



Date of Birth: 2009

Appeal of: The Parent

Against: The Local Authority (LA)

Hearing Date: 2023

Persons Present: The Parent - Parent  
The ALN Manager – Local Authority Representative  
Head Teacher – LA Witness  
Senior Specialist Teacher – LA Witness

## **Decision**

1. **Introduction** - This Appeal is brought by the Parent under section 70(2) of the Additional Learning Needs and Education Tribunal Act 2018 (the 2018 Act), in respect of a decision by the Local Authority made under section 13 of the 2018 Act, that the Child does not have Additional Learning Needs (ALN). This followed on from a decision by the school, which came to the same conclusion, as set out in its letter dated June 2023. The Parent asked the LA to reconsider that decision in June 2023. The LA sent out its own decision in a letter dated June 2023, following a Moderation Panel meeting in June 2023. The reasons given for the decision were recorded as follows:

*“It has been decided that the Child does not have ALN for the following reasons:*

- *The Child doesn't have a significantly greater difficulty in learning than the majority of others of the same age.*
- *The Child doesn't have a disability under the Equality Act of 2010, which prevents or hinders them making use of facilities for education, or training of a kind generally provided for others of the same age, who are in a mainstream maintained school.”*

2. The Child lives with their parent. They have a brother and a sister. Their other parent lives separately. They have Parental Responsibility for the Child. They wish to be provided with a copy of this judgment but has otherwise played no part in these proceedings.

3. The Child has been assessed by their school as being More Able and Talented (MAT). They are particularly talented at maths.
4. **Representation** – The Parent appeared in person. The ALN Manager appeared for the LA. We are grateful to them both for the way they have presented their respective cases.
5. **The Parent’s Case** – It is the Parent’s case that their child has ALN within the definition contained within the 2018 Act. They point to their diagnosis of Autism and the difficulties that they say the Child experiences at school, in support of their contention.
6. **The Local Authority Case** - The LA’s case is that the Child is an able student and is succeeding at school. It says their needs can be met by their school on a “One Page Profile Targeted Level”. This places reliance on the school’s approach that the Child has the status of “Monitored” or “Targeted Monitored” and that this does not equate to their having ALN.
7. **The Law** – We will firstly consider the law that should be applied, and whether it has been applied. The relevant statutory provisions are as follows:

The Additional Learning Needs and Education Tribunal Act (Wales) 2018 states:

***“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.*

**Section 6 of the Equality Act 2010 defines disability as:**

*“A person (P) has a disability if—*

- a) P has a physical or mental impairment, and*
- b) the impairment has a substantial and long-term adverse effect on Ps ability to carry out normal day-to-day activities.”*

8. The 2018 Act continues:

### **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,”*

9. **The Old Law** - The definition of Special Educational Needs in section 316 of the Education Act 1996 was as follows:

*“Meaning of “special educational needs” (SEN) and “special educational provision” etc*

*(1) A child in the area of a local authority in Wales has “special educational needs” for the purposes of this Act if he has a learning difficulty which calls for special educational provision to be made for him.*

*(2) Subject to subsections (3) and (3A) a child in the area of a local authority in Wales has a “learning difficulty” for the purposes of this Act if—*

*(a) he has a significantly greater difficulty in learning than the majority of children of his age,*

*(b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools within the area of the local authority.”*

10. It will be seen from the definitions above that those for SEN and ALN are virtually identical. One significant difference is that the SEN

definition limited the geographical area to be considered to the area of the local authority, whereas the ALN definition has widened this to the whole of Wales.

11. Guidance provided for parents by the Welsh Government on the changes reads:

***“Implementing the additional learning needs system between September 2021 and August 2024: a guide for parents and families***

***What is changing?***

*The ALN system strengthens the importance of providing information so that children and their parents are involved as much as possible in decisions that affect them.*

*As the ALN system is put in place, you will notice the following changes to what things are called:*

- *special educational needs (SEN) becomes additional learning needs (ALN)*
- *special educational needs co-ordinators (SENCOs) become additional learning needs co-ordinators (ALNCOs)*
- *special educational provision (SEP) becomes additional learning provision (ALP)*
- *plans such as individual education plans (IEPs) and statements will be replaced with a new plan called an individual development plan (IDP)*

*Some things have not changed. The definition of ALN is the same as SEN. This means if a child had SEN, it is likely that they will have ALN.”*

12. It will also be seen that the Welsh Government intended that the definition of SEN and ALN were to be the same and that a child on the SEN register was expected to transfer across to the new system and be treated as if they had ALN. It is also clear that IEPs were to cease to exist.

13. In relation to IDPs the guidance to parents reads:

***“IDP and No IDP notices***

*An IDP notice means a maintained setting or local authority has decided a child has ALN and an IDP will be made for the child.*

*A No IDP notice means the maintained setting or local authority has decided the child does not have ALN and an IDP will not be made for the child.*

*On occasion, a child who had SEN might be given a No IDP notice because their needs have changed, and they no longer need additional support to learn.*

*Most children will move from the SEN system to the ALN system when their maintained setting or local authority gives them an IDP notice or a No IDP notice (depending on the needs of the child).*

*Maintained settings will give most of the IDP notices or No IDP notices but sometimes a local authority will give them.*

*Local authorities will give IDP notices or No IDP notices (depending on the needs of the child) to children and their parents who have statements, are looked after and to children who are registered at more than one education setting (such as a PRU and a school)."*

14. The relevant parts of the 2018 Act requiring schools to decide if a child has ALN and to draft IDPs and make provision are as follows:

***11 Duty to decide: maintained schools and further education institutions***

*(1) Where it is brought to the attention of, or otherwise appears to, the governing body of a maintained school in Wales that a child or young person who is a registered pupil at the school may have additional learning needs, it must decide whether the child or young person has additional learning needs, unless any of the circumstances in subsection (3) apply.*

*(3) The circumstances are—*

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

*(b) the governing body has previously decided whether the child or young person has additional learning needs and the governing body 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) the decision is about a young person and the young person does not consent to the decision being made;*

*(d) the child or young person is a registered pupil or an enrolled student at another institution (that institution being a school or an institution in the further education sector) and a local authority is responsible for him or her;*

*(e) a local authority in England maintains an EHC plan for the child or young person.*

*(4) If the governing body 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.*

### ***12 Duties to prepare and maintain plans: maintained schools and further education institutions***

*(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);*

*(b) the plan is about a young person and the young person does not consent to the plan being prepared or maintained;*

*(c) the governing body requests a local authority in England to secure an assessment under section 36(1) of the Children and Families Act 2014 (c. 6) and, by virtue of the request or otherwise, the authority is responsible for the child or young person (within the meaning given by section 24(1) of that Act);*

*(d) a local authority in England maintains an EHC plan for the child or young person.*

*(7) A governing body must—*

*(a) secure the additional learning provision described in an individual development plan it maintains under this Part.”*

15. If the school is not deciding whether a child has ALN the duty passes to the LA as below:

### **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 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;*

*(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.*

16. **Welsh Government Statement** – When the 2018 Act was passed it was accompanied by a statement from the Welsh Government which reads:

**ADDITIONAL LEARNING NEEDS AND EDUCATION TRIBUNAL (WALES) ACT**

**Explanatory Memorandum**

*“3.8 **A unified plan:** The Act creates a single statutory plan (the individual development plan (IDP)) to replace the existing variety of statutory and non- statutory SEN and LDD plans for learners in schools and FE - including statements of SEN, individual education plans for learners supported through school/early years action or school/early years action plus, and learning and skills plans carried out via assessments under section 140 of the Learning and Skills Act 2000. This will ensure greater consistency and continuity and, unlike the current system, ensure that provision and rights are protected regardless of the severity or complexity of needs. For most children with ALN who are looked after, the Act will require their IDP to be incorporated into the personal education plans (PEPs) made for these learners as part of their care and support plans (CSP). This will eliminate duplication of effort and ensure that the educational needs of a child who is looked after are considered in a holistic way.*

**“A unified plan**

*3.86 The Act introduces statutory IDPs (sections 10 -19) for children and young people with ALN. Statements, individual education plans and learning and skills plans will cease to exist.”*

17. Under the SEN system there were three categories of intervention, School Action (SA), School Action Plus (SA+) and Statements of Special Educational Needs (Statements). Only children in the latter group had Statements.



18. The concept under the ALN legislation is that all children who have ALN must have an Individual Development Plan. (See The additional learning needs transformation programme: frequently asked questions S20 published by the Welsh Government). Statements and Individual Education Plans do not exist under the ALN law. Broadly, children who previously were on SA and SA+ would have their IDPs written and managed by the school they attended, and those who had Statements have their IDPs written and/or managed by the local authority in whose area they lived.

19. There is no **category** within the 2018 Act or the Code of “Monitored” or “Targeted Monitored” in relation to ALN. The use of “targeted” in the Code refers to ALP. If it refers to ALP then it must be meeting the needs of a child with ALN. Its use in relation to a child who does not have ALN is therefore in our view incorrect. The terms “School Action” and “School Action Plus” do not exist under the 2018 Act and Code. There is no provision whereby a child can be within any of these categories and thus “not have ALN status.”

20. The recent Estyn report, *“The new additional learning needs system: Progress of schools and local authorities in supporting pupils with additional learning needs”* was referred to by The Head Teacher in their evidence as having approved of the terms “Monitored” and Targeted monitoring”. We bear in mind that the report is an overview of the position across Wales and does not refer to this school or this LA. It is interesting, however, in terms of the views expressed about terminology and practice. The report does refer to terms such as “Targeted” and “universal provision”. One of its conclusions is:

*“Terms such as ‘universal’, ‘universal plus’, ‘targeted’, ‘specialist’ and, ‘specialist including multi-agency support’, are being increasingly used to categorise the support and provision made by schools. However, there is not always a common understanding of the terms or what constitutes provision under each of these categories. The extent to which provision in these categories is additional learning provision was not clear.”*

21. We also note that at pages 23 and 24 it states:

*“...despite local authorities and schools being generally clear about the provision that they make for pupils, the extent to which such provision is classed as ALP varies. This is significant as only when provision is deemed to be ALP will a child or young person be considered as having ALN and in need of an IDP.”*

*“Despite schools’ confidence in the systems of support that they are offering, it may be argued that provision, categorised by*

*schools as universal plus, targeted, specialist or specialist including multi agency support is indeed ALP. In such cases, pupils accessing such provision would be considered as having an ALN and they would be entitled to an IDP.”*

22. In the school’s ALN Policy, which is undated but is available on its website, the approach taken is in our view not consistent with the new law, as is apparent from the excerpts below.

**“Provision for ALN pupils**

*Every ALN pupil will follow the curriculum with other pupils except where details in his/her One Page Pupil Profile (OPP) states otherwise.*

**School Action (Monitoring and Targeted Monitoring)**

- *When there is concern regarding a pupil’s progress although he had every opportunity in class the co-ordinator, liaising with the teachers will collect pupils’ information before deciding on steps to implement.*
- *The Co-ordinator will make a further assessment of the pupil’s strengths and weaknesses and review the arrangements for the pupil with the subject teachers (literacy/numeracy targets).*
- *The Co-ordinator shall create an Independent Educational Plan stating the support needed and the targets to be attained.*
- *It is the subject teacher that implements the IEP in the main-stream.*
- *The Co-ordinator is responsible for progress monitoring and reviewing the IEP.*

**School Action +**

- *The Coordinator will consult the external specialists e.g. educational psychologist, to attain more*
  - *information regarding the pupil’s difficulties and to have advice on teaching and learning methods.*
  - *If a pupil is identified not making progress through the School Action support, he can be offered more support by entering him onto the School Action + steps.*
  - *A new Independent Educational Plan will be created if necessary following any professional information and the IEP/Pupils Profile should record new strategies that are implemented.*
  - *Usually the support should be offered within the class.*
  - *When the support advises taking the pupil out of “mainstream”, this will be performed on a small group basis or one to one.*
  - *It is the subject teacher’s responsibility to implement the independent educational plan in the mainstream(targets in Pupil’s Profile)*

### **Statutory Assessment**

*If a pupil is identified as having continuous difficulties despite providing support under School Action + then we can consider Statutory Assessment to decide on the best way to provide for him.*

*The Coordinator will refer the pupil to the LA and will collect all the evidence regarding him within the school including:*

- *IEPs for School Action, and School Action+”*

23. In the statement of the school ALNCO, they state:

*“Currently, I support 71 pupils who have an ALN status. As we are still running 2 ALN systems in Wales, these pupils either have a School IDP or have SA+ Contracts.*

*However, I am also supporting pupils that come under the Universal Provision of “Monitored” or Targeted Monitoring” and there are 36 pupils in total that have this support. The Child is one of the 36.”*

24. **Conclusion** - We appreciate that the school’s policy and approach are trying to manage two systems at present, SEN and ALN. The view that SA now equates to Monitored or Targeted Monitoring and does not require an IDP is erroneous, however, as is the practice of writing of an IEP if a child is viewed as being on SA+, when again an IDP is required.

25. Whilst we are mindful of the fact that we do not have jurisdiction in terms of Judicial Review, we consider it appropriate to comment that in order to comply with the law under the 2018 Act the school’s policy and approach need to be urgently rectified. If this is a wider issue within the local authority areas of the two Local Authorities the same comment would apply.

26. **Does The Child have ALN** - At their primary school the Child was placed on SA+ and had an IEP. In 2018, without any consultation or informing the Parent, the IEP was discontinued. No one present at the hearing was able to give any explanation for this, and other than an apology for not informing them, enquiries have not revealed the reasons behind the plan being discontinued. It resulted, however, in no document of any kind setting out the Child’s needs being passed from the primary school to the secondary school. The Parent had to provide these details themselves and has effectively contributed most of the one-page profile document that has been in place whilst the Child has been at secondary school.

27. The Parent identifies the following areas as demonstrating that The Child has ALN:

- a) They have a diagnosis of ASD.
- b) They have difficulty in understanding what is said to them, in relation to idiom and sarcasm particularly.

- c) They have difficulty understanding facial expressions.
- d) They have difficulty hearing certain voices.
- e) They can butt in and be blunt, not appreciating the impact of this on others.
- f) They can become overwhelmed due to sensory difficulties. As a result, they work alone in Welsh and wear ear defenders. (They were described as having had a very heavy reliance on these for the last 8 months.)
- g) They have laxity of joints and are prone to fall as they have difficulties with balance and coordination. They have podiatry inserts to help with this and tubular bandages in the evening to cope with any pain from the day.
- h) They have an issue with shoulder alignment on one side.
- i) They have a urology issue which makes it difficult for them to remember to urinate and can lead to mishaps. Investigations have revealed that there is not a physical cause. They have to remember to go to the toilet regularly and to drink liquids regularly.
- j) They are anxious about attending school. This can result in angry outbursts at home. They have been bullied in the past. They become upset if they miss a date or time at school.
- k) They have a difficulty using technology and finds the school network difficult and frustrating.
- l) Their difficulties can result in them becoming overwhelmed at school and needing to go to a quiet private space to self-regulate.

28. No evidence to counter any of the above was adduced on behalf of the LA. Its answer was that provision could be made for all the above from within the universal provision available at the school.

29. The LA Case Statement states that,

*"It was agreed by the Moderation Panel to uphold the school's decision. The Moderation Panel felt that the provision by the school could meet the Child's needs on a targeted level."*

30. This is the legal test relating to whether an IDP should be written and/or maintained by a school, or by an LA. It is not the correct legal test in respect of whether or not a child has ALN.

31. **The Statutory Test for ALN** – we have set out the test in section 2 of the 2018 Act above. There are two elements to it, firstly, whether a child has a learning difficulty, as defined, and secondly, whether provision is required to meet that difficulty.

32. **Learning Difficulty** – There are two questions to consider in relation to learning difficulty. If either limb is made out a child has a learning difficulty. The first question is, does the Child have a significantly greater difficulty in learning than the majority of others of the same age?
33. As the Child has been making good academic progress it appears to have been assumed this does not apply. This ignores the possibility that they are working harder than others to achieve this. The Parent made the point that whilst the Child is doing well, they could be doing better. We would add that they might be able to do as well but, with appropriate support, not have to work so hard. The Code makes specific reference to a child such as the Child at page 33, as follows:
- “a child or young person may be performing well across all areas of the curriculum but still have ALN because they have a disability that is preventing or hindering them from making full use of educational or training facilities, unless ALP is made for them”.
34. The list above needs to be understood in terms of the effect on the Child. We consider the Child must be fearful that they have misunderstood or contravened social rules. They have to worry about being in the right place at the right time. They have to worry about their physical difficulties, including whether they have drunk enough or need to go to the toilet. They have to guard against becoming overwhelmed by sensory input. We have no doubt that they are anxious at school most of the time and struggling to maintain control. Their own views as set out at page 114 confirm our view. We conclude that the list of difficulties set out above results in the Child having significantly greater difficulty in learning than most children of their age.
35. Secondly, does the Child have a disability which prevents or hinders them from making use of facilities for education? They have a disability, and the LA does not question this. We have noted that in year 8 the Child's attendance at school has been tailing off, with only 77% attendance, which was a 20% drop from the previous year, and confirms what the Parent told us about the Child being disenchanted with, and anxious about, going to school, because of their experiences. The Child has had times, particularly prior to Christmas 2022, when they have not been attending school due to events directly related to their disability, namely the difficulty the school had in providing a safe space that the child could go to if they needed to. A safe space had been identified, but when the Child needed to use it, it was locked and the school said (as it does not manage the school site itself), that it could not rectify this position. They were so anxious about this that they did not feel able to return to school until a new system was eventually put in place, so that they were advised where the key to the room was kept,

and could access it at any time. They were, accordingly, prevented during this time from accessing their education for a reason connected with their disability.

36. Further, we have no doubt that they are hindered in accessing education because of their difficulties as set out above. With their diagnosis and on the evidence, we have no doubt that the Child struggles under the surface to manage attending school on most days. That is precisely why they require measures such as a safe quiet space they can access and ear defenders.
37. We find therefore that both limbs of the definition in respect of ALN are met as the Child has a learning difficulty and a disability.
38. **Which Calls for Additional Learning Provision** - The next stage of the definition requires consideration of the question, do the Child's Additional Learning Needs call for Additional Learning Provision?
39. The LA was anxious to advise that the provision being made for the Child was meeting their needs. That was the basis of its case. As there has not been a full assessment, there may be a question mark over whether their needs are being fully met, but they are being partially met.
40. Whether or not their needs are being met by the provision that has been put in place is not the correct legal test, however.
41. It is agreed that the Child's needs call for Additional Learning Provision. It is set out in their One Page Profile as applied by the school. The question then is, is that educational or training provision additional to, or different from, that made generally for others of the same age in mainstream maintained schools in Wales? That question was not considered by the Moderation Panel. As appears above, it considered whether their needs could be met at the school. The difficulty with this arises around any change of area or school for a child. He/she should be able to move, and the same provision be available at the new school. Either the provision is such that it is available in all schools in Wales, or it must be set out in an IDP, so that it is provided at the new school.
42. We have relied on our expert knowledge in the absence of evidence as to whether the provision that is being made for the Child is available across Wales. We do not consider that it is. For example, many schools struggle with providing a safe room for children to self-regulate. Providing access to a key to such a space is unusual. Many schools struggle with supporting children with ASD and anxiety. Many schools would struggle to allow a child to leave a class whenever he/she wished. Many schools would struggle to meet the Child's sensory needs, even as they are presently understood. We have no difficulty in finding, therefore that the Child meets this part of the test as well. They have ALN as defined in the Act.

43. **The LA's Process** - The error in this case in relation to the test to be applied was compounded after the Panel meeting because the specialist ASD teacher (The Senior Specialist Teacher) who was asked to look at provision within the school, was asked to apply the same erroneous test, and not to in anyway assess the Child's needs or give a view as to whether they had ALN. It is the provision that has dictated this decision, not the question of whether the Child has ALN. The Senior Specialist Teacher accepted that they had not been asked to enquire into the correct question in respect of the legal test that must be applied. Their brief was limited, as they set out in their statement at page 160 in the bundle.
44. We feel we should also comment that we are surprised that the reconsideration by the local authority took place over a very short time period of something like a week. It had more time than this to explore the position, if it had chosen to do so, and we regard this as a missed opportunity to carry out a further and fuller assessment of the Child.
45. **Educational Psychology Assessment and Report** - We also note that there was discussion between the two local authorities about obtaining an Educational Psychology assessment of the Child in the autumn of 2022. This did not result in any assessment being carried out, although by this stage (as opposed to June 2022 when there was concern for the Child's welfare about such an assessment), the Parent was open to such an assessment taking place. We do not know why the assessment was not arranged at this time and regard this as a further missed opportunity to enhance understanding of the Child's needs.
46. We asked the parties, if we were to find that the Child had ALN, what their views would be about an Educational Psychology assessment now. The ALN Manager was quite properly concerned that this was not going to negatively impact upon the Child. The Parent was able to confirm that it would not impact them at this stage, and they welcomed such an assessment.
47. As a result of our decision that the Child has ALN an IDP must be drafted. In drafting it the LA should obtain updated evidence including from an Educational Psychologist, as set out in the Code at paragraph 11.11.
48. We add that we consider that consulting with an Educational Psychologist who is on the Moderation panel only, and who did not actually observe or assess the Child, was insufficient to comply with the Code on this occasion.
49. Having reviewed the evidence and discussed it with the parties, we consider an assessment by an Educational Psychologist should include an assessment of the Child's cognitive attainment profile, so that there is a base against which progress can be measured. The Child is designated as MAT, but there is no assessment which confirms this, or indicates whether they have a spiky profile with some areas of

weakness. We have noted references to the Child's writing speed needing to improve, for example. We also consider the assessment should include discussions with school staff, with the Parent, and of course with the Child. These discussions may require more than one visit. We also consider the Child ought to be observed while they are at school and at home.

50. If the Educational Psychologist considers that any further assessments are appropriate, which from the papers may well include assessments by an Occupational Therapist in relation to sensory issues and joint laxity, or by a Speech and Language Therapist, in relation to the Child's difficulty understanding what is said to them, how what they say affects others, and generally in relation to social communication functioning, we would expect this to be flagged up and for further reports to be obtained as soon as can be achieved.

51. **Writing an IDP** - In addition, we asked the parties what their views were about us ordering the local authority to write an IDP for the Child, based upon recommendations contained in the assessment by the EP, and any other assessments which the EP recommended should be completed. The ALN Manager did not seek to argue against this either. We will order the LA to write the IDP in this case to ensure that further time is not lost, given the history of this case, and to ensure that another appeal is not required against a decision that the IDP should be written by the school rather than the LA. We have deliberately short circuited the process, as we explained in the discussions with the parties. The ALN Manager understood this and did not seek to argue against it as an appropriate way forward. We are also concerned that the school staff need to consider this Decision and the legal approach to such assessments before making further assessments, which will inevitably cause further delay for the Child. We have concluded that to ensure the position is not further prolonged, the local authority should write an IDP in this case.

52. **Use of Confusing Terms** – We are aware that at present there is confusion in some areas as to the correct test to be applied in determining whether a child has ALN. It is for this reason that we have set out the test at some length in this decision. We also comment that the plethora of different terms being used in this case – Monitored, Targeted monitoring, One Page Profile, Individual Education Plan, One Page Profile with targets, School ALN Provision Map, and Universal Provision, is bound to lead to confusion, particularly for parents and children. The use of these various terms, as, we conclude from the evidence in this case, led to some difficulty between the neighbouring authorities, where the Child lived in one area but went to school in the other. The two authorities were not approaching the question of whether a child has Additional Learning Needs using the same terminology. The Statutory regime is simple. Either a child does or does not have ALN. If he/she does, he/she requires an IDP.



53. **Conclusion** – The Child has ALN. In our view they require a full assessment by an Educational Psychologist and very possibly some other experts. To ensure that further time is not wasted we order that the LA should write an IDP for the Child.

Order:

1. We find that the Child has the following Additional Learning Needs as defined by section 2 of the 2018 Act:
  - a. They have a diagnosis of ASD.
  - b. They have difficulty in understanding what is said to them, in relation to idiom and sarcasm particularly.
  - c. They have difficulty understanding facial expressions.
  - d. They have difficulty hearing certain voices.
  - e. They can interrupt others and be blunt, not appreciating the impact of this on others.
  - f. They can become overwhelmed due to sensory difficulties.
  - g. They have laxity of joints and is prone to fall as they have difficulties with balance and coordination
  - h. They have an issue with shoulder alignment on one side.
  - i. They have a urology issue which makes it difficult for them to remember to urinate and can lead to mishaps. Investigations have revealed that there is not a physical cause. They have to remember to go to the toilet regularly and to drink liquids regularly.
  - j. They are anxious about attending at school. This can result in angry outbursts at home. They have been bullied in the past. They become upset if they miss a date or time at school.
  - k. They have a difficulty using technology and finds the school network difficult and frustrating.
  - l. Their difficulties can result in their becoming overwhelmed at school and needing to go to a quiet private space to self-regulate.
2. The Local Authority will write an Individual Development Plan for the Child by 12 noon in February 2024. As part of this process it should arrange an assessment of the Child by an Educational Psychologist (Code Paragraph 11.11), which we consider should include an assessment of the Child's cognitive attainment profile, discussions with school staff, the Parent and the Child, and observation of them within a school and home setting.

3. If the reporting Educational Psychologist considers that further expert reports are required, the Local Authority may apply for directions to vary the above timetable and provide an alternative timetable based on the dates the further reports will be available.

**Dated October 2023**