2 permits no other explanation. We are fortified in our conclusion by the Clinical Speech and Language Therapist's own words in the concluding sentence of paragraph 6.3 when they says of School 3

"Therefore it is my professional opinion that this placement would support develop and meet the Child's needs."

12. We are satisfied that the Clinical Speech and Language Therapist failed to limit their opinion to matters within their expertise, assumed the role of advocate, and strayed into the ultimate issue. The use of feint type is not a means by which the Clinical Speech and Language Therapist, or indeed any other expert, can ignore the strict boundaries which underpin the relationship between expert and decision-maker. Their evidence is tainted by their failure to come to this case with sufficient professional rigour, and their credibility is, as a consequence, undermined.

13. It was undermined even further by their broad brush and unsubstantiated assertions in respect of the Child's speech and language development in the past. The Clinical Speech and Language Therapist told us that prior to 2018, when provision was stopped, the Child was thriving, and that provision has been limited since that time. More than once the LA Counsel asked them to point us to the evidence which supported their advice, but there wasn't any. The Clinical Speech and Language Therapist simply told us that *"… we can examine their history from their notes",* but their clinical notes were not available to us. The LA Counsel challenged the Clinical Speech and Language Therapist on the basis that none of this appeared in their report, at which point they told us that they had information from the Child's parents who told them that the progress had slowed since 2018. From the Clinical Speech and Language Therapist's own introduction (p192), the last speech and language document seen by them which pre-dates the Child's move to School 1 in September 2018 is dated 5.5.16. The next document in time seen by the Clinical Speech and Language Therapist is dated 24.11.21. Their assertion in respect of the pattern of the Child's progress was nothing more than an echo of what the parents had told them.

14. The Clinical Speech and Language Therapist's willingness to support the aspirations of the parents found expression again in their summary (p202). They recognises that the Child has a moderate to severe learning difficulty, but goes on to say *"Assessments indicate that the Child's speech and language skills are falling within a three to four year old range which appears to be below their assessed cognitive levels. This is significant in the fact that there is still scope to develop their speech and language skills".* The evidence does not support their final sentence. The Child's speech and language skills are commensurate with their overall cognitive ability and all of their various skills are at a very low level. At this level, minor differences in assessment results are not generally accurate or significant. There is no gap between ability and performance amounting to a barrier to learning, which can be filled with professional input of the sort recommended by the Clinical Speech and Language Therapist.

15. In contrast to the Clinical Speech and Language Therapist, we had the report of the Speech and Language Therapist's dated 15.9.22. They set out a summary of the Child's history and it is clear that when their case was reviewed at the end of year 2 in a previous School, it was agreed that he should attend School 1.

16. We do not accept the assertion of the Clinical Speech and Language Therapist that the Child was thriving up until the point that SALT provision was stopped in 2018, or that SALT input has been limited since then. Firstly provision was not stopped. It continues and is embedded in the day-to-day routines at School 1, although using different techniques to those in the Active Learning Centres, and secondly, there was no change in the pace of the Child's development, there was simply the recognition, agreed by their parents, that the work at the Active Learning Centre was beyond their cognitive abilities and that something different was required.

17. By a considerable margin, we prefer the advice of the Health Board Speech and Language Therapists. They set out a clear history, they explained the change in direction for the Child in 2018, and their conclusions and recommendations in respect of their ongoing provision were not simply compelling; to borrow from Lord Hamblen cited by Mostyn J, there was nothing in their report which would indicate which side had instructed them. Their advice is entirely consistent with the needs of a child in a PMLD unit. We also heard from the ALNCo, who painted a picture of speech and language support in practice at School 2. They gave a clear description of what the school offers to students, which includes targets which are planned and monitored by outside SALT and OT professionals and delivered by skilled staff. Taking together the advice of the Health Board Speech and Language Therapists and the description of day-to-day delivery, we are satisfied that the regime at School 2 offers everything that the Child needs, and we see no scope to add to it as recommended by the Clinical Speech and Language Therapist. The local authority invites us to conclude that their recommendations amount to overprovision, but we go further than that. Taking the Child out of their classroom environment for direct therapy is more than overprovision, it is inappropriate. Our conclusion in that regard is fortified by the observations of the DECLO, who suggested that therapists are not agents of change. The key aim is to ensure that professionals can support those who implement therapy on the ground. They impressed upon us the need to avoid an overall plan which is unmanageable, and the need to avoid hampering access to education. They advised that it is important to assess the Child within the school setting and to look at their strengths and the opportunities that can be provided. We could not agree more.

<u>OT</u>

18. Before considering any of the details in the report of the Independent Occupational Therapist we express some considerable concern that they did not have any contact with the Child's school. They assessed him in clinic, they had discussions with their parents in clinic, and they invited the parents to complete the Child Sensory Profile 2. They describes that process, namely

clinical assessment and parental reporting, as triangulation, but it is nothing of the sort. The third side of the triangle, namely the school, is missing. We regard contact with the school in respect of the Child's OT needs as a fundamental component of the assessment process. It is unarguable that the school is a key source of information which goes to any consideration of barriers to learning, and further, we take the view that experts are under a duty to explain why any material relevant or likely to be relevant to their conclusion is ignored or regarded as unimportant. The Independent Occupational Therapist's failure to contact the school is compounded by their failure to offer any explanation. To adapt at this point the metaphor cited by Mostyn J in the Gallagher case, the Independent Occupational Therapist veered away from the centre of the road over to where the parents stand, and their credibility is fatally wounded.

19. The DECLO, told us that a referral for OT has been made by the local authority to the health board and that an assessment is likely to take place in February. They did not agree with the advice of the Independent Occupational Therapist. They advised that assessment outside of the educational setting is limited and that it is necessary to understand what the Child does within the school environment. When it was suggested to him that the Clinical Speech and Language Therapist did not think contact with the school was needed, they described their approach as arising from a different philosophy of care. Their advice, they said, is a Welsh Government approach and aims for a wide multidisciplinary team. The vehicle for coordinating that approach will be reviews in school, and school will take the lead in those review discussions.

20. The DECLO told us that they did not have a plan to put before us today, however work is being undertaken on fine motor skills, which needs to be reviewed, and a physiotherapy review was undertaken on 29.11.22. Once the OT assessment it is completed in February, the health board will produce a cohesive plan. The Principal Educational Psychologist added that the occupational therapy and the physiotherapy departments work together very closely.

21. Not only did we find the advice of the DECLO highly persuasive, and consistent with the person-centered planning approach of the Welsh Government, we had to balance it against a report which was fundamentally deficient and which exemplifies the limitations of a clinic-based prescriptive approach, from an expert who had failed in their strict duty of professional rigour and impartiality. We prefer, again by a considerable margin, the advice of the DECLO.

<u>Physiotherapy</u>

22. The Parental Representative in closing, invites us to specify physiotherapy provision within the Child's IDP and they submit that there must be a programme or intervention put into place to meet their needs, but they fail to address the evidence of the DECLO in respect the review which took place just recently and the aim of producing a cohesive plan with OT for implementation in school. There is no basis at present on which we can determine physiotherapy needs.

23. We took no account of the Parental Representative's calculations for their assertion of under-resourcing.

Placement

24. In respect of the dispute as to which school the Child should attend, we return to first principles. Both the LA Counsel and the Parental Representative referred us to section 9 of the Education Act 1996. The LA Counsel suggested that the section is relatively weak and requires only that regard is to be had to the general principle of educating in accordance with parental wishes. The Parental Representative chose only to cite part of the section and makes no mention of the introductory qualification. Section 9 in full reads as follows.

"In exercising or performing all their respective powers and duty under the education acts the Secretary of State and local authorities shall have regard to the general principle that pupils are to be educated in accordance with the wishes of their parents so far as that is compatible with the provision of efficient instruction and training and the avoidance of unreasonable public expenditure".

25. There is no presumption arising from the wording of s9. It is well established that section 9 does not confer a right for parents to have their choice of school accepted subject only to the two qualifications of efficient instruction or expenditure. Having identified needs and provision, the test we have to apply is wider than that.

26. Neither of the representatives referred us to the case of **IM v London Borough of Croydon [2010] UKUT 205 (AAC)**. In that case, Upper Tribunal Judge Levenson set out at paragraph 9 the questions which we must ask ourselves when we come to name any school. They are;

a) Are both schools appropriate to meet the need. A school that is not appropriate cannot be named.

b) If they are both appropriate which is the school preferred by the parents? Unless (c) applies that school must be named.

c) Would naming the school preferred by the parents be incompatible with the provision of efficient instruction and training or the avoidance of unreasonable public expenditure? If so the school suggested by the local education authority must be named.

27. The local authority submits that both schools are appropriate, and indeed described them as materially indistinguishable in respect of what they can offer for the Child. They do however submit at paragraph 3 (3) that the distance of School 3 from home makes it less suitable for him and much more expensive for the local authority. They submit that it is clear that School 2 should be named.

28. In their closing submissions the Parental Representative sets out a number of observations in respect of the differences between the schools and although they do not expressly ask us to disqualify School 2 as inappropriate within the meaning of the IM part (a) test, it is plain that in substance they invite us to do so.

29. In order to apply part (a) of the IM test, we remind ourselves of the guidance from the of Court of Appeal and the Upper Tribunal as to the factual matters which we should take into account. In **TM v London Borough of Hounslow [2009] EWCA Civ 859**, the court was considering a dispute about education otherwise than at school. Whether a particular school is appropriate or inappropriate for a particular child is something more than simply asking - can the school meet the statement of needs? Atkins LJ said

    "If a LEA is to give full effect to the word inappropriate it has to see if a school would 'not be suitable' or would 'not be proper'. To do that in my view the LEA has to take into account all the circumstances of the case in hand. These circumstances might include, without giving any exhaustive list(which must depend on the facts of the case) consideration of the following matters: the child's background in medical history; the particular educational needs of the child; the facilities that can be provided by a school; the facilities that could be provided other than in a school; the comparative costs of the possible alternatives to the child educational provisions; the child's reaction to education provisions, either at a school or elsewhere; the parents' wishes; and any other particular circumstances that apply to a particular child" para 26

30. In **NN v Cheshire East Council (SEN) [2021] UKUT 220 (AAC)** Upper Tribunal Judge Rowley relied on the decision in TM and added that a local authority or a tribunal

    "… must take account of all the circumstances of the particular case it is considering. Aikens LJ listed what those circumstances might include whilst at the same time stressing that the list was not exhaustive and that in any case the circumstances must depend on the facts of the particular case." para 33

31. Whether or not a school is appropriate is a question of fact and we must take into account any relevant factors.

School 2

32. In respect of the parents' position, namely, that we should disqualify School 2 as inappropriate, we agree with the local authority that the schools are materially indistinguishable, although we stress that we are referring only to the nature of the premises themselves, the teaching regimes, the facilities and activities available, and the standards of care and expertise across the entire staff groups.

33. The Educational Psychologist, when challenged, told us that they were not advising that School 2 was not suitable for the Child.

34. We heard from the ALNCo who is the ALNCo at School 2. It is not necessary to rehearse everything that they told us, we simply indicate that we could see no area in which School 2 might differ in any significant way from School 3. We accept that no two units can be identical and that there will always be differences in layout and routines etc. but we could not identify any differences which could be described as other than insignificant detail.

35. In their report the Educational Psychologist had expressed some doubts over the suitability of School 2, one of which came from their impression of the level of learning for some of the students there. They reported that some of them are working at national curriculum levels. This was the source of some questioning by the LA Counsel who in the simplest of terms, asked the Educational Psychologist more than once whether they accepted that if turned out that they were mistaken, their concerns about the level of learning among students simply falls away. We found the Educational Psychologist to be particularly evasive in respect of what was the simplest of questions. Despite the efforts of the LA Counsel, they did not give a straightforward answer. We have already indicated above that we found the Educational Psychologist to have simply accepted what the parents said without scrutiny and their reluctance to respond in straightforward terms to the LA Counsel reinforced our concerns about their willingness to support the parents' case. After the opening of the new unit, the only factor with potential to weigh against School 2 was the alleged disparity in learning levels.

36. The ALNCo told us that they spoke to the Educational Psychologist when they visited School 2 and they remembered the conversation clearly. They were absolutely clear that there are no pupils in the Child's proposed cohort who are working at national curriculum levels, they are working at the equivalent of levels P3 and P4. The Parental Representative in their closing submissions, fails to address the evidence of the ALNCo and simply repeats what the Educational Psychologist told us in their report and when they gave their evidence. It is not clear whether, without expressly saying so, they are inviting us to make a finding as to whose description of learning levels is the more reliable, but for the sake of certainty we make plain that we accept without hesitation the evidence of the ALNCo. The ALNCo is the ALNCo at a PMLD unit and it is impossible to see how their evidence in respect of such a straightforward matter could be challenged. In view of this and the Educational Psychologist's oral evidence that they were not advising that School 2 is not suitable for the Child, it is not necessary for us go any further in respect of their report.

37. Notwithstanding the lack of professional support for their objection to School 2, the parents, in their written submission which was read to us at the end of the hearing and subsequently provided by e-mail, maintain their opposition. They doubt the levels and professional standards of staff; they do not believe that the teaching style or timetabling is appropriate; and they are concerned that the open plan layout will be noisy and distracting for the Child. There is no reliable evidence which would support what they say, and we note that their

position is based on experiences and thoughts which other families have shared with them. In short, and from their own description, their argument is anecdotal. We are satisfied that it is lacking in substance. It carries little if any weight when put into the scales along with everything we know about School 2.

38. We are not persuaded that School 2 is unsuitable for the Child and conclude that it is appropriate within the meaning of the IM part (a) test.

39. Before we turn to School 3 we pause to consider the Child's wishes and feelings. Our starting point is that a child's wishes can never be determinative, but must be given weight according to that child's level of understanding. We are told that the Child would like to go to School 3 and indeed that one of their friends goes there, but for perfectly understandable reasons there has been no in-depth discussions with him by any professional about their understanding of what the two schools can offer. Through no fault of their own the Child is unable to offer a preference to which we can allocate any kind of evidential weight.

School 3

40. Although the local authority do not address expressly part (a) of the IM test we are obliged to do so as we must form our own view, as an expert panel, of the evidence with which we have been presented, and we bear in mind the authorities cited above in respect of appropriateness.

41. We take into account not merely what is available within the premises, and we use that term simply as a convenient umbrella for expertise, facilities, guiding principles etc, but also what is involved for the Child in getting there in the morning and getting home again in the afternoon. We are satisfied that the circumstances of this journey, which will be fixed for the foreseeable future, are relevant factors which we must take into account.

42. In closing the Parental Representative suggests that the increase in journey time compared to what the Child does now is only slight, but taking account simply of an increase for one journey compared to the other would be to fall into error as it would distract our attention from the nature of the entire journey for the Child. We must look at that journey in the round. We have in mind the guidance from the Learner Travel (Wales) Measure 2008. Educational Psychologist refers in their second report to the Home to School Travel and Transport Guidance, but that applies to local authorities in England. The Welsh guidance states at section 4 para 5:

In considering whether travel arrangements are suitable for the purposes of this section a local authority must have regard in particular to: …..

(c) the age of the child

(d) any disability or learning difficulty of the child

(e) the nature of the routes which the child could reasonably be expected to take

And at para 6:

For the purposes of this section travel arrangements are not suitable if: …..

(b) they take an unreasonable amount of time or

(c) they are unsafe

43. We take as our starting point the map provided by the local authority in their case statement (p275) and the unchallenged evidence in respect of distances. The Child's journey from home to their primary school at School 1 is 11 miles. The distance from home to School 2, which are both north of the local town, is 10 miles, but the distance from home to School 3 is 35 miles. From the map it is apparent that the journey to School 3 would require the Child to travel through the local town to head south. The Parental Representative, in closing, describes this in somewhat casual terms. They submit that the Child enjoys travelling to school, is used to a long journey time of 1 hours and 10 minutes, and that they do not experience stress or anxiety. They submit that the proposed journey time to School 3 would be 1 hour and 20 minutes. We regard that as simplistic.

44. Firstly the parents' suggestion requires a changeover point for the Child, where they would join the vehicle which travels down to School 3 and which leaves at 8.00 a.m. Expecting one taxi to be timetabled to arrive just at the instant the other leaves is wholly unrealistic and the proposal is complicated further by the fact that the changeover point is not a school or other suitable local authority premises, but the home of a pupil who attends School 3. We shall return to this below.

45. Transport from the Child's house to the meeting point would have to aim to get there at least 5 minutes before departure time for the taxi to School 3. The parents estimate the travel time from home to the meeting point is 20 to 25 minutes but this is for a 10 mile journey which will be starting at the time of the morning commute and would involve travelling through the local town itself, as the meeting point is situated to the East of the town centre and the Child lives to the North. The local authority suggest that the Child would have to leave home at no later than 7.30 a.m. to meet the taxi at the meeting point and we agree. Any doubt we have is dispelled by the statement we have from the Child's taxi driver, who tells us that the current journey can be <u>up to</u> one hour and 10 minutes (emphasis added). It should take 1 hour (see the Parent p85). The Taxi Driver is clearly referring to varying traffic conditions and we are satisfied that we should take a cautious approach to our conclusions in respect of departure time from home to meet the meeting point vehicle.

46. As we have already indicated, timings are just one aspect of this proposal, and we have to ask ourselves what happens when the taxi from home meets the taxi at the meeting point. Who is to supervise the Child during the changeover,

what is to happen if the either taxi is delayed for some reason? The mechanics of this proposal concerned us from the outset and we raised it with the Educational Psychologist. They told us that they regarded the halfway changeover as a concern and did wonder how it would be managed. They said it was not appropriate for the Child to stand on their own and that he should not have a break in their journey as he would need an escort trained in ASD support to supervise him. Their view reinforces our conclusion that this journey ought not to be imposed upon the Child. They will not be able to change vehicles or wait for one of them unsupported, and there is no prospect of him being able to do so independently at any time in the future.

47. The Parent says that the Child is able to cope with a long journey and that they arrive at school relaxed and returns home relaxed. The parents suggest that the changeover can be managed by the Child's existing escort, but their response to the prospect of any delay at the handover point is to simply say that it is not an insurmountable obstacle. Their view must go into the balance against a realistic travel time of 1.5 hours at a minimum, subject to delays caused by adverse weather or accidents or roadworks etc., and a break in the journey for a changeover outside a private property, for a child with a moderate to severe learning difficulty who requires adult supervision.

48. Whilst is there is no objective evidence that the Child shows any kind of distress on their current journey to school, it is not possible to ascertain, with any degree of reliability, just what he thinks about being in a car for that length of time and in particular during winter months when they would be travelling in darkness. We bear in mind what is said by the Taxi Driver of their presentation on their current journey, but that is little more than a general impression. The Welsh Measure does not offer any guidance in respect of recommended maximum journey times and we are satisfied that what is reasonable is a matter for us, taking into account the circumstances of the case. We are satisfied that the proposed total journey time to School 3 is unreasonable and also are satisfied that the arrangements for handover in the street are lacking the certainty of safety which the Child needs.

49. Those conclusions taken together, tip the balance in favour of our finding that School 3 is inappropriate within the meaning of part (a) of the IM test and that therefore cannot be named. It follows that we will name School 2.

50. It is not necessary for us to go on to consider parts (b) and (c) of the IM test but even if we were wrong in respect of part (a) we are satisfied that the decision in **Catchpole v Buckinghamshire CC [1999] LGR 321** would defeat the parents' preference. To borrow from Thorpe LJ, as we have indicated above, the parents' preference does not *"rest on a sound foundation of accurate information and wise judgement".* On the contrary, from their written submission, the comparison of the two schools is little more than bare assertion unsupported by evidence. We agree with the local authority that the two schools are materially indistinguishable. We also agree with the local authority that no reliance can be placed on the views of the Educational Psychologist in relation to any comparison they makes of the two schools in their report.

51. We recognise that the new Code of Practice puts considerable importance on parental contribution to planning but that brings with it a greater emphasis on the guidance from Sedley LJ that *"…the reasons for parental choice are of first importance; the bare fact of parental choice … is logically only of marginal significance".* The expert advice with which the parents sought to support their case was unreliable for the reasons we have stated, and we reject this appeal not because we have ignored the requirements of the Code, but because we have applied strict tests of independence to those experts, whose advice is fundamental to the parents' case, and found them wanting. The new Code does not dilute the guidance from the appellate courts either in respect of the relationship between expert and decision-maker, or policing the quality of evidence; nor does it create any presumption which alters the meaning of s9 of the Education Act 1986 and the IM test

52. The appeal is allowed in so far as we approve the entries in the IDP as agreed by the parties, but dismissed in respect of 1:1 support, therapies and placement. The Child shall attend School 2.

Dated January 2023