Tribiwnlys Anghenion Addysgol Arbennig Cymru

Special Educational Needs Tribunal for Wales

# DECISION

**Child:** The child
**Date of Birth:** Born in 2006
**Claimants:** The Parents
**Responsible Body:** Governing Body of the Comprehensive School

**Dates of Hearings and Tribunal Decision Meetings:** 2 days in 2019 and 3 days in 2020

**Persons Present:** (Claimant – Parent)
(Claimant – Father – attended 21 and 22 November)

(Responsible Body Legal Representative – Solicitor)
(Responsible Body – Witness – Assistant Head)
(Responsible Body – Witness – ALNCO)

**Claim and Preliminary Issues**

1. There have been 3 in-person hearings in relation to this claim. During these hearings the parties were able to agree the following matters:

   The Claimants alleged that the child is disabled. They claimed that as such the Governing Body of the Comprehensive School has a responsibility not to discriminate against the child, as a pupil at the school, for reasons related to the child's disability, in the way it provided education and related services and benefits.

   The Responsible Body accepted that it had been correctly identified as the appropriate Responsible Body in this claim and it also accepted that the child is disabled as defined by s.6 of the Equality Act 2010 and that as such it accepted that as the Responsible Body for the School it had a duty to avoid discriminating against the child on the basis of the child's disability in the way in which it provided education and related services and benefits. In addition, it accepted that the incidents involved in the claim fell within the scope of provision of education and related services and as such came under the jurisdiction of the SENTW under s.85 of the Equality Act 2010.

2. Both parties agreed that the claim related to the following incidents and agreed the following parts of the Equality Act 2010 applied in respect of each incident:

- A fixed term exclusion relating to an incident involving the child that occurred in May 2019. The exclusion decision was made in May 2019 and the period of exclusion was for two inclusive days in May 2019. It was agreed that the claim related to s.15 of the Equality Act 2010 in that the Claimants alleged that the decision discriminated against the child due to behaviour related to the child's disability and also to ss. 20 – 21 of the Act in that the Claimants alleged that there was a failure to make reasonable adjustments to policies, practices and procedures and a failure to provide auxiliary aids.

- An alleged failure to afford the child the opportunity to take part in restorative justice meetings in response to a number of incidents that involved the child in the academic year 2018 – 2019. It was agreed that s. 15 and ss. 21 – 22 of the Equality Act 2010 should be applied in the context of this aspect of the claim.

- The child's attendance at a 'Well-being Hub' at break and lunchtimes, which applied from May 2019 onwards, and is alleged to have become too restrictive from June 2019 onwards and insufficiently flexible to allow the child to socialise and which it was alleged the Responsible Body failed to make reasonable adjustments to address. It was agreed that ss. 20 – 21 of the Equality Act 2010 should be applied to this aspect of the claim.

- From May 2019 onwards, until the end of the academic years 2018 – 2019, it is alleged that the child did not take part in all PE lessons at school because of an alleged failure to make reasonable adjustments and was required instead to attend the School's 'Wellbeing Hub.' It was agreed that ss. 20 – 21 of the Equality Act 2010 should be applied to this aspect of the claim.

- The child was not permitted to take part in an 'end of year reward' trip to a Theme Park in July 2019. The Claimants alleged that there was a failure to make reasonable adjustments contrary to ss. 20 – 21 of the Equality Act 2010 and also the Claimants alleged that the School's behaviour policy and its related practices and procedures in determining attendance on

the ‘rewards’ trip were indirectly discriminatory contrary to s. 19 of the Equality Act 2010.

- The child was not permitted to attend an ‘end of year activities’ trip to a Zoo in July 2019. It was alleged that there was a failure to make reasonable adjustments to policies, practices and procedures in relation to this trip and that no reasonable adjustments were made to provide auxiliary aids to support the child’s attendance on the trip contrary to ss. 20 – 21 of the Equality Act 2010.

- The child was not permitted to attend an ‘end of year activities’ trip to a National Park in July 2019. Again, it was alleged that there was a failure to make reasonable adjustments to policies, practices and procedures in relation to this trip and that no reasonable adjustments were made to provide auxiliary aids to support the child’s attendance on the trip contrary to ss. 20 – 21 of the Equality Act 2010.

- The child was not able to attend a school trip to France in July 2019. It is alleged that this arose as a consequence of the Responsible Body’s failure to make reasonable adjustments under ss. 20 – 21 of the Equality Act 2010.

For the avoidance of doubt the Responsible Body disputed that it was in breach of its duties under the Equality Act 2010 in respect of all 8 parts of the claim.

3. An additional potential claim, raised during the hearings in November 2019, by the Claimants that the Responsible Body Assistant Head’s decision to return the child home in May 2019 constituted a ’soft - exclusion’ contrary to the Responsible Body’s Equality Act duties was not pursued.

4. In addition, during the course of the hearings, the Claimants maintained that the Responsible Body was in breach of its duties under ss. 20 – 21 to make reasonable adjustments for the child by not providing sufficient transitional support for the child to assist him in making the child’s secondary transfer to the School and by not providing him with sufficient additional support throughout the course of Year 7. The Claimants argued that had additional support been made available the incident relating to the fixed term exclusion and subsequent events may not have occurred.

5. The Responsible Body denied these claims.

6. Further details in respect of these issues are set out in the Notice of Adjournment and Directions issued in December 2019 following the in-person hearings of November 2019. These Directions also outlined the additional preliminary matters that were addressed during the course of the hearings, including the admission, by consent, of 6 additional pieces of evidence and the replacement of un-redacted copies of pages 679 and 937 of Bundle A with redacted copies of the same documents.

7. Additional Directions in relation to the claim were also issued on 5 December 2019 and 10 December 2019 in advance of the third in-person hearing that took place on 17 December 2019. During the course of that hearing, in addition to concluding evidence relating to the various aspects of the claim, the Tribunal Panel and the parties watched CCTV footage of the incident that occurred on 1 May 2019 that resulted in the child receiving the two-day fixed term exclusion that formed part of the dispute in this claim.

8. The parties were each given permission to submit written closing submissions and address issues relating remedies. The Claimants provided this written information in two parts, dated in January 2020. The Responsible Body provided its written closing submissions in January 2020.

9. The Tribunal Panel then sat to make its decision in relation to this claim in January, February and March 2020.

10. The decision relating to this claim was due to be issued in March 2020. Extremely regrettably the Chair was not able to do this due to significant IT difficulties and Covid – 19 related difficulties. Both of these issues persisted during the period of Covid – 19 lockdown and thereafter the Chair and members of their family have been unwell. The Chair apologises to both parties and to the child for the resulting delay in issuing this decision.

**Facts**

11. At the time of the incidents that are outlined above and during the hearings in relation to this claim and the subsequent decision-making meetings the child was a pupil at the Comprehensive School. At the time of the disputed incidents the child was in Year 7 at the School and at the time of the hearings and decision-making meetings the child was in Year 8.

12. The child had previously attended Primary School (Local Authority School) and moved to a Comprehensive (in a different Local Authority School) on secondary transfer in September 2018.

13. At the time of transfer to the School the child did not have a Statement of Special Educational Needs. On transfer to the school the child was identified as having ALN and was placed at the School Action Plus Stage of the SEN Code of Practice. Later, in February 2019, the School ALNCO made an application for additional funding to support the child using the maintaining Local Authority's ALN funded IDP process. This application was refused by the Local Authority in March 2019. Thereafter, the Claimants made a request for the child to undergo an SEN statutory assessment and the School provided evidence in support of this application in June 2019. The child was issued with a Statement of Special Educational Needs by the Council in August 2019, with the proposed Statement having been issued in July 2019. A copy of the final Statement is set out at pages 145 – 154 of Bundle A.

14. It was accepted by the Responsible Body that the child is disabled within the meaning of s. 6 of the Equality Act 2010 and that as such the child has a 'physical or mental impairment that has a substantial and long-term adverse effect on the child's ability to carry out normal day to day activities.'

15. The child was diagnosed with autistic spectrum disorder in March 2017 by Consultant Paediatrician A copy of their report, dated March 2017, is set out at page 833 of Bundle A. Shortly thereafter, an Educational Psychologist, also provided a report relating to The child. Their report is dated March 2017 and is set out at page 195 of Bundle A.

16. It should be noted that whilst the Consultant Paediatrician issued an ASD diagnosis in respect of the child they had some reservations about confirming the diagnosis based on the relatively low scores for ASD features noted in the School's ND questionnaire and as a result of uncertainty as to whether the child's 'challenging behaviours' were prompted by the child having a good understanding of other people's thought processes or were prompted by the child being naïve to the 'theory of mind' of others and as a result of early family disruption and possible psychological issues arising from this. In addition, the Consultant Paediatrician noted that the diagnosis would not preclude that in future the child could undergo further assessment that may come to a different conclusion and that some children evolve along the

autistic spectrum and may need to be re-diagnosed at different stages of their lives.

17. In addition to the diagnosis of ASD, the Consultant Paediatrician also noted that the child had significant conduct problems and a concern about the child's mood and emotionally functioning generally.

18. Thereafter, the Educational Psychologist's report noted the Consultant Paediatrician's diagnosis as set out above and noted also that the child was presenting with different behaviours across school and parental settings.

19. Thereafter, the School made an application to the ISCAN and in December 2017 the ISCAN Coordinator issued a letter indicating that the referral that had been made did not meet the criteria for a neuro-developmental assessment to be carried out and it noted that the child's behaviour could be due to recent changes within family dynamics and it was agreed that the child should continue with counselling support from Families First and Torfaen counselling support.

20. As a result of the above, when the child transferred to the Comprehensive the child's initial IDP, set out at page 839 of Bundle B, recorded that the child has 'ASD tendencies' and noted that the child 'can find social interactions difficult,' 'can be lacking in empathy' and that the child 'likes to know there is someone the child can talk to.'

21. A further Educational Psychology assessment was conducted by another Educational Psychologist and they prepared reports of February 2019 and thereafter in March 2019 where the Local Authority confirmed when indicating that it did not support the School's request for additional IDP support that the Educational Psychology Service accepted the child's diagnosis of ASD.

22. In August 2019 a statement of special educational needs was issued for the child in which it was confirmed that the child had needs arising from a diagnosis of ASD, emotional, social, behavioural difficulties and attachment difficulties.

23. The Claimants argued that the child was well supported in the child's previous primary placement at the School and that a failure to recognise the child's needs and poor transition into the Comprehensive School in September 2018 and limited support over the course of the

year led to a deterioration in the child's behaviour and contributed to the incidents that are summarized below.

24. The Responsible Body denied the Claimants contentions in regard to transition and in regard to the support that was provided to the child during the course of the year. It argued that, based on the information received from the Primary School, the child's needs were recognised, and that appropriate additional transition support was offered and that appropriate support was offered in line with the graduated response to meeting the needs of pupils with SEN at School Action Plus of the SEN Code of Practice. At the point at which it was felt that additional support over and above School Action Plus was required the School made an application for additional support and funding to its maintaining Local Authority, the Council, and pending the final resolution of matters with the Council, the Responsible Body contended that the School did all it reasonably could to provide support for the child in the context of a £1.2 million budget deficit as set against an overall budget of £5.98 million, and an ALN overspend of £58,000 in the context of an overall ALN budget of £175,0000 which had resulted in the need to cut costs and freeze all additional spending.

25. In regard to the fixed term exclusion of May 2019 that arose from an incident involving the child in May 2019 it is not in dispute that the incident concerned the child jumping onto the bonnet of a car which resulted in damage to the car. It is also not in dispute that the incident occurred during a PE lesson on that day, as the class group walked from the changing rooms to the playing field and passed through the school car park.

26. The Tribunal Panel and the parties viewed CCTV camera footage that had recorded the incident on 1 May during the hearing in December 2019. The footage showed a group of children in a car parking area who appeared to be mulling around in this area. There were a number of members of the group who were in school uniform, whilst the remainder of the group were wearing PE kit. The group then appeared to be jumping on and off something. Thereafter, one child, who was identified as the child, and who was wearing school uniform, appeared to climb on a structure and then the same child pulled away from the group of children and approached a parked car, looked at it and then ran and jumped up and knelt on the front of the car. The child then came away from the car and repeated the same action – running and jumping onto the front of the car ending in a kneeling position on the front of the car. The same child then moved away from the car and then came back towards it and looked at the car once more and then appeared to throw something at it.

27. A witness statement relating to the incident was provided and was set out at page 85 of Bundle B and a copy of the Responsible Body Assistant Head's notes relating to the incident, with the child's undisputed account of events, along with photos of the damage caused to the car were also provided and were set out at pages 86 – 88 of Bundle B. Taken together these appeared to corroborate what was viewed in the CCTV footage. In addition, in their account of events it is recorded that the child did not know why they did what they did, they did not know who the car involved belonged to and no one told him to act in the way the child did.

28. The Claimants did not take issue with what happened during the incident. Their position was that the School was 'negligent' and in breach of its disability related duties under s. 15 and s. 20 of the Equality Act 2010 in allowing the child to be in the car park unsupervised. They argued that the incident was prompted by the child's anxiety related difficulties which are linked to the child's disability and appropriate supervision should have been provided because of the child's unpredictable behaviour, as evidenced, they argued, by previous incidents of poor behaviour from the child. In addition, they argued that a fixed term exclusion was unjustified and that there were more appropriate alternative sanctions open to the School to take in response to the incident, such as internal isolation or a restorative justice meeting.

29. The Responsible Body's position was set out in full in its closing submissions of January 2020, at pages 11 – 14. In the first instance it argued that the incident did not arise as a result of the child's disability and as such it went on to argue there was no breach of either s. 15 or ss. 20 – 21 of the Equality Act 2020. In the alternative, it argued that if the Tribunal Panel found that the incident was connected with the child's disability, there had been no failure to make reasonable adjustments under ss. 20 – 21 of the Equality Act and neither was the issuing of a fixed term exclusion an unjustifiable response to the incident under s. 15 of the Act.

30. In regard to restorative justice meetings the position of the Claimants was that the School had refused to allow the child access to restorative justice meetings in line with the School's Behaviour Policy during the academic year 2018 – 2019 and that this was discriminatory under ss. 20 – 21 and s. 15 of the Equality Act 2010. The Claimants argued that, as happens in the School where the Parent works, staff involved should have been supported and given background information relating to the child and on this basis, as is the case at the School where the

Parent works, this would have meant that the staff involved would have been more likely to engage in the restorative justice process with the child.

31. The Responsible Body denied the Claimants claims. The position of the Responsible Body was that the child had taken part in a number of restorative justice meetings through the course of the academic years 2018 – 2019 and that on two occasions the decision was taken not to use this process because the individual staff involved declined to be involved due to their own personal reasons and for the process to be used at the Comprehensive School, as set out in the School's Behaviour Policy, both parties involved needed to give consent. The reasons for the respective members of staff not wishing to take part in restorative justice meetings on the two relevant occasions when this happened were stated to be that in regard to the incident involving damage to the parked car the member of staff wished to remain anonymous and did not want the incident to become personal between a member of staff and a student and in relation to the incident where the child verbally abused a member of staff the member of staff lived close to the child and did not want to risk any further incidents by engaging with the child.

32. In regard to the issue of the child's loss of access to unsupervised free time during breaks and lunchtimes the Claimants argued that whilst they had initially agreed to the child being placed at the Well-Being Hub for breaktimes and after the child had eaten lunch so as to have some additional support and supervision, they had made it clear at a meeting in June 2019 that in their view the measure had become overly restrictive for the child and things needed to change to address this problem. The Claimants argued the child did not like attending the Well – Being Hub as none of the child's friends were there and he did not feel the child could socialise and saw the child's attendance there as a form of punishment. The Claimants argued that the School did not take any action to address this issue and in failing to do so it was in breach of its ss. 20 – 21 duties under the Equality Act 2010.

33. The Responsible Body denied that it had been in breach of its ss. 20 – 21 duties under the Equality Act 2010. It argued that staff at the School had worked in close consultation with the Parent in respect of the child's attendance at the School's Well-Being Hub and that no strategies have been introduced relating to this provision or withdrawn without the agreement. In support of this position, the Responsible Body referred in its closing submissions to the initial email from ALNCO to the Parent of March 2019 which set out the plan for the child to attend the Well- Being Hub at breaks and lunchtimes and how this

would work and to the Parent's response indicated that the Parent was in support of the proposal. It also referred to an email from the Parent to ALNCO in June 2019 during which the Parent was seeking additional support for the child to take part in an on- school site Geography activity in case the child did something silly because of a change in routine, which it contended demonstrated that the Parent continued to support the child's attendance at the Hub. In addition, it referred to an email from ALNCO to the Parent in which ALNCO suggested that it may be appropriate for the child to return to a full timetable with the exception of PE, when the child would continue to attend the Hub, and with the exception of break and lunchtimes also as there was uncertainty around the child's ability to cope at unstructured times, and to the Parent's reply which indicated they supported a cautious approach to reintegration.

34. During the course of the evidence that the Tribunal Panel heard from both parties on this issue ALNCO explained that the child was taken directly to the Hub at breaktime and spent the child's breaktime there and at lunchtime the child had the opportunity to socialise with the child's friends whilst having lunch in the Lunch Hall, whilst at the same time being supervised remotely, and thereafter the child was taken to the Hub for the remainder of the lunchtime period. ALNCO explained that the child was not isolated within the Hub, and he could mix with staff and other children who were attending there but she accepted the child did not always regard the child's time at the Hub in a positive way and that the child's friends did not attend the Hub. The ALNCO went on to say that it would have been possible, however, for the child to be allowed a friend to attend the Hub if this had been requested and that she had assumed that the child and the Parent had known this. On being asked about this further ALNCO accepted that the School had not put this forward as an option to address the Claimants concerns although it was something that could have been provided for.

35. Flowing from the incident in the School's car park in May 2019, the details of which have been set out above it is not in dispute that the School decided that the child would require additional 1:1 supervision to be able to take part in PE lessons from thereon in. Neither was it disputed that because this additional supervision was not available the child could not take part in PE lessons from this time until the end of the school term and instead would spent this time in the School's Well-Being Hub where additional supervision was available.

36. The Claimants argued that in taking this action the Responsible Body was in breach of its duties under ss. 20 – 21 of the Equality Act 2010. In the first instance they argued that given the nature of the incident in

the car park in May 2019 it would have been reasonable to address safety concerns by ensuring additional staff supervision during transfer from the PE changing room to the playing fields and back in a similar arrangement to that which was applied when the child was taken to and from the Well- Being Hub at break and lunchtimes rather than requiring full 1: 1 additional supervision throughout every PE lesson and in failing to give consideration to this the Responsible Body was in breach of its duty to make reasonable adjustments. In addition, the Claimants argued that notwithstanding the School's undisputed financial difficulties such was the importance of the child being as fully included in lessons and activities as possible that the School ought to have given consideration to making any necessary additional provision to ensure that inclusion took place.

37. The Responsible Body argued that following on from the incident in May 2019 it was necessary for 1:1 additional supervision to be provided for the child during PE lessons for safety reasons so as to avoid the risk of the child repeating behaviour. It argued that due to a £ 1.2 million budget deficit, the need to cut costs and a freeze on additional spending, the School did not have the finances or the resources to make this provision for the child and therefore it was necessary to withdraw the child from PE lessons from May 2019 onwards, as a short –term measure, pending additional resources/ funding being made by the Local Authority. It also argued that the Claimants were supportive of the need for additional supervision and in its closing arguments the Responsible Body referred to an email from the Parent of May 2019 in which they stated that the child may do this again [cause damage to a car] and asked what steps the School would be putting in place to prevent the incident in May happening again and to an email of May 2019 in which the Parent indicated that they believed the School were aware of the child's erratic behaviour and leaving the child unsupervised in a car park with other children was in their view negligent. It also argued that it was not reasonable to timetable its Pastoral Officer to provide support in PE lessons or withdraw resources from the Well- Being –Hub to support the child for these lessons.

38. In regard to the exclusion of the child from a 'reward' trip to a Theme Park in July 2019 the Claimants argued that the School's behaviour/ reward policy and the way that it was applied to attendance on the 'reward' related trip was indirectly discriminatory under s. 19 of the Equality Act 2010 and that the School did not make sufficient reasonable adjustments to this policy and its decision -making process in regard to the child's attendance on the trip and therefore was in breach of its duties under ss. 20 – 21 of the Act. In addition, the

Claimants argued that had sufficient adjustments been made to the School's policy and its decision- making processes, such that the child had been allowed to attend the trip, it would have been possible to include the child on the trip safely with appropriate additional support.

39. The Claimants recognised in evidence that the School had made an adjustment to its policy regarding allocation of behaviour points and how these were measured to take account of the child's disability related behaviour in March 2019 but argued that prior to this no adjustment had been made and in considering the child's attendance on the trip, any points that the child had accrued from September – March should not have been considered and taken into account. They argued that this was particularly the case given that, in their view, and as already explained above, the School had failed to support The child's effective transition into the School in September and had not provided him with sufficient support during the course of the year, which in turn, in the view of the Claimants, had exacerbated the child's difficulties and related behaviours.

40. The Claimants argued that not being included on this trip was particularly difficult for the child as all the child's friends were allowed to attend.

41. The Responsible Body denied both aspects of the claim as it related to the theme park trip. In evidence the Parent and ALNCO explained that staff had been instructed prior to March 2019 to record as many incidents as possible in the child's behaviour log for the purpose of making an application for advice and support but to mark 'for information only' those related to the child's disability. Thereafter, the Parent explained that the child had been placed on the School's adjusted behaviour/reward system called the B3 ALN Behaviour Point System. They explained that the threshold for attendance on the trip was a low one in any event so as to include as many pupils as possible and set at approximately 10 points or less and there was deliberately no 'glass ceiling set' and explained that when it came to considering attendance on a theme park reward trip for those pupils identified as having particularly high behaviour points, which might preclude attendance on the trip, each pupil was looked at on an individual case by case basis so that their particular needs and circumstances could be carefully considered and they could be included on the trip if it was possible to do so. The Parent emphasised that this is exactly what the School did in relation to the child. In the child's case the child said that notwithstanding the adjustments that had been made to the School's behaviour policy/reward policy relating to the child had a very high level of behaviour points, at approximately 65, and even when the child's

disability and individual circumstances were taken into account, and even had the points accrued during September – March been discounted as suggested by the Claimants, the position was and would still have been that it would not have been appropriate to include the child on the reward trip. They said that the Head of Year had not been responsible for making the decision relating to the child's attendance. They also said that it had been possible to include other pupils with ASD on the trip and that the child had not been the only pupil not to have been included on the trip.

42. ALNCO told the Tribunal that she had sought advice from the County's Autistic Spectrum Disorder Unit at a School and from the County's Educational Psychology Service regarding the child's attendance on the trip and had been advised that for pupils with ASD it was important to set suitably adjusted boundaries and expectations in terms of behaviour.

43. The Parent accepted that even had it been possible, looking at the child's individual circumstances and making reasonable adjustments accordingly, to arrive at a conclusion that he ought to be included on the trip as a 'reward,' the School would have had significant health and safety concerns about allowing the child to attend the theme park trip and ensuring the child was kept safe at all times. They also accepted that it would have been difficult to provide effective 1:1 support and in view remote supervision would not have appropriate. They accepted no individual risk assessment was conducted regarding this trip.

44. ALNCO denied the claim that the School had not put in place suitable transition arrangements for the child and maintained that the School had done all it reasonably could to support the child's needs throughout the School year in line with the graduated response identified as appropriate under the SEN Code of Practice and taking into account the School's dire financial circumstances

45. In regard to the child not being allowed to take part in an 'activities week' trip to the National Parks in July 2019 the Claimants argued that the child was not allowed to attend for alleged health and safety concerns over the child's disability related behaviour and that the School had not carried out a specific risk assessment relating to The child's possible attendance on the trip when arriving at this conclusion and based on this had not given proper consideration to whether it was possible to make reasonable adjustments to school policies, practices and procedures in relation to this trip and whether reasonable adjustments could be made to provide auxiliary aids to support the

child's attendance on the trip contrary to ss. 20 – 21 of the Equality Act 2010.

46. The Responsible Body denied this claim. It argued that following a discussion between ALNCO and the Parent about the child attending the town trip, as explained in an email from ALNCO to the Parent of 3 July 2019, ALNCO had been looking at the possibility of the child attending the trip and teachers were willing to consider the child's attendance if extra support could be provided, which ALNCO was looking into, when an incident occurred involving the child on 3 July whereby the child ran off from the Well-Being Hub at break time, refused to come in at lunchtime, and ran around the car park and refused to follow instructions and then banged a Well-Being Hub window to the point where staff were concerned it would break. In their email of 3 July, ALNCO advised the Parent that this incident made it 'difficult to look at the risk assessment and come to the conclusion that it would be safe to take the child on the trip at the moment,' her email went on to say that the child 'has been working well in the Hub in Lego Activity with two members of staff and three students this last lesson' and that she hoped that as 'we continue to work with the child he will learn to manage the child's impulses, so that we can consider taking him on trips in the future.' The Responsible Body argued that as a result of this incident and given that there had been previous incidents in school of the child running away and not following instructions and given that the trip to a town would involve some unsupervised time around the town too, the professional judgement of the School was that it would not have been safe to take the child on this trip and the School was concerned not to put the child at risk. Further, in evidence ALNCO said that it would not have been possible to secure a trusted member of staff to support the child on the trip and had it been possible to secure support from an unfamiliar adult there would have been, in her opinion, a greater risk of the child ignoring instructions and running away. It was emphasised that the decision was taken to keep the child safe, and it was not something that the School did to punish the child or to discriminate against the child due to the child's disability.

47. It was accepted by both parties that the Claimants did not make a formal application for the child to attend the town trip based on ALNCO email of 3 July 2019 in which they indicated that the School considered it would not be safe to for the child to take part in the trip.

48. During the hearing the Responsible Body was asked to point to the risk assessment that supported the position taken by the School in regard to the child's participation on this trip. The Responsible Body had provided a copy of a general school- based risk assessment relating to

the child, dated June 2019, which was set out at page 933 of Bundle A. In this document it was recorded that the child's 'propensity to act impulsively eg. run away and to damage property were hazards and could cause risk to the child, school property and to teaching staff and to TAs. One of the likely consequences of an incident was noted to be 'personal harm, injury, safety' and the level of risk involved in this particular type of incident was noted to be 'medium.' One of the control measures was noted to be that the child should be supervised at unstructured times and one of the actions required was noted to be to 'assess suitability of the child's access to extra- curricular activities, dependent on support available.' The Responsible Body accepted that it had not conducted a specific written risk assessment regarding the child's participation on the town trip but had formed the view that it would not have been possible to guarantee the child's safety on the trip based on professional judgment.

49. In regard to the child not being allowed to take part in an 'activities week' related trip to a Zoo in July 2019 the Claimants argued that the child was not allowed to attend because of the child's disability related behaviour, and that the School had not carried out any risk assessment relating to the child's attendance on the trip, and had given no proper consideration to what reasonable adjustments could have been made to facilitate the child's participation and as such the School had been in breach of its duty to make reasonable adjustments under ss. 20 – 21 of the Equality Act 2010.

50. The Responsible Body denied this claim. It argued that the School had no record of the Claimants applying for the child to attend this trip and that in order for a pupil to be able to attend the trip an application needed to be have been made and a payment/ fee was also due. It contended that as neither of these things were done in regard to the child this was the reason why the child could not attend. It argued that had the application and fee been submitted then it would have been possible for the School to conduct a risk assessment to look at how it could support the child's attendance on the trip but given that this had not happened this had not been possible.

51. In evidence the Parent accepted that she found out about the trip to a Zoo via a friend approximately 1 week before the trip was due to take place. They explained that a friend's child was not allowed on the theme park trip but was allowed to attend the Zoo trip. They said that they believed they had spoken to the Head of Year, and to ALNCO after finding out about the trip and had been told that the child could not attend the trip. They said that the child had been very upset about not

being able to take part and having to stay in school along with the other children who were not attending the trip.

52. In evidence ALNCO said that whilst they recollect having a conversation with the Parent concerning the theme park trip and town trips in early July 2019, they did not recollect having had any conversation about the child attending the activities week trip to a Zoo.

53. In regard to the child not attending a school French trip in July 2019 the Claimants argued that the child had not been allowed to attend the trip because of the child's disability related behaviour and that the School had not carried out any risk assessment relating to the trip, had not considered what reasonable adjustments could have supported The child's attendance on the trip and so it had been in breach of its duty to make reasonable adjustments under ss. 20 – 21 of the Equality Act 2010.

54. The Responsible Body denied this claim. It argued that applications and down payment for the relevant trip had to be submitted by no later than October 2018 and that the child was not able to attend the trip because the School did not receive any such application or down payment in respect of the child. It maintained that as the application was due for submission shortly after the child arrived at the School and before concerns grew in regard to the child's behaviour the School would have had no reason not to allow the child's application to go forward and therefore had the Claimants made the relevant application and down payment the application would have been accepted at that time. This position was confirmed by the email from a Teacher of November 2019, at page 71 of Bundle B, where they indicated in response to a query from the Parent asking for information regarding how the child's application to attend their French trip was managed that 'The child did not apply to go on my Year 7 trip so there was no issue.'

55. In evidence the Parent accepted that the Claimants had not submitted an application to the School within the stipulated timescale of October 2018.

56. In the Claimant's Case Statement at page 80 of Bundle A it is said that the Claimants were told the child could not attend the trip because of the child's behaviour in term 1 and that this had been said to the Claimants by the Head Teacher, prior to the child's fixed term exclusion. The Parent reiterated this in their evidence and said that they believed ALNCO was present during the meeting when this was said and that the conversation took place when the Parent had asked

whether, although late, the child could attend the trip. In an email dated November 2019 the Head Teacher denied having told the Claimants that the child could not attend the trip and in evidence ALNCO indicated that they did not recollect this having been said.

57. The child's views are set out by the Claimants at page 97 of Bundle A. In this document the Claimants indicated that they had not shared details of the legal proceedings with the child as they were keen to try to maintain as positive a relationship between home, school and the child as possible and to share the information would adversely affect this and impact negatively on the child. However, it was recorded that the child views themself as 'bad.' The child was reported to take the view that teachers are against them and believes the child is unfairly treated and that the child tries to be good and yet there is no reward. The child was also reported to struggle with the child's diagnosis and wants to 'fit in and be normal.'

58. The Claimants set out their position in regard to remedies in their Note of Claim set out at page 8 of Bundle A and this was addressed further in their closing submissions of January 2019.

59. The Responsible Body maintained that it had not been in breach of any of its duties under the Equality Act 2010 in regard to this claim and therefore contended that no remedies should be awarded. This position was reiterated in the Responsible Body's closing submissions of January 2019.

**Tribunal Conclusions with Reasons for the Decision**

60. In reaching the decision the Tribunal Panel carefully considered the written evidence and arguments submitted by the parties and the oral evidence provided during the hearings. The Tribunal also considered relevant sections of the Equality Act 2010, in particular s. 6, s. 15, s. 19 and ss.20 - 21 of the Act. In addition, the Tribunal Panel considered the case of C&C v The Governing Body of a School, The Secretary of State for Education (First Interested Party) and The National Autistic Society (Second Interested Party (SEN) 2018 UKUT 269 (AAC) referred to by the Claimants during the hearings. Further the Tribunal Panel had regard to The Secretary of State Guidance, 'Guidance on matters to be taken into account in determining questions relating to the definition of disability,' May 2011, The Equality and Human Rights Commission Non- Statutory Guidance, 'What Equality Law Means for you as an Education Provider in Wales: A Guide for Schools,' and Welsh Government, 'Exclusion from schools and pupil referral units,'

Guidance Document No: 171/2015, which was relevant at the time of the alleged fixed term exclusion in May 2019.

61. As already indicated above the Responsible Body accepted that the child was disabled within the meaning of s. 6 of the Equality Act 2010. On transfer from the Primary School in September 2018 and based on the somewhat equivocal expert evidence available at that time, along with a rather unhelpful ISCAN refusal to assess letter, the School's September 2018 IDP clearly indicated that the child was accepted as having 'ASD traits' and was also accepted as finding social situations difficult and by March 2019 and prior to the key incidents that were the main subject of this claim the School had accepted the indication from its maintaining Local Authority that the Educational Psychology Service accepted the diagnosis of the child as being autistic.

62. Given the above it seemed to the Tribunal Panel that the School had accepted that the child was disabled in terms of the child's social and emotional functioning from the time that the child had transferred into the School and was in fact very much focused on how these difficulties were presenting themselves in school at that time and in the view of the Tribunal Panel on the evidence presented the School did appear to have appropriate regard to the child's needs at that time. Thereafter, at the time of the 8 subsequent incidents of alleged disability discrimination raised in this claim, which covered the period May 2019 – July 2019, the School clearly had accepted that the child had a diagnosis of ASD.

63. In regard to the fixed term exclusion issued in May 2019 the Tribunal Panel concluded on the balance of probabilities that there was in this instance a causative link between the child's actions in May 2019 and the child's disability related anxious behaviours. However, the Tribunal Panel concluded that there had been no breach by the Responsible Body of its duty to make reasonable adjustments under ss. 20 – 21 of the Equality Act 2010 by not providing the child with additional supervision during unstructured times, as alleged by the Claimants, at that point in time. The Tribunal Panel also concluded that there had been no breach by the Responsible Body of its duty under s. 15 of the Equality Act 2010 in respect of its decision to issue a fixed term exclusion of 2 days in response to the child's actions in May 2019. On this basis the Tribunal Panel decided to dismiss this aspect of the claim.

64. In arriving at the decision that there had been no breach of ss. 20 – 21 of the Equality Act the Tribunal Panel took the view, based on all the evidence that it heard, that at that point in time, and notwithstanding

the child's disability related behaviours, the Responsible Body could not have reasonably foreseen that the child would have acted in the way that the child did in May 2019 during a PE lesson and so needed to be provided with additional supervision as maintained by the Claimants.

65. Over the course of the academic year beginning in September 2018 the child had made regular repeated journeys to and from the School's changing rooms to the School's playing fields as part of the child's PE lessons without any concerns being raised regarding the child's behaviour. In addition, in the view of the Tribunal Panel, the incidents referred to by the Claimants that ought, in their view, to have given rise to the introduction of additional supervision for the child prior to May, namely, the incident where the child climbed on a car in the School foyer and the incident where the child caused damage to the toilets, were qualitatively different to the incident that occurred in May in that they had occurred outside the remit of lessons and were incidents of misbehaviour that occur in schools relatively frequently, whereas in the view of the Tribunal Panel the child's actions in May occurred within the context of a lesson and were exceptional in nature. As a result, in the view of the Tribunal Panel, the Responsible Body had not been in breach of ss. 20 – 21 by not putting in place additional supervision during the child's PE lessons and, in the view of the Tribunal Panel, even if it had put in place additional supervision during unstructured times in response to the incidents of misbehaviour identified by the Claimants, on the balance of probabilities, in the view of the Tribunal Panel, this additional supervision would not have been applied to the child during a PE lesson and so would not have acted as a preventive measure in relation to the child's conduct in May 2019.

66. In arriving at the decision that there had been no breach of s. 15 of the Equality Act 2010 in relation to the decision to issue a fixed term exclusion of two days in May 2019 the Tribunal Panel was of the view that the exclusion was a proportionate means of achieving a legitimate aim given the particular circumstances relating to the incident. The Tribunal Panel accepted that the sanction was aimed at maintaining good order and discipline in school and also aimed at helping the child to understand that individual actions have consequences and in the opinion of the Tribunal Panel these are very important and necessary aims in a school context. Further, based on the evidence of the Parent, who the Tribunal Panel considered to be a very honest and creditable witness, the Tribunal Panel was satisfied that the School had given careful consideration to this matter, had looked at whether it was appropriate to issue a lesser form of sanction in response to the incident and had concluded that the nature of the incident and its

gravity was such as to merit a short, fixed term exclusion. It seemed to the Tribunal Panel that the incident in May was an exceptional and serious breach of discipline that resulted in significant damage to the property of another member of the school community and had the potential to have caused harm to the child himself. As such, the Tribunal Panel took the view that the issuing of a fixed term exclusion was proportionate both in terms of maintaining discipline in the School and in terms of setting boundaries for the child themself and the lesser sanctions identified by the Claimants would not have been sufficient in the circumstances to achieve these legitimate aims.

67. In regard to the issue of restorative justice meetings the Tribunal Panel concluded that the Responsible Body had not been in breach of its ss. 20 – 21 duty to make reasonable adjustments or its duty under s. 15 of the Equality Act 2010 not to discriminate against the child by treating the child less favourably because of something arising from the child's disability. In considering this matter the Tribunal Panel looked at each incident separately and applied the relevant legislation to each, however, since the Tribunal Panel reached the same conclusions in each case, for ease of drafting and to avoid repetition the Tribunal Panel's conclusions regarding each incident are set below together.

68. In regard to ss. 20 – 21 and reasonable adjustments the Tribunal Panel accepted the evidence presented by the Responsible Body that there had been a number of occasions during the academic year 2018 – 2019 when the child did take part in restorative justice meetings and that on the two occasions when such meetings had not been used this was because the particular members of staff involved declined to take part for their own personal reasons in line with the Responsible Body's 'Behaviour for Learning Policy,' set out at page 684 of Bundle A, which explains that the School adopted a consensual approach to such meetings. The Tribunal Panel also accepted the evidence of the Responsible Body that meetings were supported by trained staff.

69. In the view of the Tribunal Panel therefore there had been no automatic disapplication of the child from access to the School's restorative justice processes.

70. Further, whilst the Parent indicated that things are done very differently in the School where they work, it seemed to the Tribunal Panel that the school's approach to restorative justice meetings and the requirement for meetings to be consensual were in line with relevant Welsh Government Exclusion Guidance and that just because different schools took different approaches did not mean that the school's approach was discriminatory.

71. On the two occasions when staff declined to be involved in restorative justice meetings it seemed to the Tribunal Panel that the reasons given by each of the respective staff on each occasion were legitimate and not connected with the child's disability related behaviours but with their own personal concerns. The Tribunal Panel took the view therefore that even if these members of staff had themselves received additional training and support, as argued by the Claimants, it was still highly likely that, for their own legitimate personal reasons, they would have declined to take part in meetings.

72. The Tribunal Panel recognised that there were some unhelpful comments from some members of staff within the documentation provided by the Claimants, however, the Tribunal Panel took the view that these comments had not had an impact on the decision-making process in regard to each of the two 'potential' restorative justice meetings under consideration in this claim.

73. In regard to the issue of s. 15 of the Equality Act 2010 whilst the Tribunal Panel was of the view that the child had not been offered restorative justice meetings on two occasions in the academic year 2018 – 2019 it seemed to the Tribunal Panel that the decisions not to offer these meetings on each of these particular two occasions were based on the consensual nature of the meetings and the fact that in each of the cases concerned the members of staff involved declined to engage in a meeting, as they were entitled to do, for their own legitimate personal reasons, rather than because of something arising in consequence of the child's disability and therefore the decisions taken on these two occasions not to hold restorative justice meetings were not discriminatory. Further, the Tribunal Panel was of the view that even if either of the two decisions concerned had been taken because of something arising in consequence of the child's disability, in the particular circumstances of each decision, each decision was justified as a proportionate means of achieving a legitimate aim, in that restorative justice meetings are a two-way process and to be effective, as noted in the relevant Welsh Government Guidance on Exclusions, they require the consensual involvement of the relevant parties, which was absent in these two particular cases, and therefore would have rendered the process ineffective and possibly detrimental to the child and/ or the particular member of staff involved.

74. In regard to the issue of the child's attendance at the School's Well-being Hub during break and lunchtimes the Tribunal Panel concluded that the Responsible Body was in breach of its ss. 20 – 21 duties to make reasonable adjustments under the Equality Act 2010 as it related

to not offering the child the opportunity to have a friend attend at the School's Well -Being Hub during breaks and lunchtimes from June 2019 onwards in response to the Claimants concern that the child was finding the child's attendance there socially restricting.

75. In the view of the Tribunal Panel, the arguments presented by the Responsible Body in regard to this aspect of the claim failed to address the evidence given by ALNCO, who very honestly, acknowledged that the child's friends did not attend the Hub and that the child sometimes viewed the child's attendance there as a form of punishment and that in order to address the child's sense of social restriction it would have been possible for the child to have a friend attend the Hub with the child had this been requested and who accepted, again very honestly, that not offering this provision explicitly had been an oversight.

76. It seemed to the Tribunal Panel that, albeit because of an oversight, in not exploring this option, the child was put to a substantial disadvantage when compared to the child's peers since the child had significantly less of an opportunity to socialise with the child's friends during unstructured times at break and at lunch provision by being placed at the Well-Being Hub where the child did not have friends in attendance. In the view of the Tribunal Panel, the fact that the Claimants did not request this specific provision at the time was not an issue since the onus was on the Responsible Body to consider what if any reasonable adjustments were available to address the substantial disadvantage caused to the child and the attendance of a friend at the Hub was clearly something that was available and could have been facilitated.

77. In terms of the appropriate remedy for this breach the Tribunal Panel was of the view that it should issue a declaration that the Responsible Body was in breach of its ss. 20 – 21 duties and the terms of that declaration are set out in the order below and the Tribunal Panel also took the view that it should order that the Responsible Body undertake to review its practices, policies and procedures in relation to attendance at the School's Well-Being Hub during breaks and lunchtimes to ensure that it was made explicitly clear that where appropriate it would be possible for a friend to attend too so as to support effective ongoing socialisation and help maintain friendships and that this review should be undertaken as soon as reasonably practicable and the results should thereafter be shared with the Claimants.

78. Regarding the issue of the child not being allowed to take part in PE lessons from May 2019 onwards until the end of the academic years

2018 – 2019 the Tribunal Panel concluded that the Responsible Body was in breach of its duties under ss. 20 – 21 of the Equality Act 2010 to make reasonable adjustments.

79. It was not in issue that the child did not take part in PE lessons during this relevant period and that the decision not to include the child in these lessons flowed from the incident in the car park on 1 May 2019, which has been described above. Neither was it in dispute that, in response to this incident, the School decided that the child would require 1:1 supervision for the entirety of the child's PE lessons. Further, in evidence ALNCO accepted that it was because no 1:1 supervision was available, which was due to the School's significant budget deficit and the total freeze on any additional spending for additional ALN provision, that the child did not participate in PE and instead spent these lessons in the Well- Being Hub. ALNCO very honestly acknowledged that this situation was not ideal but was seen as a necessary short- term measure pending provision of additional funding through the Local Authority. They also, again very honestly, indicated that the School's spending embargo was such that did not seek to apply for additional funding from within the School's own resources for the child as there would have been no point in doing so.

80. The Tribunal Panel carefully considered the arguments presented by both parties and concluded that the child had been placed at a substantial disadvantage by not being allowed to take part in all the child's curricular PE lessons along with the child's peers from May 2019 through to the end of that term. In the view of the Tribunal Panel this disadvantage was particularly significant given that the child was also required to spend the child's break and lunchtimes in the Well-Being Hub and therefore, in addition to having more limited opportunities to have access to outdoor space and physical exercise compared to peers, the child's opportunities for social engagement and engaging with friends was also more limited.

81. In the view of the Tribunal Panel, given that the need for additional supervision flowed from the incident that took place whilst the child was walking from the changing rooms to the sports field, rather than during PE lessons themselves, and given that the Responsible Body had argued in response to the challenge against the issuing of a fixed term exclusion to the child, as outlined above, that there had previously been no reason to put in place additional support during PE sessions for the child, which the Tribunal Panel accepted, it would have been reasonable, as argued by the Claimants, to address the safety concerns relating to PE and still include the child in PE lessons by providing additional cover from within available staffing resources for

the walk to and from the playing fields, in the way that the School did when ensuring the child was supervised whilst going to and from the Well- Being Hub at break and lunchtimes, rather than insisting on 1:1 individual supervision for the entire lesson and in its absence excluding the child from these core curriculum lessons entirely.

82. Furthermore, although the Tribunal Panel did not need to go further in regard to arriving at the decision that the Responsible Body had been in breach of its ss. 20 - 21 duty in regard to this aspect of the claim, the Tribunal Panel thought that it would be helpful to indicate that notwithstanding the undoubted financial difficulties that the School was facing at the relevant time (£1.2 million deficit) and taking into account the resulting cost cutting and freeze on spending on TA and supply provision that had flowed from this, and whilst it sympathised with the School's position and the difficulties that this presented to school staff in supporting the needs of all pupils within the School, the Tribunal Panel was of the view that such was the importance of ensuring that the child was as fully included in school core curricular activities, such as PE, as possible that it was reasonable to have given full consideration to the option of buying in additional supply support as this was what the School considered was necessary to support inclusion (which the School indicated would have been at the cost of £95 per hour) rather than automatically discounting this option without further consideration as, on the evidence of ALNCO, happened in this case. This was an issue that was addressed further by the Tribunal Panel later in this decision when considering the issue of additional provision for the child.

83. In terms of the appropriate remedy in regard to this aspect of the claim the Tribunal Panel was of the view that it should issue a declaration that the Responsible Body was in breach of its ss. 20 – 21 duties and the terms of that declaration are set out in the order below and the Tribunal Panel also took the view that it should order that the Responsible Body put in place disability discrimination training for the School's Senior Management Team and SENCO/ ALNCO to be provided by the Local Authority or a suitable alternative training provider as soon as reasonably practicable and then following this it should take steps to cascade the training down to staff and governing body members during the course of the School's INSET training or during any twilight training sessions that are provided by the School. In addition, following completion of this training and as soon as reasonably practicable thereafter, the Responsible Body should conduct a full review of school policies and procedures to ensure that they are fully compliant with school responsibilities under the Equality

Act 2010 and it should confirm to the Claimants when this review has been completed.

84. In regard to the issue of the child not having been included on the 'reward' related to the Theme Park trip having carefully considered the parties arguments the Tribunal Panel took the view that the Responsible Body had not breached its ss 20 – 21 Equality Act duties or its s. 19 duty. As a consequence, the Tribunal Panel decided to dismiss this aspect of the claim.

85. In arriving at this position in respect of s. 20 – 21, reasonable adjustments, the Tribunal Panel considered that the evidence given by the Parent and ALNCO demonstrated that the School applied and made reasonable adjustments to its reward system over the course of the academic year to take account of the child's disability related behaviour difficulties both in terms of how staff were asked to record breaches of behaviour for 'information purposes' and not apply a full sanction and then subsequently in terms of the child being transferred to the School's B3 ALN Behavioural Points System, whereby the thresholds for sanction related behaviour were significantly adjusted to take account of the child's disability. Furthermore, the Tribunal Panel accepted the evidence of the Parent that the School did not set a fixed cut off point in respect of accrual of behaviour/reward points and attendance on the trip and instead in each case, where pupils had a high level of behaviour points, staff then gave further individual consideration to whether it was appropriate for the relevant pupil to attend the reward related trip taking into account the pupils individual circumstances, the nature of the behaviours exhibited and the overall level of points and that this was the approach that the School had adopted in regard to the child. As such, the Tribunal Panel concluded that the School's reward policy and its decision making relating to attendance on the theme park trip had built into it a considerable degree of flexibility to take account of individual pupil's particular disabilities and circumstances when making decisions relating to pupil attendance on the trip and that these flexibilities amounted to appropriate reasonable adjustments and they had been applied in considering the child's attendance on the trip. Furthermore, the Tribunal Panel was of the view and accepted the contention of the Parent, that even had it been reasonable to discount some or all the behaviour points that the child had accrued during the September – March period this would not have had such an impact on the overall points and behaviours that were taken into account to have resulted in a different decision being taken.

86. It also seemed to the Tribunal Panel that since the decision not to include the child on the theme park Trip was based on the fact that the School, having made reasonable adjustments to its behaviour and reward policy in respect of the child's disability related behaviour and having looked at the child's particular individual needs and circumstances when deciding whether the child should attend the trip, continued to believe that he did not meet the criteria for attending the trip that additional issues and concerns relating to health and safety and the availability of provision and support to address this were moot since the child would not have been allowed to attend the trip in any event.

87. In arriving at its decision relating to s. 19, indirect discrimination, the Tribunal Panel felt that the evidence presented by the Parent and ALNCO as summarised in the paragraph above demonstrated that the School was aware of the need to make adjustments to its general behaviour and reward policy to take account of disability related behaviour and the individual needs of pupils so as to avoid a disadvantage arising to disabled pupils when assessing whether a pupil should attend the theme park reward trip and that the School had acted in this way when considering whether it was appropriate for the child to attend the reward trip. As such it seemed to the Tribunal Panel that the School had not applied the standard general behaviour/ reward policy that it applied to pupils generally when considering the issue of the child's inclusion on the reward trip but one which had been considerably modified to take account the child's disability related behaviour. As such it seemed to the Tribunal Panel that there had been no breach of the Responsible Body's s. 19 duties.

88. Furthermore, the Tribunal Panel was of the view that the policy of having a reward trip at the end of Year 7, in the way that it had been applied by the School, could be said to be a proportionate means of achieving a legitimate aim. In terms of the legitimate aim of such a reward trip the Tribunal Panel felt that it was a positive behaviour management strategy that aimed to incentivise good behaviour and thereby support pupil learning and aimed to promote good attendance and thereby contribute to the overall effective running of the School. In addition, as the School, in the view of the Tribunal Panel, had identified that there was a need to build in considerable flexibilities and accommodations when considering attendance on the trip for pupils with disability related behaviour difficulties, such as the child, and had applied these flexibilities in the child's case, the approach taken by the School in looking at individual circumstances constituted a proportionate means of achieving the overall legitimate aim to support

good behaviour and attendance and thereby promote overall learning and the effective running of the School.

89. In regard to the child not being allowed to take part in the trip to the National Park in July 2019 as part of the School's 'activities week,' having carefully considered the arguments of both parties, the Tribunal Panel decided that the Responsible Body had been in breach of its duties under ss. 20 – 21 of the Equality Act 2010 and therefore decided to uphold this aspect of the claim.

90. On the evidence presented to it, it seemed to the Tribunal Panel that following a discussion between ALNCO and the Parent concerning the child's possible attendance on the Town trip in early July 2019 that this was something that the School was willing to consider provided support could be identified, notwithstanding previous incidents relating to the child's propensity to act impulsively as identified in the general risk assessment prepared by the Parent in June 2019, and that additional support was being looked into and that, based on ALNCO' email of July 2019 to the Parent, it was the incident involving the child in July 2019 that resulted in the School concluding that it would not be safe for the child to attend this trip. It was not disputed that this change of position was arrived at by the School utilising its professional judgement rather than on the basis of a detailed and specific written risk assessment that clearly identified the risks involved in the child attending the trip and then sought to evaluate those risks, identify appropriate control measures and outline what, if any, actions could be taken to mitigate the identified risk.

91. Neither was it in dispute that the School was aware that the child wished to participate in this trip and the Responsible Body was not seeking to rely on the fact that it had not received a written application in regard to the trip, as was the case in respect of the trips to a Zoo and the French trip.

92. Whilst the Tribunal Panel had a high regard for the professionalism of both ALNCO and the Parent, based on the evidence they both gave to the Tribunal Panel and whilst it was clear that they both had the child's welfare in mind, in the view of the Tribunal Panel, the absence of a specific risk assessment relating to the child's possible inclusion on this trip meant that the Responsible Body had not given full consideration to the possibility of including the child on the trip and as a result could not demonstrate that there was no reasonable means of including the child safely on the trip.

93. In regard to the appropriate remedy for this breach the Tribunal Panel made a declaration regarding discrimination as set out in the order below and ordered that, following the completion of disability discrimination training for the Senior Management Team, that has already been ordered, the Responsible Body should review its policies, practices and procedures in relation to provision of written risk assessments to support inclusion in extra -curricular activities as soon as reasonably practicable after completion of the training and should share the outcome of the review with the Claimants.

94. Having considered the evidence presented by both parties the Tribunal Panel took the view that the Responsible Body had not been in breach of its ss. 20 – 21 duties under the Equality Act 2010 as they relate to the trip to a Zoo in July 2019 and this aspect of the claim was therefore dismissed.

95. In arriving at this conclusion, the Tribunal Panel accepted the evidence of the Responsible Body that it had not received an application for the child to attend the trip or the payment of the related fee in line with procedures relating to trips and the evidence of the Parent that she had only found out about the trip from a friend approximately 1 week in advance of the trip.

96. On this basis, in the view of the Tribunal Panel, the reason for the child not attending this trip was related to the lack of an application and payment of the relevant fee for the child to attend the trip rather than related to matters linked to the child's disability. On this basis the Tribunal Panel concluded that the Responsible Body could not be said to be in breach of its duties under ss. 20 – 21 of the Equality Act 2010 in regard to the child's non participation in this trip.

97. In regard to the claim that the child was not able to attend a school trip to France in July 2019 and as a consequence the Responsible Body was in breach of its duty make reasonable adjustments under ss. 20 – 21 of the Equality Act 2010 the Tribunal Panel took the view that there had been no breach of the Responsible Body's duties under ss. 20-21 of the Equality Act 2010 and therefore decided to dismiss this aspect of the claim.

98. In arriving at this conclusion the Tribunal Panel accepted the evidence of the Responsible Body that the application for attendance on the relevant French trip had to have been made by October 2018 and that no application for the child to attend this trip was received by the School. This position was accepted by the Parent during the course of

the evidence given at the hearings, who indicated that she had not made an application for the child within the relevant timescale but they had had a conversation with the Head Teacher and ALNCO about the trip subsequently and had been told the child would not have been able to attend due to the child's behaviour.

99. The Tribunal Panel also bore in mind the timing of this matter, as pointed out by the Responsible Body, in that the application had had to be submitted in October 2018, which was shortly after the child had started at the School and before significant concerns regarding the child's behaviour arose and it accepted the contention of the Responsible Body that had an application been made at that point in time it would not have been refused.

100. It seemed to the Tribunal therefore that the child was not able to attend this French trip because no application had been made for him to do so by the undisputed application date of October 2018. On this basis the Tribunal Panel was of the view that the reason that the child could not attend this trip was not related to the child's disability and therefore no disability related discrimination had taken place as regards this aspect of the claim.

101. The Tribunal Panel did not accept the Claimants contention that the Responsible Body had failed in its duty to make reasonable adjustments in respect of the transition arrangements that were put in place to support the child's move into the School in September 2018. The Tribunal Panel therefore decided to dismiss this aspect of the Claim.

102. On the evidence presented by ALNCO and considering the information that was available to the School on transition the Tribunal Panel was satisfied that the School had put in place suitable additional transfer provision by way of an additional transition visits (as evidence at page 9 of Bundle B) and transition workbook (as evidence at pages 11 – 21 of Bundle B). The fact that information relating to the additional transition support on offer was not received by the Claimants did not, in the view of the Tribunal Panel, mean that the additional provision was not offered or was unsuitable and neither did it mean that the Responsible Body had breached its duties under ss. 20 – 21 of the Equality Act 2010.

103. In addition, the Tribunal Panel did not accept the Claimants contention that the Responsible Body had failed in its duty to make reasonable adjustments by way of additional provision and support for

the child when the child moved to the School from September 2018 onwards. The Tribunal Panel therefore decided to dismiss this aspect of the Claim.

104. On the evidence presented by ALNCO about the support that was made available to the child on moving into the School, and again considering the information that was available to the School when the child transferred there from the Primary School the Tribunal Panel was satisfied that the School had put in suitable additional support that was commensurate with the child having been identified at the beginning on the school year as being at the School Action Plus Stage of the Code of Practice. Whilst the evidence and information available to the school demonstrated that the child had special educational needs and was disabled, overall, the information presented indicated that the child was doing well at the Primary school and there was no suggestion at that point in time that the child required additional in class TA support. Details of the additional action and support provided by the School, based on the information then available to it, were set out in ALNCO' witness statement and were summarised in the Responsible Body's closing submissions and were not therefore repeated in this decision. Whilst the Claimants disputed that the meeting in November 2018 took place and did not happen until January 2019 and was critical of other aspects of the provision in their additional closing submissions of January 2020 this did not render the overall summary of provision set out in these documents entirely inaccurate and in the view of the Tribunal the provision made was suitable and appropriate in responding to the child's needs at that point in time.

105. In regard to the provision of further additional support from Spring term 2019 onwards the Tribunal Panel was of the view that it should consider this matter over the course of two separate periods of time. The first being from February 2019, which was the point at which ALNCO made the initial application for additional IDP funding to the School's maintaining Local Authority, and takes account of the Council SEN Panel decision of March 2019 which indicated that at that time it was felt that the child's needs were such as could be met at School Action Plus of the SEN Code of Practice. The second being from May 2019 when the Council SEN Panel indicated, as set out at page 912 of Bundle A, that a statutory assessment should be commenced and stipulated that the School 'have to fund this during the assessment period' and takes into account the indication from the School in June 2019 as set out in its Appendix B in support of statutory assessment, at page 925 of Bundle A, that there was a need for the child to have 1:1 help within the class context to assist with curriculum access and

confirmed the need for the child to have 1:1 supervision to be able to engage in PE safely.

106. In regard to this first time period the Tribunal Panel took the view that the School had not been in breach of its duty to make reasonable adjustments by way of providing additional 1:1 support. As indicated earlier in the decision, the Tribunal Panel took the view that the School was making additional provision in line with the child being identified as being at the School Action Plus Stage of the SEN Code of Practice, ALNCO had engaged help and support from the Local Authority's Educational Psychology Service and as difficulties were identified around 'unstructured' break and lunchtimes, with the agreement of the Claimants, arrangements were made for the child to receive additional support within the School's Well-Being as explained in ALNCO' statement of October 2019, set out at page 819 of Bundle A. In addition, as indicated above the Local Authority's SEN Assessment Panel appeared to support the view that the child's need could continue to be met at the School Action Plus Stage of the SEN Code of Practice.

107. In regard to the second time period, however, from May 2019 until the end of term, having clearly identified the need for additional 1:1 support as set out above, and having been told by the School's maintaining Local Authority that the expectation would be that the School ought to fund necessary provision pending statutory assessment, as already explained in regard to the issues relating to the child's access to PE provision, the Tribunal Panel considered that notwithstanding the undoubted financial difficulties that the School was facing at the relevant time (£1.2 million deficit) and taking into account the resulting cost cutting and freeze on spending on TA and supply provision that had flowed from this, and whilst it sympathised with the School's position and the difficulties that this presented to school staff in supporting the needs of all pupils within the School, such was the importance of ensuring that the child was as fully included as possible in school core curricular activities, such as PE, that it was reasonable to expect the School to have given full consideration to the provision of additional support by means of buying in additional supply support, since this was what the School considered was necessary at that point to support inclusion and which it also recognised would be necessary for a short period of time (supply support being estimated at £95 per hour) rather than automatically discounting this option without further exceptional consideration as, on the evidence of ALNCO, happened in this case. In the view of the Tribunal Panel, notwithstanding the School's financial difficulties, in automatically discounting provision of additional time limited 1:1 support that had been identified as

necessary because of the School's financial difficulties and the resulting automatic spending freeze, without having regard to the duty to make reasonable adjustments to general policies, practices and procedures to avoid a substantial disadvantage arising as a result and without considering whether the child's needs and the resulting substantial disadvantage which the child faced by not being fully included in PE lessons were such as to warrant this additional provision being made as an exception to the general spending freeze as a reasonable adjustment the Tribunal was of the view that the Responsible Body had been in breach of its ss. 20 – 21 duty from May 2019.

108. In terms of remedy the Tribunal Panel took the view that it should make a declaration that the Responsible Body had been in breach of its ss. 20 – 21 duty from May 2019 to the end of the term as explained above but the Tribunal Panel felt that the remedies that it had already ordered in respect of additional support for PE would be suitable to address this breach and would serve to ensure that the Responsible Body would not commit a similar breach again.

**Order and Remedies**

i. The Responsible Body was not in breach of its s. 15 or ss. 20 – 21 duties under the Equality Act 2010 as they relate to the incident of the 1 May 2019 and the two-day fixed term exclusion of May 2019 and this aspect of the claim is dismissed.

ii. The Responsible Body was not in breach of its s. 15 or ss. 20 – 21 duties under the Equality Act 2010 as they relate to the provision of restorative justice meetings for the child and this aspect of the claim is dismissed.

iii. The Responsible Body was in breach of its ss. 20 – 21 duties to make reasonable adjustments under the Equality Act 2010 as it relates to not offering the child the opportunity to have a friend attend at the School's Well -Being Hub during breaks and lunchtimes from June 2019 onwards and this aspect of the claim is therefore upheld.

iv. In regard to the appropriate remedy for this breach the Tribunal Panel ordered that the Responsible Body should review its policies, practices and procedures in relation to attendance at the Well –Being Hub to ensure that it made explicit that those who attend the Hub during break times and over lunch times may in appropriate circumstances be accompanied by a friend so as to support socialisation and maintain

friendships and that this should be done as soon as reasonably practicable and the results of the review should be shared with the Claimants.

v. The Responsible Body was in breach of its ss. 20 – 21 duties to make reasonable adjustments under the Equality Act 2010 as it relates to giving consideration to and providing for the child to be supervised by a member of school staff when walking to and from the PE changing rooms and the school playing fields for the purposes of supporting the child's inclusion in PE lessons as occurred when the child was supervised by school staff to and from the child's breaktime and lunchtime attendance at the Well-Being Hub.

vi. In regard to the appropriate remedy the Tribunal Panel ordered that the Responsible Body put in place disability discrimination training for the School's Senior Management Team and SENCO/ ALNCO to be provided by the Local Authority or a suitable alternative training provider as soon as reasonably practicable and then following this it ordered that the Responsible Body should take steps to cascade the training down to staff and governing body members during the course of the School's INSET training or during any twilight training sessions that are provided by the School. In addition, following completion of this training and as soon as reasonably practicable thereafter, the Tribunal Panel ordered the Responsible Body to conduct a full review of school policies and procedures to ensure that they are fully compliant with school responsibilities under the Equality Act 2010, and it ordered that the Responsible Body should confirm to the Claimants when this review had been completed.

vii. The Responsible Body was not in breach of its duties under s. 19 or ss. 20 – 21 of the Equality Act 2001 in regard to the child not attending the 'reward' related trip to a theme park in July 2019 and this aspect of the claim is dismissed.

viii. The Responsible Body was in breach of its ss. 20 – 21 duties to make reasonable adjustments under the Equality Act 2010 as it relates to including the child on the 'activities week' trip to a National Park in that the reason given for not including the child on the trip was related to ensuring the child's health and safety and the Responsible Body had not carried out a specific and individual risk assessment to assess how it would be possible to support the child's inclusion on the trip and therefore was not able to demonstrate that it had fully considered the issue of what reasonable adjustments if any could be made to mitigate the Responsible Body's health and safety concerns and thereby support the child's inclusion on the trip and neither could it demonstrate

that there were no possible reasonable adjustments that could have been made to support the child's inclusion and address safety concerns. On this basis this aspect of the claim is upheld.

ix. In regard to the appropriate remedy for this breach the Tribunal Panel ordered that, following the completion of disability discrimination training for the Senior Management Team that has been ordered above the Responsible Body should review its policies, practices and procedures in relation to provision of written risk assessments to support inclusion in extra -curricular activities as soon as reasonably practicable after the relevant training is completed and should share the outcome of the review with the Claimants.

x. The Responsible Body was not in breach of its ss. 20 – 21 duties under the Equality Act 2010 as they relate to the trip to a Zoo in July 2019 and this aspect of the claim is dismissed.

xi. The Responsible Body was not in breach of its ss. 20 – 21 duties under the Equality Act 2010 as they relate to the school trip to France and this aspect of the claim is dismissed.

xii. The Responsible Body was not in breach of its ss. 20 – 21 duties under the Equality Act 2010 as they relate to its duty to make reasonable adjustments in respect of the transition arrangements that were put in place to support the child's move into the School in September 2018. The Tribunal Panel therefore decided to dismiss this aspect of the Claim.

xiii. The Responsible Body was not in breach of its ss. 20 – 21 duties under the Equality Act 2010 as they relate to its duty to make reasonable adjustments by way of additional provision and support for the child when the child moved to the School from September 2018 onwards. The Tribunal Panel therefore decided to dismiss this aspect of the Claim.

xiv. The Responsible Body was not in breach of its ss. 20 – 21 duties under the Equality Act 2010 as they relate to its duty to make reasonable adjustments by way of additional support for the child from the period from February 2019 to May 2019. The Tribunal Panel therefore decided to dismiss this aspect of the Claim.

xv. The Responsible Body was in breach of its ss. 20 – 21 duties under the Equality Act 2010 as it related to the application of the School's general

moratorium on additional spending in light of its significant financial difficulties without giving any consideration to the child's disability and the adverse impact on the child that the spending moratorium and the child's consequential exclusion from PE lessons would be likely to have upon the child by way of exception to the general policy from May 2019 until the end of the school term and therefore this aspect of the claim is upheld.

**Dated January 2021**

**Chair**