Tribiwnlys Addysg Cymru

Education Tribunal for Wales

Review of the Additional Learning Needs Legislative Framework in Wales

Contribution from the Education Tribunal for Wales

Judge Jane McConnell

1 September 2025

Contents

1. Introduction

The introduction of any new legislation will often be challenging through the transition process. Where aspects of the changes introduced are fundamentally different from what has been in place before, it takes time for those required to make decisions under the new arrangements to understand them and put them into daily practice.

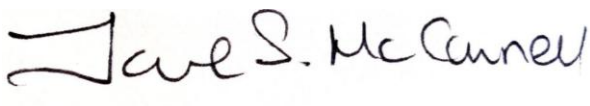
The Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("ALNET") established a new legal framework for children and young people with additional learning needs ("ALN") in Wales. The Additional Learning Needs Code for Wales 2021 ("the ALN Code") contains statutory guidance for (amongst others) each local authority in Wales ("LA" and in the plural "LAs").

Implementation started in September 2021 and all those it affects, including the Education Tribunal Wales ("ETW" or "the Tribunal"), have been working with it since that time. The transition period from the "old" Special Educational Needs ("SEN") statutory framework under Part 4 of the Education Act 1996 ("EA 1996") to the "new" Additional Learning Needs (ALN) legislation ended in August 2025. By this time, all children and young people who have, or may have, Additional Learning Needs should have been considered through the prism of this new framework by the LAs, Schools, institutions in the Further Education Sector ("FEI") and others tasked to support them.

The evidence from the Tribunal contained in this report is intended to inform Welsh Government's review of the ALN framework. It is not to be read as critical. It does not identify all the issues with the implementation of the new ALN system but focuses on those which the evidence reviewed indicates are the key issues Welsh Government may wish to consider. As the ETW is a judicial body, it cannot, and does not, provide any comment on the relative merits of the new law or provide any guidance as to its application.

It must be acknowledged that appeals are brought to the Tribunal only in cases where there is a dispute between parent(s) or children and young people (CYP) and an LA which has not been resolved by alternative means such as discussion, Alternative Dispute Resolution or mediation. Evidence from Tribunal cases will therefore not highlight any positives for children and young people that have resulted from the implementation of ALNET.

I would like to thank the operations team in the Education Tribunal Wales for their support in producing this review and acknowledge the pivotal role of Judge Michele Michaelson in providing legal support.



Judge Jane McConnell

President Education Tribunal Wales

1 September 2025

2. Summary

As already stated in oral evidence to the Children, Young People and Education Committee of the Welsh Parliament (Senedd Cymru) on 20 March 2024, the new statutory framework set out under ALNET can be described as *"intellectually challenging"*. The in-depth review of cases which forms the evidential basis for this report continues to support this view. The following are the key issues arising from this review which Welsh Government may wish to consider:

2.1 Key Issue 1: Application of the definition of ALN

The definition of ALN is a change of terminology not substance. The wording of the definition is the same as the previous definition of special educational needs under the EA 1996.

The legal test to be applied under ALNET s.2 sets out two possible qualifying tests for having ALN. The CYP must have either a Learning Difficulty or a Disability. It is the definition of learning difficulty which some LAs, schools and FEIs appear to have difficulty in applying, with the two tests being conflated together. A CYP will have a learning difficulty if: *"they have a significantly greater difficulty in learning than the majority of others of the same age"* i.e. their ordinarily developing peers.

The Code at 2.19 – 2.24 states that whether a CYP has a significantly greater difficulty in learning can be identified by looking at the education or training provision they require (or may likely require). If that provision is of a kind which is generally available in a maintained mainstream school or FEI - including catch-up provision or differentiated teaching strategies – then this will not be ALP (additional learning provision), with the result that the CYP will be found not to have ALN as they do not have a significantly greater difficulty in learning. If the provision they require is more than what is generally available, then it will be ALP, and the result will be that the CYP will have ALN as they will have a significantly greater difficulty in learning.

This explanation in the Code – connecting the test to provision - does not reflect the legal test in ALNET. This may be contributing to the issues understanding the legal test seen in the evidence. The legal test is a comparison of the learning of the CYP with the learning of the majority of others of the same age not the provision available in schools or FEIs.

Real issues have also arisen from the development of the policy term *"Universal Provision"* as well as descriptions of support/provision as *"targeted", "monitored"* and *"specialist",* which is terminology which has appeared in common use by LAs and schools. These concepts are not referred to in ALNET or in the supporting Regulations. None of them have a legal definition. They are interpreted differently in different LA areas. In one LA, universal provision referred to all provision expected to be made in a mainstream school, including additional learning provision not usually made for ordinarily developing pupils. In other LAs the term refers to just the provision expected to be put in place for ordinarily developing pupils.

2.2 Key Issue 2: Identifying what is ALP

The legal definition of ALP under ALNET s.3 is essentially no different from the definition of special educational provision (SEP) under the EA1996 s.312(4) concerning educational provision. It has however expanded to also cover *"training provision".*

It follows that a child who received provision made as SEP under School Action, School Action Plus or via a Statement of SEN will therefore be receiving ALP under ALNET. The only exception is where there is evidence that their individual needs have changed to the extent that the definition is no longer applicable.

The definition of ALP under ALNET mirrors that of SEP under current English legislation under the Children and Families Act 2014 ("CFA 2014") s.21(1). The effect of relevant case law under the EA 1996 and CFA 2014 must therefore be considered.

When cases are registered with the Tribunal, there are often basic disputes between the parties as to whether provision that a CYP requires is ALP. Some LAs have been implementing a policy that if provision can be expected to be made by the maintained school – mainstream or special – that a CYP attends then it is not ALP. When the legal test is explained by the Tribunal as part of case management then this position is usually reviewed.

Where a therapy provision such as occupational therapy, physiotherapy or speech and language therapy is delivered by an NHS body it will also usually still be ALP. The evidence to the Tribunal is that some LAs are stating that such provision is not ALP.

On appeal, the Tribunal will use its specialist expertise to decide if the support a CYP is receiving or requires is ALP. The test to be applied is whether that provision is additional to or different from that generally available for the ordinarily developing CYP across Wales. Support which is differentiation of the curriculum will not be ALP.

The comparator in this test is not one that considers the resources and provision available in a specific school or FEI but what is generally available in mainstream maintained schools or FEI in Wales.

2.3 Key Issue 3: Effect of UN Conventions on ALNET

ALNET contains a duty to have regard to both the ***United Nations Convention on the Rights of the Child*** and the ***United Nations Convention on the Rights of Persons with Disabilities*** which means that LAs and an NHS body must have due regard to the Conventions in exercising a function under ALNET. This is not the same duty as when a convention is adopted by resolution, as has happened in Scotland, but clarification about this may be helpful.

In an appeal, the ETW “stands in the shoes” of an LA.

Bringing in the convention rights of a child or young person as part of the argument in an appeal has already happened in two cases. It is therefore possible that this will recur.

Although the duty is a “have regard” duty, where LAs adopt policies which may breach the Convention (such as adopting a policy limiting the amount of ALP to be provided to CYP), LAs may have to be prepared to explain why they have done so.

2.4 **Key Issue 4: Availability of advice and information services**

The evidence from the ETW is that the capacity of information and advice services put in place by LAs are wholly insufficient to meet the needs of parent(s) and CYP, LAs or schools/colleges. Where advice and information has been provided the quality can best be described as patchy. Often it is just wrong. Sometimes it is misleading and/or based on LA policy and not the law.

The overwhelming majority of appellants are not supported or represented in bringing their appeal despite requesting help from sources signposted by their LA. As a result, cases are not well presented when the application to register an appeal is made. The Tribunal is having to clarify the scope of the law to be applied but without “stepping into the arena” and advising particularly parent(s) and CYP. The Tribunal is seeing a rise in issues outside its jurisdiction being raised which could have been resolved between an appellant and LA with informed discussion.

2.5 **Key Issue 5: Independent advocacy services for CYP**

There is a lack of independent advocates with the required level of expertise to provide advice and assistance or represent a CYP in an appeal. Such experts must have the skills to be able to effectively communicate with a CYP who has ALN, which may be a cognitive impairment, speech and language difficulties or anxiety. Professionals who work for an LA that may have such expertise, may not be perceived as having the required level of independence from their employer.

2.6 **Key Issue 6: When an LA must prepare and maintain an IDP**

Any CYP with ALN must have an IDP maintained for them either by a school, FEI or the responsible LA.

The duty on an LA to prepare and maintain a IDP is contained in s.14(2)(a). The circumstances which trigger the LA duty in the case of a child who is in a maintained school are set out in s.12(2). These are where the governing body considers that the child or young person has additional learning needs:

i. that may call for additional learning provision it would not be reasonable for the governing body to secure,

ii. the extent or nature of which the governing body cannot adequately determine, or
iii. for which the governing body cannot adequately determine additional learning provision.

There is also an option contained in s.14(2)(b) that an LA can direct the governing body of a maintained school to maintain the plan, if the authority considers it "appropriate". This means that there is a difference between the s.12(2) conditions (which bring in the duty under s.14(2)(a)) and s.14(2)(b). The ALN Code does not resolve this; it sets out at paragraph 15.91 situations where an LA should not use its powers to direct a school to prepare an IDP but this is not an exhaustive list.

This power to direct is being relied on in some LAs to delegate the responsibility for maintaining an IDP to all of their maintained schools, including maintained special schools, except in the most limited of circumstances. Often whether a school can and will be able to make the ALP is disputed by them in appeals. It must be remembered that the role of the Tribunal is to consider disputes between parent(s), CYP and a responsible LA. It is not to decide disputes between an LA and a school.

The legal test when an LA makes such a decision concerning a young person who will be attending a school or FEI is specified in Regulation 8. It is necessary for an LA to prepare and maintain an IDP when the LA decides it is "reasonable" to name a placement in the IDP under ALNET s.14(6) or it is "not reasonable" for the governing body of the school or institution to secure the additional learning provision that they require. This makes it different from the "appropriate" test which can be applied in decisions concerning CYP in school.

The fact that an LA is no longer required to carry out a statutory assessment of the needs of CYP to identify the provision means that some decisions as to who should maintain an IDP are being made without clear evidence being available as to the ALN of the CYP or the provision required to meet those needs.

The evidence from appeal cases is that the new tests create substantial differences in how ALNET is being applied across Wales with clear inconsistencies in decisions as to whether a CYP has their IDP maintained by a school, FEI or their LA.

2.7 **<u>Key Issue 7: ALP to be secured by an NHS body in Section 2C of an IDP</u>**

If the provision that a CYP requires is identified as ALP, it must be described in Section 2B of an IDP. If ALP is to be delivered by an NHS body it can, but only with the agreement of the responsible NHS body, be specified in Section 2C of an IDP.

It is not the role of the Tribunal to consider and decide disputes between an LA and an NHS body.

There is nothing in the drafting of ALNET to suggest that the delivery of ALP by an NHS body, as recorded in an IDP in section 2C, means that ALP should, as

a consequence, be removed from Section 2B. Further clarification of this may be helpful as the policy approach adopted by some LAs and NHS bodies suggests that an LA can delegate the responsibility to deliver provision to an NHS body and that there is no underlying duty which remains with the LA.

2.8 **Key Issue 8: Naming an Educational Placement in Section 2D of an IDP**

Naming a specific educational placement in Section 2D of an IDP is now the exception rather than the rule.

CYP with ALN, even if their IDP is maintained by an LA, have to apply for a place at a school or FEI through the general admissions process followed by all.

Under the general admissions arrangements set out under the School Standards and Framework Act 1998 ("SSFA"), an LA must comply with any school preference expressed by a parent unless an exception under s.86(3) of the SSFA applies. These are that the preference would prejudice the provision of efficient education or the efficient use of resources or if the arrangements for admission to the preferred school: (i) are wholly based on selection by reference to ability or aptitude, and (ii) are so based with a view to admitting only pupils with high ability or with aptitude, and compliance with the preference would be incompatible with selection under those arrangements.

The only exception in the SSFA to going through the general admissions process is where a maintained school is named in under s.48 of ALNET.

Recent case law has established that s.9 of the EA 1996 still applies in Wales. This is the duty to have regard to the principle that pupils are to be educated in accordance with parents' wishes. This must also be considered by an LA in their decision making about the allocation of school places.

LAs have a (conditional) duty under s.14 (6) of ALNET and a power under s.48 of ALNET, both of which relate to admission decisions made by LAs for CYP with ALN, who have an LA maintained IDP; the extent to which LAs are taking this in to consideration and what point in the process they are doing so varies.

Evidence from appeals made to the Tribunal is that LAs are too often not considering a CYP's ALN when making admissions decisions. The test under the EA 1996 s.9 is also not specifically considered. LAs are routinely not providing decision letters to parent(s) or CYP explaining their admissions decision and informing them of their right to appeal to the ETW about placement.

It is also not clear how LAs are considering decisions made concerning young people who have been refused admission to their chosen FEI or other institution under ALNET s.14(6) or how they are being informed of their right of appeal to the ETW. The fact that an LA, and the Tribunal on appeal, cannot name a government funded FEI in an LA maintained IDP without their agreement will also potentially cause issues where no placement is offered. The only

alternative educational placement could be at an Independent Specialist College.

Clarification would be helpful focussing on the interrelation between the relevant parts of ALNET (s.14(6), s.48 and s.51) and the SSFA admissions process and specifically how they are to be applied by an LA, or the Tribunal, when deciding which educational placement a CYP is to attend.

It would also be helpful to define the following terms used in ALNET:

s.14(6)	*"reasonable needs"*
s.14(7)	*"other institution"*
s.48(4)(a)	*"child's interest"*
s.48(4)(b)	*"appropriate"*
s.51(2)(b)	*"best interests of the child"*

Clarification of the definitions will assist with the consistent application of the law by everyone who needs to work with it especially LAs, schools and FEIs.

2.9 **Key Issue 9: Ceasing to maintain an IDP – Education up to 25 years old**

An IDP can now be maintained by an LA or FEI until a young person reaches 25 years old and potentially until the end of that academic year with an LA's agreement. Language in the ALN Code (see for example paragraph 17.65) indicates that a young person is entitled to up to two years of further education or training. This does not appear to take account of duties under the Learning and Skills Act 2000 s.31 and s.32 (the latter concerning education and training for pupils over 19). Whilst the wording in the ALN Code reflects the ALN Regulations, (see Regulation 9 in particular re suitable programmes of study), further clarification on how these two potentially conflicting concepts are intended to interact would be helpful.

2.10 **Key Issue 10: Communicating decisions which trigger a right of appeal to the Tribunal**

Unless, when an LA is making a decision about a CYP's ALN, they clearly communicate what that decision is, the reasons for the conclusions they have reached and whether there is a right of appeal triggered to the ETW, then there will be a fundamental access to justice issue. Evidence from parents and CYP making applications to the Tribunal is that very often the LA has not communicated these essential pieces of information (or at least, not all of them). This is especially the case where decisions have been made about the educational placement that a CYP is to attend through the general admissions process. LAs are failing to consider the CYP under ALNET if they have an IDP whether it is maintained by a school or the LA. The fact that these phase transfer decisions are now issued on National Offer Day (this year 03/03/2025 for transfer into Secondary School and 16/04/2025 for Primary School) means that the timeframe for appealing any such decision is now significantly reduced. Unless an LA decision is clear that there is a right of appeal to the Tribunal, the

chances of an appeal being concluded before the end of the summer term is greatly restricted.

The evidence reviewed by the ETW raises a number of additional issues which Welsh Government may wish to consider. The law, evidence and those issues are discussed in further detail in the main body of this review report.

3. Role of the Education Tribunal Wales (ETW)

The ETW is an independent, judicial body with power to consider appeals made by parent(s), children and young people ("CYP") against decisions made by their responsible LA concerning Additional Learning Needs. The person bringing an appeal is called the "appellant." The LA defending an appeal is the "respondent." Together they are referred to as the "parties" to the appeal.

There are also rights of appeal against certain decisions by the governing body of an FEI but no appeals of this type have been registered to date.

The specific rights of appeal to the Tribunal are set out in ALNET s.70. These provide a limit to the jurisdiction and powers of the Tribunal. The Tribunal does not deal with enforcement of its decisions.

4. Scope of the ETW evidence

Welsh Government asked the ETW to consider specific questions in reviewing the evidence from ALN cases (see Appendix 1).

The following types of ALN appeals were reviewed:

- ✓ **Cases where a final decision was issued by the ETW following a hearing.** These are cases decided by a judicial panel consisting of a Judge and two specialist members having considered all the evidence and arguments presented by the parties. Usually, this will involve an oral hearing.

- ✓ **Cases where parties reached agreement before a final hearing and a consent order was issued.** Parties to an appeal are increasingly working together and reach agreement before a final hearing is held. This often happens after a case management hearing is conducted by a Judge where the outstanding issues in dispute are identified and relevant law discussed. The proposed agreement is then considered by a Judge. If they approve, a consent order is issued confirming the agreement. This is a final decision which is binding on the LA.

- ✓ **Cases which were withdrawn by parent(s), child or young person before a final hearing.** An appellant can decide to withdraw an appeal at any time before a final decision is issued by the ETW. This can be because some agreement has been reached between the parties or for other reasons.

- ✓ **Cases where an application to register an appeal was made but was refused.** This applies where an application to register an appeal is made but is refused because it is outside of the jurisdiction of the Tribunal.

Other evidence was received from:

- ✓ **Judicial Office Holders ("JoHs").** There are 14 Judges and 15 Specialist Members appointed as JoHs to the ETW.

- ✓ **Tribunal Administrative Staff.** Four members of staff support the ETW and work directly with parties by phone or email answering questions concerning the Tribunal's work and the progress of cases.

5. Tribunal Statistics

The first case was registered with the ETW under ALNET in May 2022.

Since that time, 194 further cases have been registered. 65 final decisions in ALN appeals have been issued by the ETW. 51 consent orders have been issued (up to the end of March 2025).

All ETW hearings are held in private but anonymised copies of most final decisions issued are published on the ETW Website. Consent orders are not published. More detailed ETW statistics are contained in Tribunal's Annual Reports which can be accessed at https://educationtribunal.gov.wales/.

Anyone with an interest in the ETW is welcome to participate in our User Groups which are held twice per year in person and on-line. To sign up for notification of meetings please email:

Tribunal.Enquiries@gov.wales

Please note:

Any words underlined in this report are for emphasis and are not reflective of legislative drafting.

This report does not specifically comment on the variations to the application of the law in appeals for Looked After Children or for those CYP who are Detained.

A summary of Tribunal statistics can be found in appendix 1.

6. **Definitions**

ALNET is the statute which contains the "bones" of the new ALN system. There are Regulations which contain important details supporting the statute which are also part of ALN law, namely The Additional Learning Needs (Wales) Regulations 2021 ("the ALN Regs") and The Education Tribunal for Wales Regulations 2021 ("the Tribunal Regs"). The ALN Code is statutory guidance to which LAs and the Tribunal (amongst others) must have regard. In the event of any discrepancies between the ALN Code and ALNET, it is ALNET which applies. There are some terms which are still defined by the EA 1996.

When reading this report, it is useful to note the following definitions;

Under **ALNET s.99**:

- a **child** means a person not over compulsory school age, i.e. from birth up to the end of compulsory school age. [1]

- a **young person** means a person over compulsory school age, but under 25.

- **maintained school** means–
  (a) a community, foundation or voluntary school,
  (b) a community or foundation special school not established in a hospital,
  (c) a maintained nursery school, or
  (d) a pupil referral unit.

- **mainstream maintained school** means a maintained school that is not -
  (a) a special school, or

[1] **Compulsory School Age.** A person begins to be of compulsory school age—
(a) when he attains the age of five, if he attains that age on a prescribed day, and
(b) otherwise at the beginning of the prescribed day next following his attaining that age.(s.8(1) Education Act 1996). Pursuant to Para 2 Education (Start of Compulsory School Age) Order 1998/1607) the prescribed days are 31 March/August/December.
A person ceases to be of compulsory school age on the last Friday in June in the academic year a person turns 16 (s.8(3) Education Act 996 and Education (School Leaving Date) Order 1997/1970).

(b) a pupil referral unit.

- **institution in the further education sector** means an institution falling within s.91(3) of the Further and Higher Education Act 1992. [2],

Under the **Education Act 1996 s.2:**

- **further education** means –

  (a) full-time and part-time education suitable to the requirements of persons who are over compulsory school age, and

  (b) organised leisure-time occupation provided in connection with the provision of such education.

  except that it does not include secondary education or (in accordance with subsection (7)) higher education.

  (i.e. it does not include University).

The term **"educational placement"** is used as a generic term which covers all types of possible nurseries, schools or FEIs.

[2] Under Section 91 (3) of the Further and Higher Education Act 1992, references to institutions within the further education sector include institutions conducted by further education corporations, and sixth form colleges.

7. Findings

7.1 Definition and identification of Additional Learning Needs (ALN)

Relevant Law and Guidance

ALNET s.2 Additional learning needs

(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.

(4) A person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been used at home.

ALN Code

Guidance on the definition of ALN chapter 2

Paras 2.16 – 2.24 (guidance on matters relating to the definition of ALN and its application including the meaning of "Significantly greater difficulty in learning") and Paras 2.34 to 2.38 (areas of need)

ALNET s.13 Duty to decide: local authorities

(1) Where it is brought to the attention of, or otherwise appears to, a local authority that a child or a young person for whom it is responsible may have additional learning needs, the authority must decide whether the

child or young person has additional learning needs, unless any of the circumstances in subsection (2) apply.

(2) The circumstances are -

(a) an individual development plan is being maintained for the child or young person under this Part;

(b) the local authority has previously decided whether the child or young person has additional learning needs and it is satisfied that -

(i) the child's or young person's needs have not changed materially since that decision was made, and

(ii) there is no new information that materially affects that decision;

(c) section 11(1) applies and the local authority is satisfied that that the question of whether or not the child or young person has additional learning needs is being decided under that section;

(d) the decision is about a young person and the young person does not consent to the decision being made;

(e) the decision is about a young person who -

(i) is an enrolled student at an institution in the further education sector in Wales, and

(ii) is not also enrolled as a student at another institution in the further education sector or a registered pupil at a school, and no request in respect of the young person has been made to the local authority under section 12(2)(a).

(3) If the local authority decides that the child or young person does not have additional learning needs it must notify the child or young person and, in the case of a child, the child's parent of -

(a) the decision, and

(b) the reasons for the decision.

ALN Code:

Guidance on the local authority duties to make the decision, chapters 13, 14 and 15

Paras 13.3 to 13.17 (children), paras 14.9 – 14.25 (looked after children) and Chapter 15 paras 15.48 – 15.70 (young people) (includes guidance on local

authority duties once the decision is made, including decisions that the child or young person does not have ALN)

Evidence

The Tribunal has registered 25 appeals against a decision made by an LA that a CYP does not have ALN. There have been no appeals registered against an equivalent decision made by an FEI.

Decision letters sent to parents show that some LAs persistently apply the incorrect legal test in deciding whether a CYP has ALN:

> *X does not have ALN as the provision they required could be provided via Universal Learning Provision*

> *… the needs identified can be met from the universal provision available at a school*

Decisions made by LAs consistently do not reference the law or give reasons. Too often parent(s) approach the Tribunal to register an appeal where LAs have not made a formal decision despite being asked to do so by a school.

In some LAs, a level of support, sometimes termed *"targeted support" or "monitored support"*, is put in place for children who were identified as having SEN and supported on school action ("SA") and/or school action plus ("SA+") under the previous system. In many cases, these children are not now identified by schools as having ALN. Some LAs are seeking to rely on this as the basis for their decision.

Schools and colleges in turn are misinterpreting the ALN legal test based on advice from LAs.

ALNCos (Additional Learning Needs Co-ordinators in schools) in tribunal hearings have referred to LAs telling them that children previously supported on SA/SA+ are to be identified as not having ALN as their needs should be able to be met from

resources available in the school. Their evidence to the Tribunal does not always support the case being made by the LA.

Once an appeal is registered, LAs often review their original decision and concede this issue. Some are continuing to contest the case until the final hearing and are then conceding.

Issues to be considered

Issue: Applying the legal test incorrectly and inconsistently

The definition of ALN is a change of terminology not substance. The wording of the definition is the same as the previous definition of special educational needs under the EA Act 1996. This is addressed further below.

The legal test to be applied under s.2 sets out two possible qualifying tests for having ALN. The CYP must have either a Learning Difficulty or a Disability.

1. Learning Difficulty

The comparator to be used is *"whether they have a significantly greater difficulty in learning than the majority of others of the same age"* i.e. their ordinary developing peers.

The word *"significantly"* is not defined in ALNET.

The Code at 2.19 – 2.24 states that whether a CYP has a significantly greater difficulty in learning can be identified by looking at the education or training provision they require (or may likely require). If that provision is of a kind which is generally available in a maintained mainstream school or FEI - including catch-up provision or differentiated teaching strategies – then this will not be ALP (additional learning provision), with the result that the CYP will be found not to have ALN as they do not have a significantly greater difficulty in learning. If the provision they require is more than what is generally available then it will be ALP and the result will be that the CYP will have ALN as they will have a significantly greater difficulty in learning.

This explanation in the Code – connecting the test to provision - does not reflect the legal test in ALNET. This may be contributing to the issues understanding the legal test seen in the evidence. The legal test is a comparison of the learning of the CYP

with the learning of the majority of others of the same age not the provision available in schools or FEIs.

Real issues have also arisen from the development of the policy term *"Universal Provision"* as well as descriptions of support/provision as *"targeted", "monitored"* and *"specialist"* which is terminology which has appeared in common use by LAs and schools. These concepts are not referred to in ALNET or in the supporting Regulations. None of them have a legal definition. They are interpreted differently in different LA areas. In one LA, universal provision referred to all provision expected to be made in a mainstream school, including additional learning provision not usually made for ordinarily developing pupils. In other LAs the term refers to just the provision expected to be put in place for ordinarily developing pupils.

The decision about whether a CYP has ALN is one made, ordinarily, by a school or FEI (if the child or young person attends a placement) or by an LA when brought to their attention.

The legal test under ALNET for whether a CYP has ALN is not a decision related to the resources available either generally or *"universally"* within a type of educational placement or the resources or provision available in a specific school or college. It is a comparison of their ability to learn with that of the majority of their peers.

2. Disability

CYP who are disabled under the definition in the Equality Act 2010 s.6, will have ALN if their disability prevents or hinders them from making use of the facilities for education or training generally provided for others of the same age in a mainstream maintained school or mainstream FEI.

This is a comparator which requires the identification 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. The word "facilities" is not defined legally and it is not the same as "provision". The test is also a comparison with mainstream schools or FEIs across Wales and is not specific to an individual education placement.

Application of the Definition

In applying the definition of ALN, the two qualifying tests are not being considered separately by LAs. They are conflating the two limbs of the test and too often concluding that a CYP does not have ALN either because the provision they require

can be made either at a specific school or FEI or because they consider that it could be made at any school or FEI in Wales.

As mentioned above, it must also be noted that the legal definition of ALN is not different from the definition of SEN (special educational needs) under the EA 1996 s. 312(1), (2) and (3). Confirmation from Welsh Government that those children who had previously been identified as having SEN would still have ALN – unless their specific needs had changed – has not been accepted as an interpretation of ALNET by some LAs or the professionals working for them. This has been a common argument provided by LAs and echoed by Educational Psychologists during the appeals process.

The test to be applied for assessing whether a child under compulsory school age has a learning difficulty or disability is a lower threshold under ALNET s.2(3). It allows for them to be found to have a learning difficulty or be disabled if they would be *"likely"* to fulfil the test under ALNET s.2(2).

Issue: Duty to decide

An LA must make a decision as to whether a CYP has ALN unless they can rely on an exception set out under ALNET s.13(2). The duty on an LA under s.13 can be triggered at any time and by anyone bringing it to their attention that a CYP may have ALN. A decision must be made by an LA unless one of the exceptions under s.13(2) can be relied on.

Under ALNET s.11, a school or FEI may have already made a decision about whether a CYP has ALN.

If a school has decided that a CYP does not have ALN, then under ALNET s.26, that decision can be referred to the responsible LA for reconsideration. Any subsequent decision of the LA can be challenged on appeal to the Tribunal.

In the case of a YP, if the FEI decides that they do not have ALN then an appeal can be brought directly to the Tribunal against that decision. It does not need the LA responsible for the YP to review it first.

Some LAs are not making a formal decision as to whether a CYP has ALN despite clear referrals from schools and a statutory duty placed upon them to do so. Parent(s) approaching the Tribunal wishing to register an appeal have often not had a formal and reasoned decision made by the responsible LA. When ordered by the Tribunal to confirm if one has been made, some LAs accept that no formal process has been followed and therefore no decision has been issued.

Where an inquiry has been made concerning a YP attending an FEI, staff responsible for ALN often have little or no understanding that they need to make a formal decision or that there is a right of appeal against it to the Tribunal.

7.2 **Definition and identifying Additional Learning Provision (ALP)**

Relevant Law and Guidance

ALNET s.3 Additional learning provision

(1) "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,

(b) mainstream institutions in the further education sector in Wales, or

(c) places in Wales at which nursery education is provided.

(2) "Additional learning provision" for a child aged under three means educational provision of any kind.

(3) In subsection (1), "nursery education" means education suitable for a child who has attained the age of three but is under compulsory school age.

(4) Regulations may amend this section to replace the references to the age of three with references to a different age.

…

ALNET s.99 provides the following definitions;

*"**education**" includes full-time and part-time education, but does not include higher education; and "educational" and "educate" (and other related items) are to be interpreted accordingly;*

*"**training**" includes -*

(a) full-time and part-time training;

(b) vocational, social, physical and recreational training;

ALN Code 2.39 – 2.44

2.40 *However, the Act does not give an entitlement to provision which goes beyond that which is called for by the CYP's ALN. The body responsible for preparing and maintaining the IDP could take into account the efficient use of resources when deciding between different options for the ALP or different ways of delivering it, where each of those options or ways of delivery would meet the person's ALN and*

accord with any other restrictions under the Act which apply in the particular circumstances.

Para 29.13 of the ALN Code (which deals with ceasing to maintain an ALP) makes a distinction between ALP and differentiated teaching strategies; i.e. indicating that where a child or young person has an IDP which has ceased, that does not preclude on-going support from the school or FEI *"though the employment of differentiated teaching strategies or similar".*

Evidence

The Tribunal needs to identify whether the support a CYP requires (i.e. that which is called for by their learning difficulty or disability) is ALP in deciding whether they have ALN.

In their response to these appeals, some LAs refer to provision not being ALP as it is "*universal provision", "monitored provision", "targeted provision"* or "*provision which the school can make from its existing resources"*.

> *X is receiving speech and language therapy from the NHS therapist who comes regularly to see children in school. This therefore is not Additional Learning Provision.*

> *A specialist teacher has seen X and provided support to school on a monthly basis for the last year to ensure that his needs are being meet. This is targeted provision from within the school's budget and so therefore not considered to be Additional Learning Provision.*

This has even been a position put forward by an LA where it is agreed that the child will or is already attending a special school.

> *As X is a pupil at special school, the occupational therapy support he receives is available to all pupils that need it and is not Additional Learning Provision.*

Evidence from Educational Psychologists to the Tribunal shows a disparity in their understanding of whether their recommendations are to be considered ALP or not. In reports and in oral evidence, reference is being made to provision not being ALP

as it can be expected to be made by a school even though it is delivered only with input from outside professionals.

Some NHS Professionals have told the Tribunal that that they understood that under the new ALNET system they would only be required to identify the support that would be provided to the CYP by their NHS body. In other words, they are determining provision by reference to available resources not by reference to the provision reasonably required by the CYP's additional learning needs.

Issues to be considered

Issue: applying the legal definition incorrectly and inconsistently

The legal definition of ALP under ALNET s.3 is essentially no different from the definition of special educational provision (SEP) under the EA1996 s.312(4) concerning educational provision. It follows that a child who received provision made as SEP under School Action, School Action Plus or via a Statement of SEN will therefore be receiving ALP under ALNET. The only exception is where there is evidence that their individual needs have changed to the extent that the definition is no longer applicable.

However, the legal test under ALNET s.3 does now also cover *"educational and training provision".* Definitions under ALNET s.99 do not expand or clarify the interpretation of what types of training provision are ALP.

The definition of ALP under ALNET also mirrors that of SEP under current English legislation under the CFA 2014 s.21(1). The effect of relevant case law under the EA 1996 and CFA 2014 must therefore be considered.

A v Hertfordshire CC [2006] EWHC 3428 (Admin) confirms that there is no hard edge between educational and non-educational provision. Some things could be both; some provision could have an educational benefit but not be ALP.

LB Bromley v SENT [1999] EWCA Civ 3038 confirms that whether provision is educational or not is not a question of law. ("*Whether a form of help needed by the child falls within this description is a question primarily for the LEA and secondarily for the SENT's expert judgment"*).

DC & DC v Hertfordshire CC [2016] UKUT 379 (AAC) contains guidance on what is meant by the word Education - "*although it may be wide-ranging in concept, is about*

instruction, schooling or training, so one or more of these factors is likely to be discernible in provision which is asserted to be educational." On appeal, the Tribunal will use its specialist expertise to decide if the support a CYP is receiving or requires is ALP. The test to be applied is whether that provision is additional to or different from that generally available for the ordinary developing CYP across Wales. Support which is differentiation of the curriculum will not be ALP. The comparator in this test is not one that considers the resources and provision available in a specific school or FEI but what is generally available in mainstream maintained schools or FEI in Wales.

7.3 **UN Convention on the Rights of the Child**

Relevant Law and Guidance

ALNET s. 7 Duty to have regard to the United Nations Convention on the Rights of the Child

(1) A relevant body exercising functions under this Part in relation to a child or young person must have due regard to Part 1 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 ("the Convention").

(3) Subsection (1) does not require specific consideration of the Convention on each occasion that a function is exercised.

Rights of Children and Young Persons (Wales) Measure 2011

This Measure contains specific duties to have regard to the Convention on the Rights of the Child and attaches as a Schedule Part 1 of the Convention

Article 23 (paragraph 3)

Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

Article 29 (paragraph 1)

States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential …

ALN Code Chapter 5

paragraphs 5.10 – 5.14 comment on the Measure and make reference to the Children's Commissioner's Guidance and explain that a child in this context is a

person under the age of 18 and see also **paragraphs 5.19 and 5.20** on discharging the duties in practice

Evidence

Parents in two cases have argued that the duty to have regard to the UN Convention means that the test for what comprises an adequate and appropriate level of ALP is higher than understood under the EA 1996 and now ALNET. In both cases, the UN Convention was not relied on in the decision made by the ETW.

The ETW has however referred to the threshold under Article 23 in a decision concerning the specification of Speech and Language Therapy in Section 2B of an IDP. It has been considered as evidence supporting their decision to award a level of therapy which was greater than that recommended by NHS professionals. This is a point of law which will possibly be raised by the LA in the Upper Tribunal on appeal.

Issues to be considered

Issue: Extent of the "have regard" duty

ALNET contains a duty to have regard to this Convention which means that LAs and an NHS body must have due regard to the Convention in exercising a function under ALNET. In an appeal, the ETW "stands in the shoes" of an LA.

Bringing in the convention rights of a child or young person as part of the argument in an appeal has already happened in two cases. It is therefore possible that this will recur.

Although the duty is a "have regard" duty, where LAs adopt policies which may breach the Convention ((such as adopting a policy limiting the amount of ALP to be provided to CYP), LAs may have to be prepared to explain why they have done so.

The Convention includes a requirement to ensure the CYP is supported to develop their fullest potential; this is different language to that which is used under ALNET. How this will impact on Tribunal appeals going forward remains to be seen.

7.4 **UN Convention on the Right of Persons with Disabilities**

Relevant Law and Guidance

ALNET s. 8 - Duty to have regard to the United Nations Convention on the Rights of Persons with Disabilities

(1) A relevant body exercising functions under this Part in relation to a disabled child or young person must have due regard to the United Nations Convention on the Rights of Persons with Disabilities and its optional protocol adopted on 13 December 2006 by General Assembly resolution A/RES/61/106 and opened for signature on 30 March 2007 ("the Convention").

(3) Subsection (1) does not require specific consideration of the Convention on each occasion that a function is exercised.

United Nations Convention on the Rights of Persons with Disabilities – Article 24 (on Education):

1. *States Parties recognize the right of persons with disabilities to education. With a view to realizing this right without discrimination and on the basis of equal opportunity, States Parties shall ensure an inclusive education system at all levels and lifelong learning directed to:*

   (a) The full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity;

   (b) The development by persons with disabilities of their personality, talents and creativity, as well as their mental and physical abilities, to their fullest potential;

   (c) Enabling persons with disabilities to participate effectively in a free society.

ALN Code Chapter 5

paragraphs 5.15 – 5.18 contains a link to this Convention and see also **paragraphs 5.19 and 5.20** on discharging the duties in practice

Evidence

At this time, no parent(s), CYP or LA have argued that the Tribunal should apply the standards of this UN Convention in their decision making. It remains an untested part of ALNET.

Issues to be considered

Issue: Extent of the "have regard" duty

ALNET contains a duty to have regard to this UN Convention which means that LAs and an NHS body must have due regard to the Convention in exercising a function under ALNET. The UK Government did not accept Article 24 in full. When it ratified the Convention, it made two statements which limit this Article's impact including in Wales. One statement was a 'reservation.' This said that disabled children could carry on being educated outside their local community. The other was an 'interpretive declaration' which said the UK interpreted the term 'general education' as including special schools as well as mainstream schools.

In an appeal, the ETW "stands in the shoes" of an LA.

Although the duty is a "have regard" duty, where LAs adopt policies which may breach the Convention ((such as adopting a policy limiting the amount of ALP to be provided to CYP), LAs may have to be prepared to explain why they have done so.

7.5 **Advice and Information about ALN and ALN System**

Relevant Law and Guidance

ALNET s.6 Duty to involve and support children, their parents and young people

A person exercising functions under this Part in relation to a child or young person must have regard -

> *(a) to the views, wishes and feelings of the child and the child's parent or the young person,*
>
> *(b) to the importance of the child and the child's parent or the young person participating as fully as possible in decisions relating to the exercise of the function concerned, and*
>
> *(c) to the importance of the child and the child's parent or the young person being provided with the information and support necessary to enable participation in those decisions.*

ALNET s.9 Advice and information

(1) A local authority must make arrangements to provide people with information and advice about additional learning needs and the system for which provision is made by this Part.

(2) In making arrangements under subsection (1), a local authority must have regard to the principle that information and advice provided under the arrangements must be provided in an impartial manner.

(3) A local authority must take reasonable steps to make the arrangements made under this section, sections 68 (avoidance and resolution of disagreements) and 69 (independent advocacy services) known to -

> *(a) children and young people in its area,*
>
> *(b) parents of children in its area,*
>
> *(c) children it looks after who are outside its area,*
>
> *(d) governing bodies of maintained schools in its area,*
>
> *(e) governing bodies of institutions in the further education sector in its area,*
>
> *(f) case friends of children in its area, and*
>
> *(g) any other persons it considers appropriate.*

(4) Where the governing body of a maintained school is informed of arrangements under subsection (3), it must take reasonable steps to make the arrangements known to -

(a) its pupils and their parents, and

(b) case friends of its pupils.

(5) Where the governing body of an institution in the further education sector is informed of arrangements under subsection (3), it must take reasonable steps to make the arrangements known to its students.

ALN Code Chapter 6 – Advice and Information about ALN and the ALN System

6.5 *"… However [if] local authorities decide to provide the information and advice, in making their arrangements to do so, they* ***must*** *have regard to the principle that the information and advice about ALN and the ALN system must be provided in an impartial manner."*

6.12 Both the information and advice made available under these arrangements should be about ALN and the ALN system with the aim of helping children, their parents and young people understand the following matters:

…

(k) how to appeal to the Tribunal against a decision of the local authority or FEI (including a refusal to decide a matter where that refusal is appealable). And in the case of decisions of, or IDPs maintained by, a maintained school, how to request a local authority reconsider the matter."

ALNET s.69 Independent Advocacy Services

(1) *A local authority must -*

(a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible;

(b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider;

(c) refer any person who is a case friend for a child for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.

(2) In this section "independent advocacy services" means advice and assistance (by way of representation or otherwise) to a child, a young person or a case friend -

(a) making, or intending to make, an appeal to the Education Tribunal for Wales under this Part,

(b) considering whether to appeal to the Tribunal….

ALN Code Chapter 32: Avoiding and resolving disagreements and independent advocacy services

Independent advocacy services

Para 32.53

Local authorities must:

(a) make arrangements for the provision of independent advocacy services for the children and young people for whom it is responsible;

(b) refer any child or young person for whom it is responsible who requests independent advocacy services to an independent advocacy service provider; and

(c) refer any person who is a case friend for a child for whom it is responsible and who requests independent advocacy services to an independent advocacy service provider.

Para 32.55.

Independent advocacy services provide expert advice and assistance, by way of representation or otherwise, to a child or young person, including a child's case friend, where the child or young person is:

- *making, or intending to make, an appeal to the Tribunal;*
- *considering whether to appeal to the Tribunal; or*
- *taking part in, or intending to take part in arrangements for avoiding or*
- *resolving disagreement.*

Note: this assumes that an Independent Advocate may or may not provide representation at a Tribunal hearing.

Paragraph 30 gives guidance on the purpose and functions of a "case friend"

Evidence

The overwhelming majority of appeals (99%)[3] brought to the Tribunal are made by parent(s). Of those appeals, very few (26%) indicated that they have accessed advice or support in making their application to appeal or during the progress of the appeal.

[3] Figures based on ALN appeals registered with the Tribunal from May 2021 up until the end of January 2025

In ALN appeals where a hearing was held, 22% of parent(s) were represented by a lawyer and 30% supported by an advocate. In comparison, 66% of LAs were represented by external lawyers and 5%[4] internal LA lawyers. Some LAs routinely instruct external lawyers to represent their cases whilst others never do so.

Where a solicitor or counsel has been appointed to represent the LA in a case, the response to the appeal is based on ALNET but sometimes will have changed and does not reflect the original decision made by the LA.

> *When the LA told us that xx would not be getting an LA Maintained IDP it said it was because he was in one of the categories which they were required to take on – he was not a looked after child, out of school or going to be going to two schools at the same time. When the LA sent in their paperwork responding to our case, this had changed. They said it was because the school should be putting in place the support xx needs. This must include full-time 1:1 support as otherwise he will harm himself and others.*

The Tribunal cannot provide legal advice to anyone.

However, where a party is unrepresented, then the Tribunal and any legal professionals present have a professional duty to ensure access to justice. This includes making reasonable adjustments for any disability a parent, child or young person present may experience or putting in special arrangements to accommodate particular circumstances. Judicial guidance on evidence from vulnerable witnesses and the Equal Treatment Benchbook provide further information to Tribunal panels.

Decisions that are issued by LAs routinely do not provide the required information or the contact details for where advice and support can be accessed (further evidence about this is set out below in the Section dealing with LA decision making).

Parent(s) tell us at all stages of the appeal process that they are struggling to access sources of advice and support on the ALN system generally and specifically about navigating the Tribunal appeal process. Where they have been signposted to such services, they are overwhelmed with enquires and a caseworker is not available to support them.

> *I was told by [Welsh charity] that as I had an advocate in place because of my own communication issues that I was not entitled to support or advice. This is ridiculous as my advocate has no idea about the ALN system.*
>
> *We have been trying to contact [Welsh charity] over the past 2 weeks. The phone is constantly engaged and when I did eventually manage to get through, I was told that no one would be available to discuss my son for at least 4 weeks.*
>
> *Unless someone can explain what I need to do, then I may as well give up. It is hard enough caring for my child – I do not have the time to get a law degree.*

[4] Figures based on ALN appeals registered with the Tribunal where a final hearing was held from 1 May 2021 up until the end of January 2025

Routinely, parent(s) or CYP are not represented in hearings. Exceptionally, an appellant may have instructed a solicitor or counsel to represent them. Parental support from pro-bono or charity sources has been limited to a minimal number of cases.

The Tribunal has had one appeal registered by a child.

We have had 3 appeals registered by a Child or Young Person. Of those appeals, an independent advocate has been appointed in two cases. They provided support to the YP to express their views on the issues raised but were not qualified to provide expert advice and assistance or represent the YP in the appeal. Where a solicitor or counsel had been appointed to represent a YP as an appellant, their experience in working directly with a YP with learning disabilities was not evident. Parent(s), as representatives for a YP or conduit for effective communication, have remained central to these appeals.

Five appellants have registered an ALN appeal with the support of Legal Help or received Legal Help during the progress of the appeal. Legal Help is a type of Legal Aid which should be available to those who qualify to support them bringing a case. It should provide them with support and advice in preparing documents for a case including accessing privately instructed professional reports. This does not cover representation at a Tribunal hearing.

Issues to be considered

The duty to “have regard” under ALNET s.6 is a duty to “take into account” the wishes and feelings expressed by parent(s) and CYP; to ensure they can participate fully in decision making; and to provide information or support in making those decisions. It does not guarantee or compel action to be taken. The duties to provide information and advice under ALNET s.9 are however direct obligations.

Issue: Capacity of services

The evidence from the ETW is that the capacity of information and advice services put in place by LAs are wholly insufficient to meet the needs of parent(s) and CYP. The overwhelming majority of appellants are not supported or represented in bringing their appeal despite requesting help from sources signposted by their LA. As a result, cases are

not well presented when the application to register an appeal is made. The Tribunal is having to clarify the scope of the law to be applied but without “stepping into the arena” and advising parent(s) and CYP. The Tribunal is seeing a rise in issues outside its jurisdiction being raised which could have been resolved between an appellant and an LA with informed discussion.

Issue: Quality of information and advice

The evidence from the ETW is that where advice and information has been provided the quality can best be described as patchy. Often it is just wrong. Sometimes it is misleading and/or based on LA policy and not the law. A number of self-appointed ALN advocates are providing advice and support to parent(s) or CYP for a fee. Too often the quality of this information and advice is poor and incorrect.

Issue: Independent advocacy services for CYP

There is a lack of independent advocates with the required level of expertise to provide advice and assistance or represent a CYP in an appeal. Such experts must have the skills to be able to effectively communicate with a CYP who may have a cognitive impairment, speech and language difficulties or anxiety. Professionals who work for an LA who may have such expertise, may not be perceived as providing the required level of independence from their employer.

Issue: Legal Aid

The Tribunal have had very few ALN appeals brought by parent(s) where they have been able to access Legal Help. No more than four. No CYP have brought appeals under ALN law with the support of Legal Help. Legal Help is the type of Legal Aid which is available to those with a low income and who meet the criteria set by Central Government and administered via the Legal Aid Agency https://www.gov.uk/check-legal-aid. If a parent or CYP is successful in accessing Legal Help it entitles them to support in preparing an appeal and can also include commissioning up to three privately instructed reports from professionals. In an ETW appeal this would commonly be from an Educational Psychologists, Speech and Language Therapist, Occupational Therapist, Physiotherapist or CAMHS professional. Legal Help for ALN appeals does not cover representation or advocacy at a case management or final hearing. Very few lawyers who hold Legal Aid contracts cover Welsh cases.

7.6 **Duty to prepare and maintain an IDP – CYP in school or FEI**

Relevant Law and Guidance

ALNET s.10 Individual Development Plans

For the purposes of this Act, an individual development plan is 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;

(c) anything else required or authorised by or under this Part.

ALNET s.12 Duties to prepare and maintain plans: maintained school and FEI

(1) If a governing body decides under section 11 that a child or young person has additional learning needs, it must -
(a) prepare an individual development plan for him or her, unless any of the circumstances in subsection (2) apply, and
(b) maintain the plan, unless the circumstances in paragraph (b) or (d) of subsection (2) apply.

(2) The circumstances are -
(a) the governing body considers that the child or young person has additional learning needs -
i. that may call for additional learning provision it would not be reasonable for the governing body to secure,
ii. the extent or nature of which the governing body cannot adequately determine, or
iii. for which the governing body cannot adequately determine additional learning provision,
and the governing body refers the child's or young person's case to the local authority responsible for the child or young person to decide under section 13(1);

See above for the LA's consequential duty under s. 13 to make a decision about whether the child has ALN. If the LA decides under s.13 that the child has ALN, s. 14 applies:

ALNET s.14 Duties to prepare and maintain plans: LAs

(1) The duty in subsection (2) applies if a local authority is responsible for a child or young person and -
(a) in the case of a child the local authority decides under section 13 that the child has additional learning needs,
(b) in the case of a young person who is a registered pupil at a maintained school in Wales or enrolled as a student at an institution in the further education sector in

Wales, the local authority decides under section 13 that the young person has additional learning needs, or

(c) in the case of any other young person, the local authority -

i. decides under section 13 that the young person has additional learning needs, and

ii. decides in accordance with regulations under section 46 that it is necessary to prepare and maintain a plan under this section for the young person to meet his or her reasonable needs for education or training.

(2) The local authority must -

(a) prepare and maintain an individual development plan for that child or young person, or

(b) if the child or young person is, or is to be, a registered pupil at a maintained school in Wales and the authority considers it appropriate -

i. prepare an individual development plan and direct the governing body of the school to maintain the plan, or

ii. direct the governing body of the school to prepare and maintain a plan.

(3) But the duty in subsection (2) does not apply if the plan is about a young person and the young person does not consent to the plan being prepared or maintained.

ALN (Wales) Regulations 2021 Regulation 8

Necessity of a plan: programmes of study at maintained schools and further education institutions in Wales and certain institutions in England

(1) It is necessary for the local authority to prepare and maintain, or continue to maintain, an individual development plan for the young person if the local authority, in preparing or maintaining the plan for the young person, would be or is under the duty in section 14(6) of the 2018 Act to describe provision of a kind listed in section 14(7) of that Act.

(2) It is also necessary for a local authority to continue to maintain an individual development plan for the young person if the young person is to register as a pupil at a maintained school in Wales or enrol as a student at an institution in the further education sector in Wales to undertake a programme of study.

(3) For cases not falling within paragraph (1) or (2), the local authority must consider -

(b) in the case of a young person who is to register as a pupil at a maintained school in Wales or enrol as a student at an institution in the further education sector in Wales, whether it is reasonable for the governing body of the school or institution to secure the additional learning provision;

(c) in the case of a young person who is, or is to be, a registered pupil or enrolled student at a maintained school in England, Academy or institution in the further education sector in England, whether the governing body of the school or

institution or, in the case of an Academy, the proprietor would secure the additional learning provision.

(4) In considering a matter referred to in paragraph (3), the local authority must consult the governing body or proprietor.

(5) It is necessary for the local authority to prepare and maintain, or to continue to maintain, an individual development plan for the young person if -

(a) in the case referred to in paragraph (3)(a), the local authority considers that it is not reasonable for the governing body of the school or institution to secure the additional learning provision;

(b) in the case referred to in paragraph (3)(b), the local authority is not satisfied that the governing body or proprietor would secure the additional learning provision.

(6) Otherwise it is not necessary for the local authority to prepare and maintain, or to continue to maintain, an individual development plan for the young person.

ALN Code – Referrals from a maintained school to a local authority – Para 12.43 on the factors to be considered

12. 43

The circumstances of the school (i.e. its location, size, budget, experience etc.) could affect the school's view on whether it would be reasonable for it to secure the ALP. For example, any of the following circumstances might affect that view:

(a) the child has a low incidence or rare condition which requires specialism that the school cannot provide;

(b) to meet the child's needs, the school requires regular advice and support from external agencies which is over and above that which can be reasonably arranged and accessed by the school;

(c) the child requires equipment which can only be used by one pupil or cannot be reused or is beyond the reasonable resources of the school;

(d) the child requires very intensive daily support which cannot be reasonably funded or secured by the school's budget.

ALN Code –Maintaining an IDP – LA duties

11.26 – 11.33 LA Maintaining an IDP - re: children under compulsory school age who are not at a maintained school in Wales

12.77 – 12.82 LA Maintaining an IDP - re: children at maintained schools in Wales

13. 25 – 13.31 LA Maintaining an IDP - re: children of compulsory school age not at a maintained school

15.81 – 15.86 LA Maintaining an IDP - re: young people at a maintained school

16.74 – 16.79 LA Maintaining an IDP - re young people at an FEI

Local Authority duties in relation to Young People not at a maintained school or FEI – Chapter 17

17. 21 – 17.90 LA Deciding and Maintaining an IDP for a young person not at a maintained school or FEI

The additional learning needs transformation programme: frequently asked questions (guidance last updated 11 May 2022)

ALN is identified, and IDPs prepared and maintained, by either a school, PRU, FEI or local authority. Who identifies the ALN and prepares and maintains the IDP will depend on how a child or young person's education is delivered, the severity or complexity of their needs and the circumstances of the child or young person…

Local authorities are responsible for maintaining IDPs for children and young people with ALN who:

- *do not attend a maintained school, PRU or FEI*
- *are registered at more than one setting*
- *have ALN that calls for ALP it would not be reasonable for the governing body to secure*

In addition, local authorities are responsible for maintaining IDPs for children with ALN who are looked after by the local authority.

Evidence

The Tribunal has registered 41 appeals against decisions by an LA that they will not prepare and/or maintain an IDP.

There have been no cases registered against an FEI decision not to maintain an IDP.

Evidence from schools is that some LAs are advising that they can only make requests for the LA to maintain an IDP in very specific circumstances:

> *Our LA is clear that an IDP will only be maintained by them in one of 5 circumstances - the child is Looked After, detained, has a split placement, is EOTIS or not attending school. We have many children in our school who had a Statement but now have a school maintained IDP. Some of these have quite profound needs and require full-time 1:1 support. We can no longer fund that provision but still the LA refuse our requests that they maintain the IDP. As an ALNCo I am in a desperate situation.*

> *I was told by the LA that as my child's needs can be met at Ysgol XXX, our local special school, that he does not require an LA Maintained IDP. The IDP is now very vague and the ALNCo says that is the way it is in the new system. He will get the provision that the school can provide."*

Where LAs are giving reasons for their initial decisions, they focus on resources available in the specific school that the CYP attends, or it is proposed they attend.

In one appeal, the LA said that the reason for refusal to take over a school-based IDP was that the child's ALN were "not complex enough".

The threshold being applied by LAs in deciding when an IDP is to be maintained by them, rather than a school or FEI, varies greatly. In some LAs, evidence from schools is that they have been specifically advised that only children who are looked after, out of school, receiving education otherwise than at school or in dual placements are entitled to IDPs maintained by the LA. Written evidence provided in appeals clearly sets out these policy approaches.

Issues to be considered

Issue: Legal test applied when an LA must maintain an IDP

Under the EA 1996 s.324(1) a Statement of SEN was issued by an LA when it was considered it was "necessary". It was a legally binding document on the LA which then had the duty to secure the special educational provision it specified. The threshold for when it was necessary was established as being when the special educational provision that a child requires to meet their special educational needs was more than could be reasonably expected to be provided by mainstream maintained schools in England or Wales. It was not a duty relating to the specific provision available in an individual school or Local Authority area. Children with SEN

whose needs could be met by the resources available in a school had no statutory plan put in place but were instead supported at School Action or School Action Plus.

Under ALNET, all CYP who have been identified as having ALN must have an IDP put in place. An IDP is a statutory document that can be maintained by the Maintained School or FEI they attend or the LA which is responsible for them. The legal responsibility for securing the provision described in the IDP depends on who maintains it.

An IDP cannot be maintained by an Independent School or College. In such cases, the IDP must be maintained by the LA who will then have the responsibility to secure the provision specified in the IDP, under ALNET s.14(10). Where an educational placement is named in Section 2D of the IDP under ALNET s.14(6), the LA will also have to fund that provision including board and lodging.

The Tribunal can consider appeals against a decision where an LA has refused a request that they maintain an IDP for a CYP. This can be after a school or FEI has made a referral to the LA to reconsider its decision on whether a CYP requires an LA maintained IDP and the parent(s) or CYP disagrees with that decision. This type of appeal is increasingly being registered by the Tribunal. Such cases are usually combined with an appeal against the contents of the IDP – specifically section 2A – description of ALN; section 2B – description of ALP; section 2D – educational placement.

The issues raised in appeals concerning the application of the legal test are as follows:

Issue: Different legal tests in different circumstances leading to lack of clarity

When the duty moves from the governing body of a maintained school or an FEI to an LA

The duty on an LA to prepare and maintain an IDP is contained in s.14(2)(a). S.14(1) sets out when the duty will apply; in the case of a child it will apply where an LA has decided under s.13 that the child has additional learning needs. The circumstances in which an LA will need to make a decision under s.13 can be found in s.12(2). These are where the governing body considers that the child or young person has additional learning needs -

(i) that may call for additional learning provision it would not be reasonable for the governing body to secure,
(ii) the extent or nature of which the governing body cannot adequately determine, or
(iii) for which the governing body cannot adequately determine additional learning provision.

LA option to direct that a plan is maintained by the governing body of a maintained school

There is an option contained in s.14(2)(b) that an LA can direct the governing body of a maintained school to maintain the plan, if the authority considers it "appropriate". This is being relied on in some LAs to delegate the responsibility for maintaining an IDP to their maintained special schools. This means that there is a difference between the circumstances set out in s.12(2) (set out above) which bring in the duty under s.14(2)(a) (which turn on when it would not be reasonable for a governing body to secure the provision) and s.14(2)(b) which brings in a potentially wider test of "appropriateness" generally. The ALN Code does not resolve this; it sets out at paragraph 12.86 situations where an LA should not use its powers to direct a school to prepare an IDP but this is not an exhaustive list.

This power to direct is being relied on in some LAs to delegate the responsibility for maintaining an IDP to all of their maintained schools, including maintained special schools, except in the most limited of circumstances. Often whether a school can and will be able to make the ALP is disputed by them in appeals. It must be remembered that the role of the Tribunal is to consider disputes between parent(s), CYP and a responsible LA. It is not to decide disputes between an LA and a school.

The use of the word "appropriateness" and its application to any maintained school (not just maintained mainstream schools) creates a different test than previously. This threshold is no longer a test of necessity as under SEN law. It is not the same as that which is to be applied in the case of a YP under ALNET. The evidence from appeal cases is that the new tests create substantial differences in how ALNET is being applied across Wales with clear inconsistencies in decisions as to whether a CYP has their IDP maintained by a school or their LA.

Young people at FEIs – FEI and LA duties to maintain and IDP

The legal test is different when an LA makes a decision concerning a young person who will be attending a school or FEI under s.14(6). Regulation 8(1) specifies that it is necessary for an LA to prepare and maintain, or continue to maintain, an IDP where the LA is under a duty under s.14(6). This will apply where an LA names a placement for a young person in the IDP under ALNET s.14(6).

S.14(6) will apply only if the reasonable needs of (in this case) a young person for ALP cannot be met unless a local authority also secures provision of the kind mentioned in subsection (7) (i.e. a place at a particular school or other institution; or (b) board and lodging).

This makes it different from the "appropriate" test referred to above (in relation to a direction made to a maintained school in Wales).

In addition, Regulation 8(2) contains another circumstance where an LA must maintain an IDP (applicable only to young persons) where the young person is to register as a pupil at a maintained school in Wales or enrol as a student at an

institution in the further education sector in Wales to undertake a programme of study.

Regulation 8(5) also requires the LA to maintain an IDP for a young person where it is not reasonable for the governing body of the school or institution to secure the ALP and where the LA is not satisfied that the governing body or proprietor would secure the additional learning provision.

Children and young people not at a maintained school or FEI

Where the above circumstances do not apply the LA still has a duty to maintain an IDP if the duty under ALNET s.14(2)(a) applies. The Tribunal has had a number of cases registered where the LA has allocated a place at a maintained school to a CYP under the admissions arrangements with the expectation that the Governing Body will then maintain the IDP. The CYP however, has not and is not attending. In these circumstances the LA argue that if they were, then the IDP would not need to be maintained by them. The threshold at which an LA is required to consider the application of ALNET s.14(2)(a) in such cases would benefit from clarification. In one case the dispute between the LA and parents about the child's admission to school had been ongoing for nearly 18 months before a right of appeal to the Tribunal was identified and an appeal registered. During that time, the child was not receiving an appropriate education.

Issue: Evidence about a CYP's ALN and the ALP they require

Under ALNET, an LA is not required to carry out a statutory assessment of the CYP's needs or to identify the ALP that they may require before deciding if an IDP is to be maintained by them.

This is a major change from the process followed under the EA 1996 s.323 and the SEN Regulations which required a statutory assessment of the child, during which the LA had to obtain information and advice concerning the child's needs and the provision required to meet those needs from certain professionals, including an Educational Psychologist within clearly defined timescales. Only then would an LA be expected to decide if a Statement of SEN was necessary.

In appeals to the ETW, the evidence provided increasingly does not include an EP assessment report or any up-to-date professional assessment reports. Evidence from schools about a CYP's abilities and attainment has therefore become pivotal in deciding cases. This evidence has weight, as it is based on an on-going, usually long-term relationship, between school staff and a CYP. However, it can show a lack of experience of wider ALN needs, especially if provided by a mainstream school. Input from a Specialist Teacher, either from an LA's own team or as outreach from a Special School, is becoming important to identify and determine what provision is required to support a CYP appropriately.

7.7 **Content of an IDP – ALN Section 2A**

Relevant Law and Guidance

ALNET s.70(2)

A child or young person and, in the case of a child, the child's parent, may appeal to the Education Tribunal for Wales against the following matters -

…

(c) the description of a person's additional learning needs in an individual development plan;

ALNET s.10 Individual Development Plans

For the purposes of this Act, an individual development plan is a document that contains

(a) a description of a person's additional learning needs;

ALN Code Chapter 23 Preparing and maintaining an IDP, and its content

Paragraphs 23.27 – 23.28

23.27. The description of the child or young person's ALN should be as clear and comprehensive as possible and include the impact of the need on the child or young person's learning in as much detail as possible. Where there is a relevant diagnosis this should be included as part of the description. Although the definition of ALN is that the learning difficulty or disability calls for ALP, it is the identified need, i.e. the learning difficulty or disability which is to be captured in this section, as the ALP will be detailed in the next section. Those responsible for drafting the IDP ought to ensure that they do not confuse the description of ALN with the ALP necessary to meet those needs. The description of ALN might develop as referrals and advice/assessments are made.

23.28. This section could include the reasons for deciding that the child or young person has ALN, and should do so where there are particular reasons for a decision that might not be obvious to someone considering the case in future, or where there was a difference of opinion as to the ALN. This might be a difference of opinion between professionals, or a difference of opinion between the child, child's parent or young person and professionals, or any other difference of opinion. It could explain how different opinions have been taken into consideration before a particular decision was reached.

Evidence

Issues raised in appeals against Section 2A of an IDP tend to be caused by lack of or out of date evidence of a CYP's needs. In many cases, LAs initially fail to consider or reject evidence from non-LA professionals or NHS services. This happens most noticeably where a CYP has a private diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) or Attention Deficit Disorder (ADD) and also where an Occupational Therapist has identified that the CYP has sensory integration issues.

> *As an LA we will review the letters and reports from our professionals and those of the NHS team locally. We will take them all into account when drafting an IDP. What the school tell us is really important. We do not usually consider evidence from private therapists paid for by parents.*

Following case management, an LA will often review this evidence and accept it. Amendments to the IDP are then agreed between the parties and this does not remain a central area of dispute in the case at a final hearing.

> *Once the Judge had spoken to us on the video call, the LA accepted that xx has sensory needs. Before that they told us that they could not take our therapists report into account.*

Issues to be considered

Issue: Consideration of all evidence

When drafting the description of ALN in Section 2A of an IDP, all available evidence needs to be considered by a school, FEI or LA. This includes evidence such as a diagnosis or assessment report from professionals working with a CYP outside of the LA or local NHS body. Rarely are reasons given as to why this evidence has not been accepted or relied on, other than the fact that the source is not from within public services. This argument is made even at final hearings.

As an LA is no longer required to carry out a statutory assessment of a CYP before an IDP is drafted, all available evidence is not always gathered or considered when drafting the IDP.

Whilst a diagnosis can be helpful to indicate the possible needs that a CYP experiences, it is not essential. What is most important is evidence of the type and extent of learning needs they have compared with an ordinarily developing peer of the same age.

7.8 **Content of an IDP – ALP Section 2B including outcomes**

Relevant Law and Guidance

ALNET s.70(2)

A child or young person and, in the case of a child, the child's parent, may appeal to the Education Tribunal for Wales against the following matters -

…

(d*) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);*

ALNET s.10 Individual Development Plans

For the purposes of this Act, an individual development plan is a document that contains –

…

> *(b) a description of the additional learning provision which the person's learning difficulty or disability calls for;*
>
> *…*

ALN Code Chapter 23 Preparing and maintaining an IDP, and its content

23.34. This section should, where relevant, include details of how regularly the ALP is to be provided (for example, whether it will be provided daily, weekly, at weekends, school days only, term time only or once each term, etc.)

23.37 The information recorded in relation to ALP will be more useful the clearer it is. It should be detailed, specific and quantifiable. This clarity might result from describing the specific tasks or actions that will be undertaken; it could also detail the training or qualifications any staff will require. Simply stating that support will be provided will not meet the need for clarity; describing the tasks any staff will undertake or facilitate, what they will be responsible for, and, if necessary, what qualifications or training they will require is important.

See also **paragraph 23.30** about the importance of outcomes.

23.30 The intended outcomes <u>should</u> have a strong focus on enabling children and young people to move towards long-term aspirations, be that employment or further or higher education, independent living and/or community participation. To this end, it is essential to consider what is important to the child or young person and what they want to achieve. IDPs can also include outcomes with a wider focus, such as positive social relationships and emotional resilience and stability. For some children and young people, an intended outcome can be about minimising the impact of an impairment on their learning.

<u>Evidence</u>

Appeals against Section 2B of an IDP can be divided into two types;

a. Those where provision is not described at all
b. Those where provision is described but not specified

Evidence from professionals show a misunderstanding of the need to specify provision.

In our LA we have been told that we no longer have to specify what provision a child requires in the IDP. That was only for Statements. This system will be simpler.

All the detail of my daughter's statement has been taken out. I was told by the ALNCo that it was not needed now as the school know what she needs but now her speech and language therapy is not being delivered and I do not think there is anything I can do about it.

We were told by the LA that we should not specify 1:1 provision in a child's IDP. It is for us as a school to fund now not the LA. The only issue is that the child still has the same needs and we cannot afford to keep that level of support in place. I am at my wits end as an ALNCo.

As an LA, we do not take into account reports which parents' have obtained, they are overprovision usually. Unless an NHS occupational therapist recommended it, we do not agree to direct therapy to address sensory needs.

LAs still routinely fail to provide written evidence from a professional and then look to bring them as a witness to a hearing. On questioning those professionals too often have not even met the CYP but instead are managers of a team responsible for providing a service such as a therapy.

The quality of specification in IDPs varies greatly between LAs. In some, especially where the school has been responsible for transitioning a Statement of SEN to an IDP, the specification is very poor indeed. This is in particular an issue in maintained special schools. In one example Section 2B of an IDP was no more than four sentences and even they were not specific.

Issues to be considered

Issue: Requirement to specify

The previous requirement to "specify" SEP in a Statement of SEN under EA 1996 s.324(3)(b) has been changed to a requirement for an IDP to contain a "description" of ALP under ALNET s.10(b).

The requirement to "specify" has been defined in case law, notably in *L v Clarke and Somerset County Council [1998] ELR 129* which says that the real question in relation to any particular statement was whether it was:

"so specific and so clear as to leave no room for doubt as to what has been decided is necessary in the individual case. Very often specification of hours per week will no doubt be necessary and there will be a need for that to be done".

The fact that the ALN Code adopts the wording *detailed, specific and quantifiable* suggests that Welsh Government may not have intended to change the requirement to specify.

There are some uses of the word 'specify' in ALNET, but the word is not being used in the same way as its previous use in the EA 1996. For example, s.15(5) of ALNET contains a requirement, where the LA has decided that a particular kind of learning provision should be Welsh, to 'specify' that it should be provided in Welsh. But this is simply a duty to say that the provision is to be provided in Welsh. Similarly, s.21(3) contains a duty to "describe" the treatment or service to be delivered by an NHS body, with a duty to 'specify' that it is to be secured by the NHS body – again, not usage of the word as it was used in the previous EA 1996 legislative framework.

However, in the list of orders which the Tribunal can make on appeal, the Tribunal can order a local authority to revise an individual development plan "as specified in

the order" which indicates that when it makes an order about the contents of an IDP, it is required to ensure that it "specifies" its content. This would indicate that there is an underlying acceptance that descriptions of ALN and ALP are required to be specified, notwithstanding the change of language.

Issue: Evidence of provision

Again, as there is no longer a requirement for an LA to carry out a statutory assessment of a CYP's needs and the provision they will require, both LAs and the Tribunal when considering appeals have less evidence available from professionals on which to base decisions about the contents of an IDP. The fact that an LA only has to consider whether to obtain an Educational Psychologist report, not actually commission one, before deciding whether to draft and maintain an IDP, means that such evidence is increasingly not available. Where such a report is available, it can be more than three years old having been obtained for a Statement of SEN. The extent to which this will be an issue in a particular appeal will depend on whether or not there is robust evidence from another source, such as up-to-date evidence from a school based on the current presentation of the CYP or from a Specialist Teacher who has been working with the school and CYP.

Reports from educational and NHS professionals continue to remain unspecified as to the provision a CYP requires. This was an issue under the SEN Framework which has not been addressed by ALNET. Witnesses in oral evidence are clear that advice given to them by LAs is to not specify provision, as this will then require it to be included in an IDP and the LA will then have a duty to provide it. Reliance is increasingly being made on the generic terms "universal provision" or "targeted provision" to describe provision required. Where there is no clarity about the provision to be delivered under such terms, the position remains opaque.

As already highlighted, in many LAs, written evidence obtained by parent(s) from privately instructed professionals is routinely ignored in the drafting of an IDP. Even when submitted as evidence in an appeal, some LAs continue to argue that it is not relevant and should be completely ignored because it is inherently biased. The Tribunal has to consider all evidence before it and decide what weight should be given to it. Factors such as how often the professional has seen a CYP, where they saw them, what type of assessments they carried out and how they triangulated their findings, will all be of importance – but the Tribunal cannot ignore the evidence.

Oral evidence which is supported by a written report will always have more weight than oral evidence on its own. The Tribunal requires any witness appearing before the Tribunal to provide a report or witness statement before giving oral evidence to ensure that both parties are aware of the other side's case before a hearing.

When deciding what level of provision a CYP should receive, the Tribunal applies the test established by case law under *R v Surrey CC ex parte H 1984 83 LGR 219*. that it should be an appropriate level of provision to meet the CYPs needs, and not the best available or "Rolls Royce" level of provision. This is supported by wording adopted in the ALN Code.

Issue: Expected outcomes

Outcomes are connected to the ALP in the IDP. As defined at paragraph 23.29 of the ALN Code, an intended outcome is defined as the outcome intended to result from the provision of that ALP. Based on that definition, intended outcomes are fundamentally different from "Objectives," as previously specified in Part 3 of a Statement of SEN, which were the goals that parents and professionals wanted the child to achieve.

However, wording included in the ALN Code about supporting parents refers to "the outcomes for their child to aim for" (see paragraph 4.35). For a YP, there are references in the ALN Code to their "desired outcomes" being about enabling them to move towards long-term aspirations (see paragraph 17.33).

All intended outcomes detailed in an IDP should be drafted in such a way that it is possible to measure whether they have been successfully achieved, as well as being realistic and challenging. They should be SMART (specific, measurable, achievable, realistic and time-bound) (see for example paragraphs 23.31 and 23.32 of the ALN Code).

Under ALNET s.70(2)(d), the Tribunal has jurisdiction to decide what provision is required to meet a CYP's ALN and which, following the ALN Code, must be described in Section 2B.2 of an IDP. There is no specific right of appeal to the Tribunal against the Outcomes described in section 2B.1 of an IDP. Case law in England, *S v Worcestershire County Council (SEN) [2017] UKUT 0092 (AAC),* has established that the First-tier Tribunal SEND (Special Educational Needs and Disability) can use its powers to make consequential amendments to amend the Outcomes specified in an Education Health and Care Plan, where different or additional provision is ordered following an appeal. It is not yet established whether this approach will be adopted in Wales.

7.9 **Content of an IDP – ALP section 2C to be secured by an NHS body**

Relevant Law and Guidance

ALNET s.21(3)

If an NHS body informs a body that maintains an individual development plan for a child or young person that there is a relevant treatment or service likely to be of benefit in addressing a child's or young person's additional learning needs, the body that maintains the plan must describe the treatment or service in the plan, specifying that it is additional learning provision to be secured by the NHS body.

NB: although Section 2C of an IDP is appealable (in part – the right of appeal about additional learning provision in ALNET will include the ALP in Section 2C) there is no duty on the NHS body to secure the revised additional learning provision unless it agrees to do so: ***s. 21 (9) of ALNET:***

If the Education Tribunal for Wales orders the revision of an individual development plan in relation to additional learning provision specified under this section as provision an NHS body is to secure, an NHS body is not required to secure the revised additional learning provision unless it agrees to do so.

ALN Code Paragraphs 21.21 to 21.39 about ALP to be secured by NHS bodies and see **paragraph 21.34**

If a relevant treatment or service is identified and the NHS body informs the body maintaining the IDP of it, the body maintaining the IDP must then describe the treatment or service in the IDP, specifying that it is ALP to be secured by the NHS body. If the NHS body considered that the treatment or service should be provided in Welsh and so informed the body maintaining the IDP, the body maintaining the IDP must specify in the IDP that the treatment or service is ALP that should be provided in Welsh.

Evidence

Evidence from NHS professionals is relied on routinely in appeals most commonly from Speech and Language Therapists, Occupational Therapists and Physiotherapists.

An assessment report is usually provided by a professional after an initial assessment following referral from a General Practitioner (GP). Updates on progress are usually in the form of letters. Evidence is succinct and focused on describing the CYP's medical needs. The specification of provision is often scant and will rely on the model of provision which can be provided within the resources of the Local NHS body.

There are indications of misunderstanding within some LAs as to whether provision agreed to be delivered by NHS professionals is to be included in Section 2B of an IDP as well as Section 2C.

If speech and language and occupational therapy is to be provided by the NHS, then we as an LA do not have to include it in Section 2B of the IDP.

Training provided to DECLO's was that if the NHS body agreed, then provision would be specified in Section 2C only.

In appeals where NHS provision is in dispute, the role of the DECLO (Designated Education Clinical Lead Officer) is key to the positive relationships being built between an NHS body and an LA.

There is no consistent view from LAs as to how disputes between them and NHS bodies are to be resolved. The jurisdiction of the Tribunal is limited to considering and deciding disputes between an appellant and the LA as a respondent.

During the development of the ALN system, nobody discussed what would happen if the Local NHS team refused or could not make the provision recommended by a non-NHS professional. We do not provide therapeutic support for sensory integration needs in this NHS team.

Issues to be considered

Issue: Whether ALP which an NHS body agrees to provide, is to be specified in Section 2B as well as Section 2C, of an IDP

It is firmly established by case law that some therapies which are usually delivered by NHS services provide education or training to a CYP and are therefore ALP. These include speech and language therapy, physiotherapy and occupational therapy.

Relevant case law includes *X and X - and - (1) Caerphilly County Borough Council and (2) Special Educational Needs and Disability Tribunal [2004] EWHC 2140*,

[2004] EWHC 2140. Speech and language therapy should be treated as educational provision unless there are exceptional reasons for not doing so.

Nothing adopted by Welsh Government in the wording of the ALN legislative framework suggest a move from this position.

There is also no equivalent in ALNET to the CFA 2014 s.21(5) which provides that health care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision).

Where the evidence before the Tribunal is that provision is clearly ALP it will therefore be ordered to be specified in section 2B. There is nothing to suggest in ALNET that the delivery of ALP by the NHS, as recorded in an IDP in section 2C, means that ALP should be removed from Section 2B. If an NHS body subsequently agrees to deliver ALP and it is also then specified in Section 2C, under ALNET s.21(5) the duty to secure that provision moves to the NHS body. If the NHS body subsequently cannot or will not secure that ALP it will then revert back to a duty on the LA.

It is not the role of the Tribunal to consider and decide disputes between an LA and an NHS body.

7.10 **Content of an IDP – Education placement Section 2D**

Relevant Law and Guidance

Two provisions in ALNET set out the circumstances in which a particular school can be named: s.14(6) and s.48(4). S.14(6) is a (conditional) duty and s.48(4) is a power.

ALNET s.14(6) – the LA's duty to name a particular school, FEI or educational placement – applies only if the reasonable needs of a child or young person cannot otherwise be met

(6) If the reasonable needs of a child or young person for additional learning provision cannot be met unless a local authority also secures provision of the kind mentioned in subsection (7), the authority must include a description of that other provision in the plan.

(7) The kinds of provision are -

(a) a place at a particular school or other institution;

(b) board and lodging.

(8) The duty in subsection (6) -

(a) does not apply to a place at a particular school or other institution that is not a maintained school in Wales if the person or body responsible for admissions to the school or other institution does not consent;

(b) is subject to the duties in sections 55, 56(3) and 59. (NB)

NB: the duty in s.14 (6) would extend to independent school subject to s.55 which contains conditions on when an independent school or FEI can be named.

ALNET s.48(4) – LA power to name a maintained school in an IDP

(*4) A local authority may only name a maintained school in an individual development plan for the purpose of securing admission of a child if—*

(a) the authority is satisfied that the child's interest requires the additional learning provision identified in his or her plan to be made at the school, and

(b) it is appropriate for the child to be provided with education or training at the school.

ALN Code – indicates that circumstances in which these sections can be used are limited

Section 2D: Place at a named school, other institution, or board and lodging

(This section is appealable to the Tribunal).

*23.48. This section **should** only be used in very specific circumstances.*

23.58 … where a school is named in this sub-section, the local authority should set out underneath why it is satisfied that the child's interest requires the ALP identified in the IDP to be made at that school and why it is appropriate for the child to be provided with education or training there.

23.59 The following considerations are likely to be relevant when considering whether to name a school for this purpose (there may be other relevant considerations, depending upon the circumstances):
(a) whether specific characteristics of the school make it especially good at securing the required ALP – this might include a variety of different matters, including the school's physical characteristics;
(b) whether the school has members of staff with specialist expertise or training;
(c) whether the school has the required specialism in a low incidence provision, such as visual or hearing impairment;
(d) it would be unreasonable for a more local school to provide the child's ALP.

S.14(6) and s.48(4) deal with the circumstance where a particular school can be named. S.51 deals with the general duty to secure education in a mainstream school.

ALNET s.51 Duty to favour education for children at mainstream maintained schools

(1) A local authority exercising functions under this Part in relation to a child of compulsory school age with additional learning needs who should be educated in a school must secure that the child is educated in a mainstream maintained school unless any of the circumstances in paragraphs (a) to (c) of subsection (2) apply.

(2) The circumstances are -

> *(a) that educating the child in a mainstream maintained school is incompatible with the provision of efficient education for other children;*
>
> *(b) that educating the child otherwise than in a mainstream maintained school is appropriate in the best interests of the child and compatible with the provision of efficient education for other children;*
>
> *(c) that the child's parent wishes the child to be educated otherwise than in a mainstream maintained school.*

(3) A local authority may not rely on the exception in subsection (2)(a) unless there are no reasonable steps the authority could take to prevent the incompatibility.

(4) Where a child's parent wishes his or her child to be educated otherwise than in a mainstream maintained school, subsection (2)(c) does not require a local

authority to secure that the child is educated otherwise than in a mainstream maintained school.

Education Act 1996 s.9

Pupils to be educated in accordance with parents' wishes.

In exercising or performing all their respective powers and duties 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.

Case law on application of EA 1996 s.9

S.9 is a duty to have regard, not an absolute duty, confirmed in *WH v Warrington BC [2014] EWCA Civ 398.* The continued application of s.9 under ALNET was confirmed recently in *Cardiff Council v Mr & Mrs X: UA2024 001734 HSW [2025] UKUT 068(AAC).*

Interaction between ALNET and the usual admissions process under the Admissions Code

The **School Standards and Framework Act 1998 ("SSFA")** is the legislation which applies to usual admissions to school and it has a statutory code – the School Admissions Code 2013 – which sets out the detailed criteria.

Under the EA 1996 system, children with SEN who had a statement did not go through the usual admissions process, with the EA 1996 containing its own provisions about parental preference. There is no corresponding provision under ALNET i.e. the provisions dealing with the parental right to express a preference in Schedule 27(3)(3) of the EA 1996 have not been replicated in ALNET.

The SSFA contains a limited disapplication for children with IDP's. S.98(7) of the SSFA disapplies the admissions part of the SSFA for children with IDPs but only if a school has been named under s.48 of ALNET:

SSFA s.98(7):

Subject to subsections (8) and (9), nothing in this Chapter applies in relation to children for whom [EHC plans are maintained under section 37 of the Children and Families Act 2014 or individual development plans are maintained under Part 2 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 in respect of which section 48 of that Act applies (duty to admit children to maintained schools)].

However, the non-statutory guidance on the SSFA (issued in November 2021 as a result of the implementation on ALNET) also makes it clear that the right of appeal - even if a school is not named - will be to the Tribunal:

Where a school is named in an individual development plan for the purpose of securing admission, the admissions provisions in the School Standards and Framework Act 1998 do not generally apply. If a child or the child's parent wishes to appeal against the school named in the child's individual development plan for the purpose securing admission, or the fact that no school is so named, the appeal is to the Education Tribunal for Wales.

But if a school has not been named under s.48 (maintained schools), then it seems that the SSFA and the normal admissions criteria in the School admissions code will apply. This means parents of children with ALN can express a preference under the SSFA (Section 86) - i.e. in the case of an IDP which does not name a school under Section 48, the SSFA will apply.

(1) A local authority shall make arrangements for enabling the parent of a child in the area of the authority -

> *(a) to express a preference as to the school at which he wishes education to be provided for his child in the exercise of the authority's functions, and*
>
> *(b) to give reasons for his preference.*

(2) Subject to subsection (3) … the admission authority for a maintained school shall comply with any preference expressed in accordance with arrangements made under subsection (1).

(3) The duty imposed by subsection (2) does not apply -

> *(a) if compliance with the preference would prejudice the provision of efficient education or the efficient use of resources;*
>
> *(b) …*
>
> *(c) if the arrangements for admission to the preferred school -*
>
> > *(i) are wholly based on selection by reference to ability or aptitude, and*
> >
> > *(ii) are so based with a view to admitting only pupils with high ability or with aptitude,*
>
> *and compliance with the preference would be incompatible with selection under those arrangements.*

… (7) Where the arrangements for the admission of pupils to a maintained school provide for applications for admission to be made to (or to a person acting on behalf of) the governing body of the school, a parent who makes such an application shall be regarded for the purposes of this section as having expressed a preference for that school in accordance with arrangements made under subsection (1).

Where school placement is allocated under the SSFA, offers will only be sent to parent(s) in line with national allocation days. In 2025 these were 3 March 2025 for secondary school placements and 16 April 2025 for reception/primary school.

ALN Code on naming a School or other institution

Under the ALN Code, which includes a standard form of IDP, Section 2D of the IDP is divided into subsections.

Section 2D.1 *The name of a maintained school in Wales that is being named for the purposes of securing the admission of the child to the school*

Section 2D.2 *The name of any particular school or other institution which must be secured*

Section 2D.3 *Board and lodging provision which must be secured*

All are appealable

Evidence

The largest single issue brought to the Tribunal to be decided is a CYP's educational placement. Of the 84 appeals registered against Section 2D, the focus has been almost entirely on disputes about school placements rather than FEIs.

Queries from parent(s) concerning whether their LA has made a decision which can be appealed to the Tribunal focus on educational placement disputes. These cases are the ones where an LA is most likely not to have issued a written final decision or provided information about the right of appeal to the Tribunal (see further detail on this below in the section dealing with LA decision making).

My LA officer called me to say that xx had been offered a place at xxx [local special school]. They said that the decision would be confirmed in writing but three months later we are still waiting despite me asking many times. I do not know what to do.

In appeals where parents prefer a child to be placed in a Maintained Special School, the LA often appears to have no clear admissions policy in place. Previously, under EA 1996 section 316(2), if no statement was maintained for a child under Section 324, the child must be educated in a mainstream school subject to limited exceptions. The local authority therefore controlled all admissions. However, there is no equivalent requirement under ALNET for a child attending a Maintained Special School to have an LA Maintained Individual Development Plan (IDP).

As an LA, this [educational placement] is the most confusing area of the new law. When it was explained by the person from Welsh Government, when we were preparing to start transferring children from Statements, the situation where a parent did not agree with the school or LA's choice was not really dealt with at all.

Decisions about which school a child is to attend is made through the normal school application process now. It is discussed at a review of the IDP, and parents can explain where they have applied for and why, but that does not mean to say that is what they get allocated. Children with ALN no longer get priority.

When a parent is unhappy about what school their child is to attend then they can appeal through the normal LA appeal process – that is even if they have an LA IDP. It does not matter if we [a school] are responsible for the IDP or the LA.

It is a matter for professionals to decide if a child should go to a mainstream or special school. The law says that all children should go to a mainstream so that is what we do. Of course, parents can tell us what they think, but ultimately it depends on the places available.

In the majority of appeals, the original decision made by the LA has failed to consider factors raised by parent(s) which may make the LA's proposed educational placement inappropriate. Common factors include history of illegal/informal exclusion, part-time timetables being in place for an extended period of time, and Pastoral Support Plans being used to allow non-attendance.

Evidence from some mainstream and special schools is that they are now not routinely consulted by their LA before they are identified as a placement when they are not to be specifically named in section 2D of an IDP. The pupil is allocated a place without ALN information. ALNCos are only aware that a pupil has been identified as having ALN when their previous mainstream school forwards on a copy the IDP.

When they are consulted by an LA, many schools have told the Tribunal in appeals that they are rarely provided with a pupil's IDP or supporting evidence as part of this process. This can make planning and the allocation of resources very difficult. In those LAs where policy has led to many CYP who had a Statement of SEN now having a school maintained IDP, which includes some pupils in special schools, arrangements for the funding of ALN provision is opaque. Whilst the Tribunal does not have jurisdiction to decide disputes about a school, college or LA not making the provision described in an IDP, the consequence of such disputes is that a change in educational placement is often requested. That is an issue for the Tribunal.

Since my son has had an IDP, the support he is receiving at school has been reduced. He no longer has a visit from the speech and language woman or physiotherapy. He no longer gets the same level of support from Mrs xxx. The teacher has said that they can no longer get the money from the LA that they could when he had a Statement. He is not progressing and is really unhappy. Keeps picking at his skin. Refusing to go to school. That is why we are asking for him to go to a special school now.

Requests for a CYP to be educated in a non-maintained school or FEI are relatively rare in appeals. There are very few Independent Special Schools or Independent Special Colleges in Wales. Any cases there tend to be concentrated around specific geographical areas where an Independent School (a special school or non-selective school) which can offer small class sizes and high staff to pupil ratios is located.

Our son could not cope being in a class of 30 children and spent most of his time being taught in the corridor. He is too bright for a special school. At xxx School he has the attention of the teacher and only shares them with 15 other kids.

The Tribunal has decided two cases where the request was for a CYP to be placed in an Independent School or College in England. In both cases, these were ordered to be residential placements.

Issues to be considered

This is by far the biggest area of difficulty in applying ALNET in LA decision making and in appeals – not just for LAs, families and schools/colleges but also for the Tribunal. The law to be applied is intellectually challenging.

Issue: Admission for a CYP with an LA Maintained IDP to a school or FEI – timing of a decision when transitioning between phases of education

Schools

The evidence from appeals is that parent(s), LAs and schools are confused by the fact that school admissions for those pupils who previously had a Statement of SEN has changed radically. Under the SEN Framework, EA 1996 s.324(4), admission to a type of school and/or the name of a specific school was recorded in Part 4 when the statement was first issued following statutory assessment. Any subsequent changes of educational placement were dealt with through the Annual Review or phase transfer process. Under the phase transfer process, the responsible LA would need to make a decision on the new school placement for any child with a statement moving from one stage of education to the next (e.g. Primary to Secondary school) by a statutory deadline of 15 February (i.e. the 15 February before the September in which the transfer to the new school placement is to start). Decisions made by an LA by this deadline led to a right of appeal to the Tribunal being triggered if parents did not agree with the school placement named. This was an entirely separate process from the general school admissions process in place for other children.

Under ALNET, it is now expected that CYP with ALN, even if their IDP is maintained by an LA, will apply for a school or FEI placement through the general admissions process followed by all, unless a maintained school is already named in the IDP under s.48, which is the exception rather than the rule.

Most, if not all, LAs do not seem to have a process for identifying or making decisions for CYP with an IDP maintained by them as part of their general admissions process. Where an LA has actually named an educational placement in section 2D of an IDP and that is being changed, a formal decision is likely to be issued, which triggers the right of appeal. However, the right of appeal does not only apply in that situation. There is a right of appeal about Section 2D whether a school has been named or not. The fact that there is no requirement to routinely name an educational placement in Section 2D results in many parent(s) or CYP not being informed that they have a right of appeal to the Tribunal about placement.

There is now no requirement for an LA to make a decision about a change of educational placement by a separate and specific deadline for CYP with ALN in preparation for the CYP's transfer between different phases of education. Transition arrangements are outlined in ALN Code Chapter 27 *Planning for and supporting transition*; see also Chapter 23 paras 23.85 to 23.89. There are no specific duties or time requirements as to when a transition review must be carried out and a decision

made by an LA about educational placement. Section 3C of an IDP in which transition arrangements can be set out is not appealable to the Tribunal.

Whilst children with a Statement of SEN were required to be a priority for school admission policies, this is no longer the case for CYP with an IDP unless it is maintained by the LA and only if a specific maintained school is named in Section 2D.1 of the IDP does the CYP have to be admitted.

Further guidance about the changes to the law on admissions was issued in November 2021 (an extract of which appears above). This is non-statutory. There is a separate School Admissions Appeal Code (November 2023) but this contains only one reference to IDPs which is a reference to the duty on mainstream schools to admit a pupil where the school is named in the IDP. The School admissions code itself (*School admissions code 2013*) has not been updated to include CYP with ALN at this time. Given the substantial differences between the previous legislation under the EA 1996 and ALNET it cannot be assumed that references to children with SEN who have statements can simply be substituted for children with ALN who have an IDP leaving the position of children with ALN, in many aspects, unclear. The *Education (Coordination of School Admission Arrangements and Miscellaneous Amendments) (Wales) Regulations 2024* which came into force on 28 June 2024 does not include specific requirements for coordinating admissions for CYP with ALN.

The Tribunal has no jurisdiction to make decisions concerning a CYP's admission to a school or FEI under general admissions arrangements. It can only make a decision and order a school is named in an IDP based on the specific provision under ALNET – notably s.14(6) and s.48(4).

Further Education Institutions (FEI)

Admission to an FEI has always been through the admissions process for a specific Further Education College. There is no specific guidance issued by Welsh Government to FEIs on the admission of YP with ALN, although there is some general advice created during the transition period, and the website *ALN Pathfinder* provides useful information about Welsh Government funded Further Education Colleges.

An FEI can be named by the Tribunal in Section 2D of an IDP under ALNET s.14. However, the duty in s.14(6) which underpins the naming of an FEI, is subject to s.14(8) which requires consent from a school or other institution that is not a maintained school in Wales. The "must" duty to admit in s.48(2) also only applies to the admission of children to maintained schools. There is no equivalent duty which requires an FEI to admit a YP if an LA, or the Tribunal on appeal, names it in an IDP.

If named, an FEI has a duty under s.47(5) to take all reasonable steps to help the LA that maintains the plan to secure the additional learning provision specified in it, but this is not an absolute duty. Given this lesser standard, the Tribunal will require confirmation that an offer of a place has been made to the young person before the Tribunal can consider naming it in an IDP on appeal.

The interplay between the General Admissions process for a school or FEI and the right of appeal to the Tribunal where a CYP has an IDP maintained by an LA is not well understood. It is not a requirement to have gone through the admission appeals process before an appeal is registered with the Tribunal. However, if parent(s) or CYP with ALN are not informed that a decision has been made and that they have a right to appeal to the Tribunal, independent of any admissions appeal process, then there is an access to justice issue for Welsh Government.

Issue: No requirement to name a school or educational institution in an IDP

Under a statement of SEN, an LA was required to name a type of school and, where possible, specify an actual school by name in Part 4. Most IDPs, whether they are maintained by a school, college or LA, do not name a specific school in Section 2D. This is stated clearly in the ALN Code. Where educational placement is not in dispute then this is not an issue. Where it is in dispute, and a right of appeal has been triggered, once the case comes before the Tribunal the issue will be decided and a school or college can be named if that is what is requested.

It is not clear what the intention of Welsh Government was in not requiring an educational placement (or even a type of placement, as under the SEN system) to be named in an IDP. By not doing so, it creates uncertainty as to who has the legal duty to ensure that ALP is made. This is especially the case where a CYP is not attending school or college, but they are registered with a particular school or college. The enforcement of ALP is not within the jurisdiction of the Tribunal but increasingly failure to make provision by a school is at the root of appeals made to the Tribunal requesting a change of educational placement.

Issue: Naming a school or other institution under ALNET s.14(6) & (7)

When an LA, and the Tribunal on appeal, considers the application of the duty under s.14(6) the test to be applied is one of *"reasonableness"*. This is a well-established legal concept. What is essential to the decision making process is consideration of the ALP that is required to meet the CYP's needs and can/will it be delivered in a specific educational placement. It is not a test based solely on the CYP's identified ALN.

Further guidance in the ALN Code on how to apply the test of reasonableness under ALNET s.14(6) is limited. Specifically, the scope of factors such as suitability or appropriateness of a placement and associated costs are not addressed. As a specialist tribunal, the ETW will make a decision in such cases based on the evidence provided by parties.

The test under s.14(6) is fundamentally different from that to be applied when considering a maintained school placement under s.48. It is not clear whether there is a duty to apply s.14 and then consider the power under s.48 in deciding educational placement where a maintained school is requested by parent(s) or CYP.

Once the test under ALNET s.14(6) is satisfied, under ALNET s. 14(7)(a) a particular school or other institution can be named in section 2D.2 of an IDP. The use of the word *"school"* is not defined in ALNET and therefore can include naming an Independent School (special or non-selective). The term *"other institution"* is also not defined under ALNET. Reading the ALN Code the intention is that s.14(6) would include consideration of an FEI when it is requested to be named in an IDP. This would also include an Independent Further Education College. It is not clear if supported internships, apprenticeship schemes or courses delivered by other training providers can also be considered and described in an IDP.

Under ALNET s.14(8) a school or other institution that is not a maintained school in Wales must consent to be named in the IDP. ALNET s.55 states that an LA may not agree to educate a CYP in an Independent School or Independent Educational Institution unless it is included in the relevant register. A list of schools in Wales can be accessed via Addresses and phone numbers for schools and pupil referral units | GOV.WALES

Issue: Board and Lodging

ALNET s.14(7)(b) allows arrangements for board and lodging to be specified in Section 2D.3 of an IDP. What constitutes board and lodging is not defined in ALNET. The ALN Code at 23.68 – 23.73 sets-out a number of considerations which should be taken into account, including where *evidence demonstrates that an essential element of the child of young person's education or training can only be provided in a residential setting (for example, the learner requires a consistent programme during and after school hours that cannot be provided by non-residential schooling when combined with support from other agencies).*

Under the SEN Law, there were two circumstances where a CYP could be placed in a residential school and where the LA would be responsible for funding such a placement:

1. Where it was identified that a CYP required teaching outside of the ordinary school day as special educational provision to meet their needs.

2. Where the travel distance to the nearest (otherwise) appropriate school would make the placement unsuitable. (*MM & DM –v- Harrow [2010] UKUT 395 (AAC)*: "*Transport is not an educational need. However, it has to be taken into*

account. A placement cannot be appropriate if the authority cannot provide suitable transport to the school. …)".

There is extensive case law developed under the EA 1996 which defines further when a residential educational placement is required (for example *S v Sendist and another [2007] EWHC 1139 (Admin)* and *R (on the application of Tottman) v Hertfordshire CC [2003] EWHC 1725 Admin.* The wording adopted in the ALN Code para 23.68 would imply that this is still relevant.

Where it is identified that a CYP requires a consistent programme of education or training during and outside the ordinary school or college day (often referred to in everyday language as a "Waking Day Curriculum"), this should be described as ALP in Section 2B of an IDP. Evidence which would support such a finding will usually come from an Educational Psychologist or other professionals such as a Speech and Language Therapist. It is often required where a CYP cannot generalise learning acquired in school or college outside of the controlled teaching environment such as at home or when within their community. They need educational programmes "outside the four corners of the school" to be taught to do so.

Issue: Duty to admit and test for naming a maintained school under ALNET s. 48

This test can only be applied where parent(s) or CYP are requesting a placement at a Maintained School. The definition of a Maintained School is found in ALNET s. 99.

The equivalent test for naming a maintained school in a statement of SEN was found under the EA 1996 schedule 27(3)(3). This required an LA to name parent(s) preferred maintained school where one was requested unless there was evidence that an exception could be relied on. These were;

(a) the school is unsuitable to the child's age, ability or aptitude or to his special educational needs, or

(b) the attendance of the child at the school would be incompatible with the provision of efficient education for the children with whom he would be educated or the efficient use of resources.

This test in part reflects the test under the SSFA s.86. However, as the SSFA will not apply if a maintained school is named under s.48, it is unclear as to the continuing relevance of these conditions for a child with ALN where a maintained school placement is being sought.

A body of case law further defined the different elements of this legal test.

Under ALNET s.48, **Parental preference** is no longer a defining right. Instead, a new test of whether the *child's interest* requires the ALP identified in the IDP to be made at the school must be applied. Whilst the ALN Code does provide some guidance on the application of the test, it is open to further legal interpretation as it introduces a new concept in the context of school placements. This test is different from a “best interests” test which can be found in other law relevant to a child such as under the Children Act 1989.

The second legal test to be applied under s.48 is one of appropriateness. This has a clear legal basis in education law and case law, particularly that relevant to the application of EA 1996 s.9 which has defined it as a wider test than one of suitability. (See for example *MW v Halton Borough Council (SEN) [2010] UKUT 34 (AAC)* on the considerations to be taken into account in determining whether a placement is “appropriate”).

It is not clear if or how LAs are applying ALNET s.48 in making decisions for CYP and/or the extent to which LAs are considering the SSFA tests under their general admissions arrangements.

LAs appear to be uncertain as to how the s.48 test should be applied when there is a dispute with two school placements proposed – usually one by parent(s) or CYP and one by the LA.

LAs have a duty under ALNET s.6 (the duty to have regard to the views, wishes and feelings or parent(s) or CYP). S.48 will require the LA to be satisfied that the schools under consideration are appropriate. Then there is the child’s interest test. However, if both schools are appropriate and meet the child’s interests test, it is not clear at that stage as to the extent to which the inefficient use of LA resources – referred to in the SSFA but not in ALNET - remain relevant when considering two proposed placements.

There has been one Upper Tribunal case about ALNET addressing the issue of placement which is *Cardiff Council v Mr & Mrs X: [2025] UKUT 68 (AAC) [2025].* This is commented on further below, but the question of the continuing relevance of the inefficient use of resources (or otherwise) was not addressed as such by the Cardiff case.

Thus, there remain elements of how the duty under s.14(6) and the s.48(4) power should be considered and applied by an LA, or the Tribunal on appeal which have not been clarified.

As to the interaction between this duty and s.9 of the EA 1996 see below.

Issue: Duty to name a maintained mainstream school ALNET s.51

Where a parent(s) or CYP expresses a wish to attend a maintained mainstream school, but the LA have identified a special school placement, then s.51 must be applied. *M H v Sendist and LB of Hounslow [2004] EWCA Civ* focussed on the interplay between Schedule 27(3)(3) and s.316 EA 1996 and concluded that normally, the LA and the Tribunal standing in its shoes, ought to exercise its power to name a particular mainstream school in Part 4 of the statement. Such case law, established under the SEN legal framework, would seem to still apply when considering parent(s) or CYP views. The approach to be taken would be to consider the request for a specific school under s.48 first, the micro position. Then, if that school is not to be named under s.48, then s.51 is to be considered, the macro position.

The ALNET legal test has had significant additions from the equivalent provision under EA 1996. Previously, under s.316, there was a duty to educate a child in a mainstream school, if this was compatible with the parents' wishes subject to limited exceptions (essentially unless there was evidence that the child's attendance would be incompatible with the education of other children and no reasonable steps could be taken to address this incompatibility). Even where professionals were in agreement that a child would be best educated in a special school, if parents did not want that, then the child was to be placed in a mainstream school unless one of the limited exceptions applied and the legal threshold for those exceptions was a high one.

The test under ALNET s.51(2)(a) combined with (3), is initially the same as the test under previous legislation with the same exceptions. For the exceptions to apply, there will be a requirement for evidence of the incompatibility of the child's placement in the school with the education for others and then consideration of any reasonable steps which could be taken to address that incompatibility. Case law, specifically *Bury Metropolitan Borough Council v SU [2010] UKUT 406 (AAC)* has set out this test in detail and would still seem to be relevant. In particular the Bury case makes it clear that suitability is not part of the exceptions to the right to a mainstream education.

However, a new additional test is introduced in s.51(2)(b) of ALNET. It refers to the need for the *"best interests"* of the child to be established and then for the placement to be found to be compatible with the provision of efficient education for other children. The application of the "best interests" test to be made is not further elaborated by the ALN Code, which is silent on this issue under the relevant paragraphs (23.97 – 23.104 of Chapter 23). It may be helpful for further clarification to be provided as to what this test is intended to encompass.

Lastly, s.51(2)(c) allows parent(s) to opt-out of mainstream as a type of school if they wish for their child to be educated in a special school or PRU (Pupil Referral Unit) for example. Once such a wish has been expressed by parent(s), the LA cannot argue any of the limbs of the s.51 test in the reverse i.e. that a child must be

educated in mainstream (i.e. the right to a mainstream education is a parental right, not an obligation, something which appears to be misunderstood by some LAs).

The right to a mainstream education in ALNET relates to children in mainstream schools. It does not apply to FEI. Young people do not have the right to attend a mainstream FEI.

Issue: Application of Education Act 1996 s.9

The requirement under the EA 1996 s.9 is a general duty on an LA to educate a pupil in accordance with parents' wishes. It only applies to CYP who are pupils in a school, including those beyond compulsory school age up to the age of 19 years old. It is not a specific duty owed to pupils with SEN or ALN. This section of the EA 1996 was not repealed with the introduction of ALNET and must therefore be considered by LAs and in ALN appeals made to the Tribunal.

In the Cardiff case, the First-tier Tribunal had erred in law by applying Section 9, in substance, as if Schedule 27 of the EA 1996 still applied, which it does not; what the Tribunal should have done was to focus their analysis, first, on section 48 to see whether the conditions to that Section had been satisfied. However, the Cardiff case makes it clear that Section 9 remains in place in Wales.

Case law developed under SEN framework is therefore still relevant and applicable in ETW cases taken together with the caution indicated by the Cardiff case that Section 48 must be applied first.

In *CM v LB Bexley [2011] UKUT 215 (AAC)),* the First-tier Tribunal in an appeal for a maintained school, had not considered Section 9; in the Upper Tribunal it was held that the case should be re-heard and section 9 applied. "*However, the distinct and separate exercise in section 9 must still be carried out in such cases. That is a rather broad discretionary exercise, to which the preference of the mother (and, in particular, the reasons for that preference: per Sedley LJ in C v Buckinghamshire County Council and the Special Educational Needs Tribunal [1999] EWCA Civ 926) are material, among other considerations*." Whilst the duty under EA 1996 s.9 does not create a right for a child to attend a parent(s) preferred placement, it must be considered where any specific school is requested.

The ALN Code does not make any reference to the EA 1996 s.9 and its application other than as footnotes (footnotes 46,55,56). The Tribunal on appeal can name a school in an IDP even where a specific school has not already been named under ALNET s.48 or s.14(6).

7.11 **Content of IDP to be provided in Welsh**

Relevant Law and Guidance

ALNET s.14 (5)

A local authority that prepares or maintains an individual development plan for a child or young person, or reconsiders a plan under section 27, must—

(a) consider whether additional learning provision should be provided to the child or young person in Welsh, and

(b) if it decides that a particular kind of additional learning provision should be provided in Welsh, specify in the plan that it should be provided in Welsh.

ALN Code paragraphs 23.39

Repeats s.14 (5) and cross refers to s.12 (5) (which contains the same duty on a Governing body where it is the Governing Body of the School which maintains the plan), S.13 (6) (the same duty for Looked After Children) and s.40 (6) (the same duty where the IDP is for a Detained Person)

Evidence

The Tribunal have not had any cases registered where a dispute about provision to be provided in Welsh was argued at a final hearing. Where such an issue was raised at registration of the appeal, it had been successfully resolved by agreement before the final hearing.

In one case, parties agreed that a child should attend a special school placement. The LA failed to identify a special secondary school which could deliver education in the child's preferred language of Welsh. The LA proposed that he attended an English medium school supported by a Welsh speaking Learning Support Assistant. The Tribunal rejected that proposal, and the LA were required to find a suitable placement.

Oral evidence from NHS speech and language therapists in two cases raised the issue that if provision was to be provided in Welsh and recorded in the IDP, then there was a lack of Welsh speaking therapists to make that provision. Whilst the LA and parent(s) in both cases came to an agreement that the provision was to be delivered in Welsh, whether it can or will be is a question outside of the Tribunal's jurisdiction.

Issues to be considered

Issue: Resources to ensure ALP is available in Welsh. Appeals brought concerning the delivery of ALP in Welsh will first require the Tribunal to decide any outstanding issues concerning the specification of provision such as the duration, frequency, who should deliver it and how. Only then will the Tribunal consider the question of whether it is to be delivered in Welsh.

Given the strength of the commitment of both LAs and NHS bodies to deliver services through the medium of Welsh, it is not anticipated that the Tribunal will be required to decide more than a minimum number of cases on this issue.

The central issue to the delivery of provision in Welsh is the availability of Welsh-speaking teachers and professionals and Welsh medium specialist schools.

7.12 **Children and young people resident in Wales but educated in England**

Relevant Law and Guidance

ALNET s.55 - Conditions applicable to securing additional learning provision at independent schools

…

(2) A local authority may not exercise its functions under this Part to secure that a child or young person is educated at an independent educational institution in England unless -

(a) the institution is included in the register of independent educational institutions in England (kept under section 95 of the Education and Skills Act 2008 (c. 25) ("the 2008 Act")), and

(b) the local authority is satisfied that the institution can make the additional provision described in the child's or young person's individual development plan.

ALNET s.56 - List of independent special post-16 institutions

(1) The Welsh Ministers must establish and maintain a list of independent special post-16 institutions in Wales and England ("the list") for the purpose of subsection (3).

(2) The Welsh Ministers must publish the list, as amended from time to time

(3) A local authority may only exercise its functions under this Part to secure education or training for a child or young person at an independent special post-16 institution in Wales or England if the institution is included in the list, subject to any prescribed exemptions.

…

ALNET s.59 - Additional learning provision outside England and Wales

A local authority may exercise its functions under this Part to make arrangements for a child or young person with additional learning needs to attend an institution outside England and Wales, but only if the institution is organised to make the additional learning provision described in the child's or young person's individual development plan.

Evidence

The Tribunal has decided two cases where the schools of parental preference were independent special schools in England. In one case, the distance to be travelled would mean that the child required a residential placement. In the other case, the Tribunal found that the child required teaching outside the ordinary school day and a residential placement was ordered.

In one case, the LA argued that a day placement in a maintained special school could meet needs. In another, the LA proposed a package of education otherwise than in school.

Issues to be considered

Issue: Responsibility for Maintaining and funding an IDP

Where a CYP lives in Wales but is educated in a school or FEI in England, there is a potential issue around the responsibility for maintaining and funding the IDP. If the LA maintains the IDP it will have a duty to secure the ALP. However, the LA cannot require a school or College in England to maintain the IDP. Subsection (2) of Section 65 of ALNET gives an LA some limited powers to request information or other help for the purpose of exercising its functions which would include from some (but not all) educational institutions in England, but this would not amount to being able to require a school or College in England to maintain an IDP.

Issue: Admission to a school or FEI in England

Whilst an LA can name a school or FEI in England in an IDP, they cannot do so without agreement from the school or FEI for that to happen. For independent schools or FEI, they must be included on the published register of schools and FEI which can be found at Get Information about Schools - GOV.UK.

Where a special school is maintained by a local authority in England, since they do not fall under ALNET s.48, the test in that section cannot be applied. Instead, any placement should be considered under ALNET s.14(6) or EA 1996 s.9. Again, a school cannot be named unless they have agreed to admit a CYP.

There is no specific provision in ALNET imposing a duty on a school or FEI in England to deliver ALN provision, even if named in an LA maintained IDP. The CYP cannot have an Education, Health and Care Plan (EHCP) as these can only be issued by a local authority in England in respect of a child or young person for whom the LA is responsible under CFA 2014 s.24.

7.13 Children and young people receiving education under ALNET s.53 - ALN otherwise than in school (EOTIS)

Relevant Law and Guidance

ALNET s.53 Additional learning provision otherwise than in schools

(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 otherwise 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 a school.

ALN Code

Paragraph 18.2 includes children being educated otherwise than in a school on the list of "special circumstances." **Paragraphs 18.9 to 18.20** deal with children receiving what the Code describes as "EOTAS" (although the correct acronym which is adopted here is "EOTIS" (per Judge Jacobs in *LB Camden v KT [2023] UKUT 223 (AAC)*) to reflect the language in ALNET rather than as it was under the EA 1996).

If the child has a school maintained IDP, **paragraph 18.12**:

18.12 If a child or young person already has an IDP prior to EOTAS being arranged, and if it is maintained by a school, its duty to maintain the IDP will cease if the child or young person ceases to be a registered pupil[15]. If this is the case, the responsible local authority is likely to be subject to the duty to decide whether the child or young person has ALN, and if it decides that the child does have ALN, the duties to prepare and maintain an IDP are likely to apply (see Chapters 13, 14 and 17).

If the child or young person has an LA maintained IDP, **paragraphs 18.14 and 18.15**

18.4 If the child or young person already has an IDP maintained by a local authority when the EOTAS is arranged, the local authority must continue to maintain the IDP (unless and until any of the circumstances occur which result in the duty to maintain it ceasing – see Chapter 29). It would often be appropriate for the local authority to review the plan in light of the changed circumstances.

18.15. A local authority may only arrange for the ALP described in an IDP it maintains for a child, or any part of that ALP, to be made otherwise than in a school if it is satisfied that it would be inappropriate for the ALP to be made in a school. This applies equally in respect of children receiving EOTAS, but where that EOTAS is not provided in a PRU, then the circumstances giving rise to the need for EOTAS may well also mean that it would be inappropriate for the child's ALP to be made in a school.

Paragraph 18.21 to 18.23 on children who are electively home educated:

18. 21 Where it is brought to its attention or otherwise appears to a local authority that a home educated child (other than a looked after child) for whom it is responsible, may have ALN, the local authority must decide whether or not the child has ALN and, if it decides that the child has ALN, prepare and maintain an IDP and secure the ALP described in that plan (see Chapter 13 for more details about these duties and the exceptions to them).

18.23. A local authority preparing or reviewing an IDP for a home educated child, should work with the child and child's parent to identify the appropriate ALP and then secure it. This involves identifying the type of ALP called for by the child's needs and whether the parent will be able to deliver it (either directly or by arranging for someone else to deliver it).

Evidence

The Tribunal has considered 16 cases where the appellant has requested that a child receives education otherwise than in school (EOTIS). In other cases where such ALP was requested when the appeal was registered, parties have reached agreement and a consent order has been issued reflecting the EOTIS arrangements to be put in place.

> *We have no choice other than to ask for our child to be educated not in school. The LA say he should attend a local mainstream primary school, but we cannot even get him to visit it. The School say that they cannot meet his needs – that he should be in a special school. He has a school IDP but we are not sure how that can be when he is not going there. He has been out of education for over 6 months - for a 5-year-old that is so long.*
>
> *The LA have said that the only school they can offer is the nearby secondary school. Our son was there for 2 years and was sent home early most days. We have found a tutor that he likes and who works with him for 4 hours each week. The LA have offered nothing and say it is the School's responsibility.*

There is still a misunderstanding in some appeals about the difference between EOTIS and a parent choosing Elective Home Education (EHE) of a child.

Where EOTIS is identified as ALP, and therefore specified in Section 2B of the IDP, the LA has the responsibility to make and fund the provision.

If a parent(s) chooses to EHE under the EA 1996 s.7, then as set out in the ALN Code (see above paragraphs 18.21 and 18.23), the LA still has a duty to consider whether the child has ALN and whether to maintain an IDP for them. Where parent(s) are not able to secure the ALP in the IDP, then the LA will need to consider how this should be done.

Issues to be considered

Issue: Terminology

ALNET s.53 refers to ALP being made "otherwise than in a school". The ALN Code uses the abbreviation EOTAS which stands for 'education otherwise than at school' which reflects the previous wording of the legal duty under EA 1996 s.319. It would be helpful to have clarification on whether the abbreviation EOTIS (education otherwise than in a school) is the correct one to be used.

Issue: scope of the duty

The legal test set out under ALNET s.53 only applies to the education of a child up to the end of compulsory school age. It is not applicable for young people aged 16 to 25 years old. Where a YP is not able to access education or training at an appropriate school or FEI it is not clear how Welsh Government intends to fulfil the duty to secure the provision of proper facilities for education and training for persons of 16 to 19 and over 19 under the ***Learning and Skills Act 2000 ("LSA") s.31 and 32*** (see below), where a young person cannot attend an FEI or no FEI has offered them a place. The LSA still applies (in part) in Wales.

Issue: EOTIS as the only alternative to lack of available specialist provision

The lack of specialist school or FEI provision in some LAs has resulted in a number of CYP being offered EOTIS as the only viable alternative. Often these CYP could, and want, to attend an educational placement but there is nothing suitable offered by the LA or available.

Issue: EOTIS as ALP

Case law developed under the EA 1996 identified that where EOTAS was required, it should be specified as special educational provision in Part 3 of a Statement of SEN. Under ALNET s.53, if a CYP required EOTIS then this will be specified as ALP in Section 2B of an IDP but this will not name the provider of a package of tutoring or activities. It will be for the LA to identify and commission the provision.

Issue: EOTIS vs EHE

There is a duty on an LA under the ALN Code to ensure they consider how the provision in an IDP is delivered for a CYP who is EHE. It is not clear where any dispute between parent(s) and the LA concerning how or who will deliver ALP will be resolved.

7.14 **Ceasing to maintain an IDP**

Relevant Law and Guidance

ALNET s.31 Ceasing to maintain an individual development plan

(5) Where the governing body of a maintained school or an institution in the further education sector has a duty under this Part to maintain an individual development plan for a child or young person, the governing body may cease to maintain the plan if it decides that the child or young person no longer has additional learning needs.

(6) Where a local authority has a duty under this Part to maintain an individual development plan for a child or young person, the authority may cease to maintain the plan if the authority—

(a) decides that the child or young person no longer has additional learning needs, or

(b) in the case of a young person who is neither a registered pupil at a maintained school nor enrolled as a student at an institution in the further education sector in Wales, decides in accordance with regulations under section 46 that it is no longer necessary to maintain it to meet the young person's reasonable needs for education or training.

Learning and Skills Act 2000

s.31. Education and training for persons aged 16 to 19.

(1) Welsh Ministers must secure the provision of proper facilities for -

(a) education (other than higher education) suitable to the requirements of persons who are above compulsory school age but have not attained the age of 19;

(b) training suitable to the requirements of such persons,

(c) organised leisure-time occupation connected with such education, and

(d) organised leisure-time occupation connected with such training.

(5) For the purposes of this section –

(a) education includes both full-time and part-time education;

(b) training includes both full-time and part-time training;

(c) training includes vocational, social, physical and recreational training;

(d) higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

s.32 Education and training for persons over 19.

(1) The Welsh Ministers must secure the provision of reasonable facilities for -

(a) education (other than higher education) suitable to the requirements of persons who have attained the age of 19,

(b) training suitable to the requirements of such persons,

(c) organised leisure-time occupation connected with such education, and

(d) organised leisure-time occupation connected with such training.

…

(5) For the purposes of this section -

(a) education includes both full-time and part-time education;

(b) training includes both full-time and part-time training;

(c) training includes vocational, social, physical and recreational training;

(d) higher education is education provided by means of a course of any description mentioned in Schedule 6 to the Education Reform Act 1988.

…

<u>Evidence</u>

The Tribunal has had only two cases where an appeal has been made against an LA decision to cease to maintain an IDP. In one case, the young person had just turned 19 years old and the LA argued that they had already received two additional years of education since the end of compulsory school age and the LA was not obliged to provide further education and training.

The LA consider that xx has received the required additional 2-years of post-16 education at his special school and therefore they have no obligation to maintain the IDP or to fund a placement at xxx college [an FE College].

Two additional cases were registered with the Tribunal, where the initial decision of the LA was to cease to maintain an IDP. In both cases, the LA reviewed its decision

and conceded the issue before a final hearing. In one case, the Tribunal went on to order the YP's request for a local FEI to be named in Section 2D.3 of the IDP.

Issues to be considered

Issue: When is it no longer necessary for an LA to maintain an IDP

The fact that an IDP can now be maintained until a young person reaches 25 years old is not fully understood by LAs. This could be extended further to the end of the academic year in which they turn 25 years old under ALNET s.34.

A comparator is often drawn by LAs with the entitlement of ordinary developing CYP *"…to 2 additional years education until aged 18 years old"* as a reason for an IDP to cease.

An Information Document issued by Welsh Government dated February 2020 titled "*Securing provision for young people with learning difficulties at specialist further education establishments"* stated that:

"… The Welsh Government's policy is to fund the duration required based on the young person's capability to progress and achieve against their education and training outcomes. For the majority of young people accessing specialist provision, the duration will be comparable with the duration of provision available within mainstream FE establishments, i.e. two academic years".

The Learning Difficulties and Disabilities (LDD) assessment process required under the Learning and Skills Act 2000 s.140 was fully replaced by the ALN framework at the end of the academic year 2024/2025. Responsibility for securing and funding specialist post-16 placement has moved from Welsh Government to the responsible LA.

The ALN Code at paragraph 17.65 says that the starting point is that a YP is entitled to up to two years of further education or training and that beyond that a local authority may determine that a YP has reasonable needs for education or training in particular circumstances. The framework for doing this is set out in the Regulations notably Regulation 9 and Schedule 1. The ALN Code goes on to give guidance on what these circumstances may include, such as where the duration of a suitable programme of study is longer. Where the YP's desired outcome is quite general such as acquiring independent living skills a reasonable period of study would not normally exceed two years. ALN Code paragraphs 17.70 – 17.78 then sets out four circumstances where more than two years further education or training may be necessary.

Whilst the wording in the ALN Code reflects the ALN Regulations re suitable programmes of study (see Regulation 9(1), in particular re: suitable programmes of study in Schedule 1), the issue for consideration is that on the one hand, we have legislation in ALNET which provides for an IDP to (potentially) extend until a young person reaches 25 years old but on the other hand, we have the Regulations and the ALN Code which looks to limit potential expectations of post 16 education to 2

years by linking it to programmes of study being usually only of two years duration. Further clarification of how these two aspects are intended to interact would be helpful.

Issue: FEI decision to cease to maintain an IDP

The Tribunal has not yet had any appeals where an FEI has decided to cease to maintain an IDP. A number of enquires to the Tribunal would suggest that FEIs have little knowledge of how or when this decision should be made or communicated. There is limited knowledge about if and how the decision would be appealed to the Tribunal.

7.15 **Children and young people lacking mental capacity**

Relevant Law and Guidance

ALNET s.70 (appeal rights) includes the following (s.70 (3)):

A child or a child's parent may apply to the Education Tribunal for Wales for a declaration that the child either does or does not have the capacity to understand—
(a) information or documents that must be given to a child under this Part, or
(b) what it means to exercise the rights conferred on a child by this Part.

ALNET s.83 provided for the making of Regulations to give effect to the provisions of ALNET in cases where a parent or child or young person lacks capacity at the relevant time.

This is dealt with in the ALN Regs (Part 4). In relation to Tribunal appeals, Regulation 41 applies:

When a child's parent, or a parent of a detained person who is a child, lacks capacity at the relevant time, or a young person, or detained person who is a young person, lacks capacity at the relevant time, their representative may appeal to the Education Tribunal for Wales on their behalf and sections 70 and 72 of the 2018 Act are to be interpreted accordingly.

ALN Code Chapter 30 deals with "case friends" for children who lack capacity

Chapter 31 relates to the use of representatives and sets out the relevant provision of the Mental Capacity Act 2005 and its Code of Practice which are the framework for deciding whether or not a person has capacity to make a particular decision.

Evidence

The Tribunal has not been asked to make a decision concerning a CYP's mental capacity in an appeal, outside a case that has already been registered with the Tribunal.

Case management directions issued on registration of an appeal order the LA to obtain a CYPs views on the issues raised in the appeal. In most cases, these are obtained and are not disputed by either party.

In cases where an issue has been raised, usually by the LA, then a case management hearing has been held to consider next steps.

The LA are concerned that the views expressed by parent in the appeal do not reflect those of xxx [a young person]. We accept that they do not have the mental capacity to bring the appeal themselves, it is not disputed that they cannot read or write and have limited cognitive ability. The college placement requested by parent would mean they are educated away from home and that is not in their best interests.

Issues to be considered

Issue: When questions of mental capacity should be raised

Whilst the Tribunal has powers under ALNET s.70(3) to decide issues about mental capacity relating to a child, any decision will be made only in respect of a specific issue relating to the appeal.

Issues questioning whether a child has capacity must be raised by the LA or other professionals early in the appeal process, if they are to be appropriately addressed before a final hearing.

The Tribunal does not have a specific power under ALNET s.70 to consider and decide the capacity of a YP.

The starting point is that it must always be assumed that a YP does have mental capacity to make decisions.

Issue: Mental capacity to register and bring an appeal verses mental capacity to express a view

Whether a child has mental capacity to register and bring an appeal is a question of fact which needs to be answered by the LA, and if disputed, the Tribunal on appeal. The answer will depend on the evidence, such as their age and the effect of any ALN on their ability to understand the appeal process.

It must always be assumed that a YP has the mental capacity to bring an appeal.

There is a difference between a CYP having capacity to understand the appeal process and being able to successful engage in the administration as opposed to being able to express a view about what they would like to happen in the case. Most CYP appealing to the Tribunal, because of the nature of their ALN, will not have capacity to bring – i.e. to “run” - an appeal unless someone does that for them. Dealing with Tribunal deadlines and understanding the legal process, even where a simplified process is put in place, is often not accessible to them. Parent(s) will often be the most appropriate person to bring an appeal on behalf of their CYP or to

support their CYP to bring an appeal. The Tribunal has not seen evidence in a registered appeal that demonstrated that an effective advice, information and advocacy service is available to CYP as an alternative to parent(s) or close family members.

Rarely can a CYP not give their views on what they wish to happen in the appeal. With the adoption of appropriate communication techniques by people familiar to and with the CYP, their views, wishes and feelings can be expressed and provided as evidence. This does not have to be via speech. An essential element however is the flexibility and specialist training of advocates. This is currently not freely available or accessible to CYP in Wales.

If a YP does not have capacity to bring an appeal, Regulation 41 allows for a representative to appeal on their behalf.

7.16 Transition of SEN Provision to ALNET – (From Statements of SEN and School Action and School Action plus to IDPs)

Relevant Law and Guidance

Guidance

Implementing ALNET: A Technical guide to implementing the Act during the second, third and fourth years of implementation (2022 – 2025)

3.20 Where a child described in paragraph 3.1 has not moved to the ALN system by 30 August 2025, the child will automatically move to the ALN system on 31 August 2025. This means the old law will cease to apply on the 31 August 2025 and the new law will apply on that date. The duties provided for in the ALN Act and subordinate legislation, including the ALN Code, apply from 31 August 2025.

8.23 Where a child has not moved to the ALN system by 30 August 2025, Commencement Order 8 provides a safeguard to ensure all pupils move to the ALN system. They will automatically move to the ALN system on 31 August 2025. The provision means that at point the ALN legislation, including the ALN Code, will apply to the child and Part 4 of the Education Act 1996 will cease to apply to the child.

This guidance lists the ALN commencement orders which bring ALNET into force.

Evidence

The majority of telephone enquiries received by the Tribunal before a case is registered are questions about whether the parent(s) or CYP has a right of appeal. Many are where a child's statement of SEN has been transitioned to an IDP and it has been decided that it is now an IDP maintained by a school rather than the LA. In most cases, there has been no written decision issued by the LA as part of the transition process which has set out the right of appeal to the Tribunal.

> *I am now really confused. My daughter has had a Statement since she was 6 years old. She has Down Syndrome and attends a special school. Now she has an IDP which the school sent us. They say that the LA are no longer involved and that she cannot have the individual speech and language therapy the Tribunal ordered she needed a few years ago. How do I appeal?*
>
> *I had a letter saying that my son now has an IDP and that he is the school's responsibility. The ALNCo says that they can no longer get funding from the LA for 1:1 support even though he still needs it. They are only funding Looked After Children and those not going to school. I am wondering if I should take him out of school?*

Evidence provided to the Tribunal demonstrates that there is an established practice in some LAs for children who have statements of SEN to be automatically transitioned to a school-based IDP, even where they are attending a maintained special school. Very often the school based IDP is inadequate and not quantified,

qualified or specific. Much of the specification of SEP from the statement has been disregarded in the drafting of the IDP, even though evidence has not been provided that the child's needs have changed.

When comparing a statement with an IDP, the dilution or complete removal of provision is very common. This is particularly the case where a child is placed in a special school whether the IDP is school or LA maintained. The content of some IDPs appears woefully inadequate.

In order to meet the deadline of transitioning a statement of SEN to an IDP, LAs are relying on ALNCos to draft IDPs. The LA is not then reviewing the IDPs.

Issues to be considered

Issue: School Action/School Action + and Statement of SEN to School Maintained IDP

School Action and School Action + were the terms used under the previous legislation for the support being given to children in school with SEN who did not have a Statement of SEN. The bringing in of the statutory IDPs maintained by schools is one of the major changes in ALNET. However, it appears that it is not just the children who were on School Action and School Action + who have school maintained IDPs. Evidence before the Tribunal is that children who previously had Statements of SEN are now also being given school maintained IDPs.

There is an inconsistency across the LAs when a statement is transitioned to an IDP about whether it should be a school maintained IDP or an LA maintained IDP. The individual evidence of the child's needs and the provision they require has routinely not been considered via a review, the required legal test has not been applied and blanket policies have been adopted in some LAs.

Many LAs are telling schools and parent(s) that unless the child is dual registered, Looked After, not attending school, receiving education otherwise than in school or detained, they cannot or will not maintain an IDP. This is the wrong interpretation of the legislation.

There is no consistent expectation of what provision should be available to the ordinary developing CYP in a mainstream school or FEI, at the different stages of education. There is also no consistent expectation of what ALP should be available to pupils and students with ALN from within the existing resources of a mainstream school or FEI at the different stages of education.

Children who had a statement of SEN who now have an IDP maintained by a school have reduced legal rights under ALNET following that transition.

Issue: Transition Guidance not being followed by LAs

Chapter 7 of the Transition Guidance sets out the timeline for a child with a statement of SEN to transition to arrangements under ALNET. It requires an IDP

notice or a no IDP notice to be issued to parent(s) or child. Evidence produced to the Tribunal is that such notices are not routinely being issued in some LAs and CYP are being moved automatically to the ALN system at the end of the relevant school year, without any form of notification. Where an IDP Notice or a no IDP Notice is issued, they routinely do not explain adequately the decision made or the reasons for the decision.

From the 31 August 2025 this was no longer an issue when ALNET became fully in force and all remaining CYP not transitioned from the SEN legal framework did so automatically.

7.17 **Looked After Children**

Relevant Law and Guidance

ALNET s.15 Additional learning provision for looked after children

Key terms

(1) A child is looked after by a local authority if he or she -

(a) is not over compulsory school age and is looked after by a local authority for the purposes of Part 6 of the Social Services and Well-being (Wales) Act 2014 ("the 2014 Act"), and

(b) is not a detained person.

ALNET s.19 Duties to prepare and maintain plans for looked after children

(1) The duty in subsection (2) applies if a local authority that looks after a child has decided under section 18 that a looked after child has additional learning needs.

(2) The local authority must prepare and maintain an individual development plan for the child if the child is in the area of a local authority in Wales.

ALN Code chapter 24: Preparing and maintaining an IDP for a looked after child, and its content

Evidence

The Tribunal has had two cases registered which concerned a looked-after child. In both cases, the parent retained parental responsibility and brought the appeal disputing the content of the LA maintained IDP, including school placement. In one case, the child was adopted during the appeal process, which resulted in the appeal being struck out for lack of jurisdiction as the adoptive parents no longer wanted to pursue the appeal.

No appeals have been brought by a social worker as corporate parent on behalf of a CYP.

Issues

The issues already identified in the application of ALNET to all CYP apply equally to looked after children.

Issue: Registering of appeals - by LA as corporate parent against themselves as the LA responsible for maintaining a child's IDP

There has long been an issue that despite many looked-after children having ALN, very few, if any, appeals will be brought by the responsible social care team at the LA, in their capacity as the child's corporate parent, against the LA. Until this is addressed it is unlikely that the right of appeal will be exercised freely.

Because of the nature of a child's ALN, it is very often the case that they would not know that an appeal should be made. They would certainly not have the ability to instigate an appeal.

If an appeal is registered, there is no equivalent process to that in the Family Courts where a children's guardian is appointed from CAFCASS during an appeal. There is no automatic right to a solicitor to provide advice or support.

Whilst a foster carer or family member who has care of a child has a right of appeal to the Tribunal, they will often not know that they can do this. We have heard evidence that on occasions family members have felt intimidated or threatened and so have not challenged the LA, for fear that their care of the child will be questioned by the LA as a consequence. This is particularly true where (for example) grandparents have care of a child under informal arrangements made with social care. This is an access to justice issue.

Issue: Registering of an appeal by foster carers

In one enquiry made to the Tribunal, foster carers had been told that they could not register an appeal against a school placement decision made by the responsible LA. They also raised a concern that the LA's social care would be "angry" with them for doing so. Foster parents were signposted to an advice and information service who were not able to advise appropriately.

Issue: Care in a children's home and ALN

The Tribunal have heard evidence concerning children previously in care about how ALN was not identified or ALP not put into place, because the priority was their care arrangements. Social care teams are not routinely considering whether a child has ALN because the focus is on issues within the family. Behavioural issues tend to be regarded as a consequence of their situation and experiences, rather than as a result of unmet ALN.

7.18 **Children and Young People in Detention**

Relevant Law and Guidance

ALNET s.39 – 45

s. 39 Meaning of "detained person" and other key terms

(1) For the purposes of this Act -
"beginning of the detention" ("dechrau'r cyfnod o gadw person yn gaeth") has the meaning given by section 562J of the Education Act 1996 (c. 56);

"detained person" ("person sy'n cael ei gadw'n gaeth") means a child or young person who is -

(a) subject to a detention order (within the meaning given by section 562(1A)(a), (2) and (3) of the Education Act 1996), and

(b) detained in relevant youth accommodation in Wales or England,

and in provisions applying on a person's release includes a person who, immediately before release, was a detained person;

"home authority" ("awdurdod cartref") has the meaning given by section 562J of the Education Act 1996, subject to regulations under subsection (2);

"relevant youth accommodation" ("llety ieuenctid perthnasol") has the meaning given by section 562(1A)(b) of the Education Act 1996.

ALN Code Chapter 19: **Children and young people subject to detention orders**

Evidence

The Tribunal has not yet had a case brought for a CYP in detention.

Issues

The issues identified in the application of ALNET to all CYP apply to those detained either under the Mental Health Act 1983 or in custody.

Where a CYP is detained, an LA must maintain the IDP.

Issue: Registering appeals for a CYP in detention

Evidence from the [5] HM Inspector of Prisons shows that a high percentage of CYP detained in custody under the criminal justice system have ALN.

Those CYP detained in hospitals/secure units, either informally or under the Mental Health Act, will almost always have ALN because of the symptoms they are experiencing.

Unless a CYP has parent(s) informed and willing to support them to register an appeal with the Tribunal, then LA decisions about ALN will never be effectively challenged. The importance of pro-active independent advice, support and provision of advocacy for this group of CYP is of high priority. There is currently no effective duty on professionals to consider whether a CYP has ALN or to engage with the LA's responsibilities.

[5] Data taken from HM Inspector of Prisons survey of all children living in young offender institutions (YOIs) and secure training centres (STCs) across England and Wales – "Children in custody 2022–23 **-** An analysis of 12–18-year-olds' perceptions of their experiences in secure training centres and young offender institutions" recorded that 30 per cent of responders had a disability.

7.19 **LA decision making**

Relevant Law and Guidance

ALNET requires an LA to make various decisions about CYP who have or may have ALN, the key decisions being:

s.13 - duty to decide whether a child or young person has additional learning needs;

s.27 - duty to reconsider a plan and decide whether or not to revise it;

s. 28 - duty to decide whether to take over governing body maintained plans;

s.32 - duty to decide whether a governing body should cease to maintain a plan.

In addition, in the case of an LA maintained plan, it is the LA's duty to prepare the plan (***s.14***) which will require the LA to decide upon the plan's contents, including whether or not name a school under either ***s.14 (6)*** or ***s.48***.

The **ALN Code** also requires LAs to make decisions concerning ALN and give notification of those decisions promptly. In most cases this must be before the end of 12 weeks from the issue being brought to the attention of the LA. Notification must also give information about the right of appeal to the Tribunal against appealable decisions under ALNET s.70.

ALN Code Chapter 22: Meetings about ALN and IDPs

Sets out guidance and good practice principles for meetings about ALN and IDPs.

Evidence

Enquiries to the Tribunal by email and phone from parent(s) who have not yet sent in documents seeking to register an appeal request advice with three common themes:

(1) Their LA have not yet issued a decision at all concerning a CYP's ALN and the timeframe for doing so is more than 12 weeks from the LA being requested to do so. It is often months since the LA received such a request from parent(s) or a school concerning the CYP.

> *I asked my ALN coordinator at the LA when a decision would be made about my request for my son to attend a local special school as it has been over 4 months since the IDP review. They eventually told me that as the IDP was a school one that they did not have to make a decision. No one had told me that before. We have just been left waiting. The ALNCo says it is not their decision. I am now stuck, and my son is struggling.*

(2) An LA decision has been communicated to parent(s) only via a text or on-line computer system. Sometimes it is via a short email from an ALN Officer at the LA. It is in the form of a short message and does not clearly state that it is a final LA decision but instead intimates that it is a provisional or holding decision which may or can be reviewed by the LA at an undefined later date. It fails to provide information about a right of appeal to the Tribunal.

I received a text message from my LA. It did not say who it was from. Just that they had decided that my child did not have ALN as her needs could be met by the school. I have not been able to find out who made the decision or why they decide that. I was given log in details to something called a portal. I do not have a computer and could not connect to it from my phone. I was not registered and did not have the code. I gave up.

(3) A formal decision is issued to parent(s) by the LA but it fails to inform parent(s) of their right of appeal to the Tribunal.

The LA told me that they were not agreeing that my daughter should change school. I did not know I could appeal to the Tribunal until a Mum at school told me that I might be able too. I googled the Tribunal last night late and have been looking at your website. I do not think I can appeal as my letter does not say I can.

The decision making process itself is also unclear.

Decisions in our LA are made by a panel. We were told there were no minutes available as to who or why they made their decision our son does not have ALN. It is not possible to know who made this decision or why.

LAs often do not explain the basis of their decision in their response to the appeal. Some LAs still refer to SEN Law when looking to argue the reasons for decision. This is most frequently seen in the context of school placement.

To place xx at Ysgol xx as requested by parents and name it in her IDP would result in the inefficient use of resources under EA 1996 schedule 27(3)(3).

We have evidence that on occasions LAs are misadvising parent(s). Usually this is either about whether they have a right of appeal to the Tribunal, the prospects of their case or the law to be applied. Reference to an LA's ALN policy rather than the law has been reported by parent(s) and has also been repeated to the Tribunal in hearings.

If a child does not have a diagnosis of Autism they cannot be placed in a special school. This is the LA's policy.

The fact that your child had a Statement of SEN does not mean they have ALN.

There is no point in appealing to the Tribunal as that is not how we do things here.

Issues

Issue: LA process for making decisions

The process by which an LA, or a governing body of a school or an FEI, considers and then makes decisions is not set out in ALNET or the ALN Code. In practice, decision making is often delegated to an ALN "panel" in most LAs. The recruitment to and composition of such panels is not transparent. The process they must follow in considering and making ALN decisions is not clear. The Tribunal requires copies of notes of meetings to be provided by the LA as part of the registration directions. These are rarely available and when provided, they show that the decision was usually not based on the requirements of ALNET. Chapter 20 of the Code provides guidance on when it appears that a child or young person may have ALN, and deciding on the ALP required but this focusses on the evidence gathering which is required not the decision making process itself.

Issue: Communication of LA decisions

There is no clear process for notifying parents and young people about the decisions made by the LA.

This is particularly acute in the case of decisions which carry a right of appeal.

There is no standard form of letter which the LA is required to issue to complete its decision making process.

Whilst there are clear requirements under the ALN Code to communicate LA decisions to parent(s) or CYP, the evidence is that this is happening rarely. In those LAs where they have reviewed and introduced robust processes, there has been a rise in the number of appeals made to the Tribunal.

Person Centred Practice (PCP) meetings in some LAs seem to be used to inform parent(s) that their child does not have ALN or that an IDP cannot be maintained by the LA. This results in a formal decision not being issued or information not being provided about the right of appeal to the Tribunal. Too often, these meetings refer to an LA's policy as the basis of their decision rather than the law.

In some LAs, decisions and required information are not being clearly communicated to parent(s) or CYP. The use of on-line information systems or casual emails/text communication do not provide the required information about the decision that has been made, the reasons for the decision or the right of appeal to the Tribunal. In the worst cases, LA officers have telephoned parent(s) and provided nothing in writing. Often school ALNCos are misinformed about the relevant legal

test, such as when a CYP has ALN or when the IDP is to be maintained by an LA rather than a school. They then pass this incorrect information to parent(s).

Too many parents(s) are contacting the Tribunal because they are unclear whether or not a decision has been made by the LA. Where the Tribunal is persuaded that it is likely a decision has been made, the case is registered and then the LA is ordered to provide a copy of their decision. Until an LA has provided a decision to parent(s) or CYP with the information required under the ALN Code, the statutory time-limit of two months for registering an appeal with the Tribunal has not been triggered, as adequate notice has not been given.

Where a meeting is held by a school, FEI or LA to discuss a CYP's ALN or IDP, there is no express requirement to provide information or advice at these meetings. There is also no express requirement that any information or advice should be correct and based on the law.

7.20 **Rights of appeal to the Tribunal and the Tribunal's powers**

Relevant Law and Guidance

The rights of appeal to the Tribunal are set out in ***ALNET s.70(2):***

A child or young person and, in the case of a child, the child's parent, may appeal to the Education Tribunal for Wales against the following matters—

(a) a decision by the governing body of an institution in the further education sector in Wales under section 11 or a local authority under section 13, 18 or 26 as to whether a person has additional learning needs;

(b) in the case of a young person, a decision by a local authority under section 14(1)(c)(ii) as to whether it is necessary to prepare and maintain an individual development plan;

(c) the description of a person's additional learning needs in an individual development plan;

(d) the additional learning provision in an individual development plan or the fact that additional learning provision is not in a plan (including whether the plan specifies that additional learning provision should be provided in Welsh);

(e) the provision included in an individual development plan under section 14(6) or 19(4) or the fact that provision under those sections is not in the plan;

(f) the school named in an individual development plan for the purpose of section 48;

(g) if no school is named in an individual development plan for the purpose of section 48, that fact;

(h) a decision under section 27 not to revise an individual development plan;

(i) a decision under section 28 not to take over responsibility for an individual development plan following a request to consider doing so;

(j) a decision to cease to maintain an individual development plan under section 31(5) or 31(6);

(k) a decision under section 32(2) that a governing body of a maintained school should cease to maintain a plan;

(l) a refusal to decide a matter on the basis that section 11(3)(b), 13(2)(b), 18(2) (b) or 29(2)(a) applies (no material change in needs and no new information that materially affects the decision).

The ***Education Tribunal for Wales Regulations 2021*** cover Tribunal procedure.

The format of an IDP is set out in the ALN Code with a template provided. The ALN Code seeks to further define the contents of an IDP over which the Tribunal has jurisdiction.

ALN Code 23.13 & 23.14 - Elements of an IDP which can be appealed to the Tribunal

These elements are:

2A	*Description of the CYP's ALN*
2B.2	*Description of the CYP's ALP – ALP to be provided*
2B.3	*Description of the CYP's ALP – ALP to be provided in Welsh*
2B.5	*Start date*
2B.6	*End date*
2C.2	*ALP to be secured by an NHS body – ALP to be provided*
2C.3	*ALP to be secure by an NHS body – ALP to be provided in Welsh*
2C.5	*Start date*
2C.6	*End date*
2D	*Places at a named school/ institution or board/ lodging*

The additional learning needs transformation programme: frequently asked questions (guidance last updated 11 May 2022):

Unlike statements, IDPs are provided to children and young people with ALN irrespective of the severity or complexity of their needs. The statutory status of the IDP is the same irrespective of the child or young person's needs, with the same rights of appeal to the Education Tribunal for Wales (ETW) for anyone with an IDP.

Evidence

Many of the initial questions asked on the Tribunal's telephone line concern whether the parent(s) has a right of appeal and then, what they can appeal.

We did not understand what decision the LA had made and did not understand what we were needing to appeal to the Tribunal. There was no advice available. We ticked the boxes we thought we needed to. When we spoke to the Judge on the video before the hearing, they helped us to understand what the LA had done. The appeal was changed to include the school we wanted – even though the man from the LA said they could not do that.

The Tribunal cannot provide advice or support to the parent(s), CYP or LA but consistently telephone and email queries to the Tribunal's administration raise questions that they have not been able to answer elsewhere.

As part of the Tribunal process a case management hearing is held before a hearing to ensure that everyone is clear about the outstanding issues which need to be considered and decided in the case.

The whole ALN process is so confusing. The Judge was the first person who could explain it to us in language we understood. We found out what the LA had told us was wrong.

Issues

Issue: When is a right of appeal triggered

Where a school refers a decision they have made to the LA, i.e. that an IDP should be maintained by the LA, the LA then need to review that decision. Only once that LA decision is issued is a right of appeal to the Tribunal triggered.

Some sources of information provided by LAs to schools imply that a parent(s) or CYP has a right of appeal to the Tribunal against a decision made by a school when they have an IDP. This is not the case.

The information available on when there is a right of appeal to the Tribunal relating to decisions made by FEIs and when an LA must make a decision concerning a YP ALN post 16 is limited.

Issue: Multiple decisions – rights of appeal

The scope of an appeal to the Tribunal is not limited by the decision which triggered the appeal. For example, if a right of appeal is triggered by an LA refusing a request to maintain an IDP, an appeal can be registered against that decision but also against the contents of the IDP – description of ALN, ALP and educational placement under Section 2D of the IDP. If a decision is made that the LA must maintain the IDP, then the contents of the IDP can be reviewed as well, as an LA maintained IDP is then in place.

Issue: Disconnect between ALNET and the Code in relation to the Tribunal's jurisdiction

The law under ALNET s.70 gives the Tribunal jurisdiction to consider appeals. The ALN Code suggests the Tribunal can also decide appeals against the sections of the IDP which deal with start and end dates which are not specifically covered by s.70.

There is a prescribed form of an IDP which must be used by LAs. This sets out what should appear in each Section. Section 2B is for ALP to be secured by the LA. Section 2C is for ALP to be secured by an NHS body.

The ALN Code says that both are appealable to the Tribunal and Section 70 (2) (d) (the appeal right about ALP) does not distinguish between ALP secured by an LA and ALP secured by an NHS body.

However, the NHS body is not party to an appeal to the Tribunal which is between the Appellant and the LA. It is unclear, therefore, how effective a right of appeal is against Section 2C.

The Tribunal does have a (separate) power to make recommendations (Section 76).

Appendix 1 – Tribunal Statistics

Type of appeal (1)	**Sept 2024 – March 2025**	**Sept 2023 – Aug 2024**	**Sept 2022 – Aug 2023**	**Sept 2021 – Aug 2022**
Does the child have ALN	**12**	**8**	**16**	**2**
LA prepare and maintain an IDP	**9**	**6**	**2**	**0**
Refusal to Change an IDP	**10**	**2**	**0**	**0**
Refusal to take over responsibility of an IDP	**13**	**8**	**1**	**2**
Cease to maintain	**4**	**0**	**1**	**0**
Refusal to decide a matter	**4**	**2**	**0**	**1**
Need	**1**	**0**	**0**	**0**
Provision	**6**	**9**	**4**	**0**
School	**7**	**30**	**9**	**0**
Need & Provision	**5**	**4**	**0**	**1**
Need and School	**0**	**1**	**0**	**0**
Provision & School	**7**	**7**	**2**	**0**
Need, Provision and School	**12**	**29**	**5**	**1**
Total	**90**	**107**	**41**	**7**

Foot note (1): An appeal registered may cover more than one right of appeal

Hearing Representation

Parental Representation	Number	Percentage	Local Authority Representation	Number	Percentage
Self-represented	36	48.5%	Representative – non-legal	21	29%
Representative – non-legal	22	21.5%	Representative – Internal legal	4	5%
Representative – Legal	16	30%	Representative – External legal	48	66%