[2025] UKUT 191 (AAC)

IN THE UPPER TRIBUNAL **Appeal No UA-2025-000227-HSW**
ADMINISTRATIVE APPEALS CHAMBER

ON APPEAL FROM THE EDUCATION TRIBUNAL FOR WALES

Dated: 23 May 2025

Before:

The Rt Hon Sir Gary Hickinbottom Judge of the Upper Tribunal

Appellant:	Y Council
Respondents:	Mrs X (mother of X)
Heard at:	Cardiff (Cardiff Civil Justice Centre)
Attendance	
For the Appellant:	Laura Shepherd of Counsel
For the Respondent:	In person
Date of hearing:	14 May 2025
Date of decision:	23 May 2025

DECISION OF THE ADMINISTRATIVE APPEALS CHAMBER OF THE UPPER TRIBUNAL

On Ground 1: The appeal is allowed in part. The IDP be amended to describe the SALT provision which the Health Board have agreed to provide in Section 2C, and to show in Section 2B that that provision is to be delivered by the Health Board (and not the Council).

On Ground 2: Appeal dismissed.

Subject Matter

Sections 20-21 and 76 of the Additional Learning Needs and Education Tribunal (Wales) Act 2018 – whether Additional Learning Provision to be made by an NHS body should be described in Section 2B of the Individual Development Plan or only in Section 2C – the proper approach of the tribunal to recommending that such provision should be made by an NHS body.

Cases referred to

None.

Introduction

1. To ensure the rights and interests of X are protected, this Decision has been anonymised; and no report of this case shall be made that, directly or indirectly, may lead to the identification of X.

2. This is an appeal from the decision of the Education Tribunal for Wales ("the ETW") (Judge Allen, Specialist Member Dr Evans and Specialist Member Dr Delaney, "the ETW Panel") dated 25 November 2024 allowing the appeal of the Respondent (Mrs X, X's mother) against the decision of the Appellant local authority ("the Council") to issue an Individual Development Plan ("IDP") in relation to X's Additional Learning Needs ("ALN") in the terms that it did. I shall refer to the ETW Panel decision dated 25 November 2024 as "the ETW Decision".

3. In particular, the Council appeals against the decision of the ETW Panel to list X's Speech and Language Therapy ("SALT") and Occupational Therapy ("OT") Additional Learning Provision ("ALP") in Section 2B of the IDP in addition to or instead of Section 2C which, it is submitted, was contrary to the statutory scheme (Ground 1). The Council also submits that, in so listing that ALP, the ETW Panel took into account an irrelevant consideration, namely the means of enforcement against an NHS body (Ground 2).

4. The President of the ETW having refused permission to appeal on 17 February 2025, I granted permission on both grounds on 6 March 2025.

5. The relevant Health Board ("the Health Board") were invited to make submissions on Ground 1 and/or attend the hearing which they declined to do.

6. At the hearing, Laura Shepherd of Counsel appeared for the Council, and Mrs X appeared in person. I thank them both for their assistance.

Relevant Legislation: Background

7. References in this Decision to statutory provisions are to the Additional Learning Needs and Education Tribunal (Wales) Act 2018 ("the 2018 Act"), unless otherwise appears.

8. Although some provisions of the Education Act 1996 ("the 1996 Act") remain in place, since 23 August 2022, the regime governing the identification of, and provision for, children with ALN in Wales is primarily set out in the 2018 Act, and the Additional Learning Needs Code for Wales 2021 ("the ALN Code") made by the Welsh Ministers under section 4(1). When exercising functions under the 2018 Act, local authorities must have regard to the ALN Code (section 4(3)(a)).

9. Under the 2018 Act, a person has ALN "if he or she has a learning difficulty or disability (whether the learning difficulty or disability arises from a medical condition or not) which calls for additional learning provision ["ALP"] (section 2(1)); and a child of school age has "a learning difficulty or disability if he or she either (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 which prevents or hinders him or her from making use of facilities for education… of a kind generally provided for others of the same age in mainstream maintained schools…" (section 2(2)). In any specific case, the identified ALN therefore informs the required ALP.

10. A local authority must decide if a child has ALN where it comes to its attention or appears to it that that child may do so (section 13). If it decides that the child does have ALN, then it must prepare and maintain an IDP for that child (section 14(1)(a) and (2)(a)). The IDP must include (i) a description of the child's ALN, (ii) a description of the ALP which the child's learning difficulty or disability calls for, and (iii) "anything else required or authorised by or under [Part 2 of the 2028 Act"] (section 10(a), (b) and (c)). "Additional learning provision" means, so far as relevant to this appeal, "… educational… provision that is additional to, or different from, that made generally for others of the same age in… mainstream maintained schools in Wales…" (section 3(1)). Given the respective statutory definitions of ALN and ALP, it is clear that ALP is entirely responsive to identified ALN.

11. Furthermore, and importantly, by section 14(10)(a):

> "Where a local authority maintains an [IDP] for a child or young person, the authority must… secure the [ALP] described in the plan."

12. The provisions in relation to preparing and maintaining an IDP are found in Chapter 23 of the ALN Code. There is a mandated standard form for the IDP in Annex A of that Code (Annex B for a looked after child), and how the various sections of that form are to be completed is set out in paragraphs 23.15-23.96 of the Code. Section 2 of the IDP is the focus of this appeal, the relevant parts being Sections 2A to 2C, which are headed as follows:

> "Section 2A: Description of the child or young person's [ALN]"

> "Section 2B: Description and delivery of the child or young person's [ALP]"

> "Section 2C: Description and delivery of ALP to be secured by an NHS body."

13. Within Section 2B, Section 2B.1 "Intended outcome" sets out the outcome intended by the provision of each element of ALP; and Section 2B.2 "ALP to be provided" requires a description of the ALP to be provided with a view to meeting the intended outcome. As indicated above (paragraph 11), section 14(10)(a) requires a local authority which maintains an IDP to secure the ALP described in the plan. That is reflected in the mandated IDP form which requires the local authority to identify who will provide each element of the ALP. Those might include the local authority directly, an outsourced contractor or (as we shall see) an NHS body under sections 20-21.

14. Section 2C requires some explanation. Under the 1996 Act (which applied in Wales until the 2018 Act came into effect), the obligation to provide "Special Educational Needs" ("SEN", different from but essentially the equivalent of ALN) in a "Statement" (the equivalent of an IDP) falls upon the local authority. There are no means by which an NHS body can be required to make any special educational provision towards such needs although, where an Educational and Healthcare Plan specifies health care provision (as opposed to special educational provision), the responsible health care commissioning body has an obligation to make that provision (section 42 of the Children and Families Act 2014).

15. Since the 2018 Act, there has been a different approach in Wales, increased collaboration between local authorities and local health boards ("LHBs") being a principle of that Act.

16. For example, under section 65, a local authority may ask an LHB to provide it with "information or other help, which it requires for the purpose of exercising its functions" under the Act, and the LHB is usually required to respond to such a request.

17. More specifically, sections 20 and 21 impose obligations on health bodies (including LHBs) to provide ALP in certain circumstances. They provide:

> **"20 [ALP]: [LHBs] and NHS trusts**
>
> (1) The bodies specified in subsection (2) may refer a matter to an NHS body, asking it to consider whether there is any relevant treatment or service that is likely to be of benefit in addressing the additional learning needs of a child or young person.
>
> (2) The bodies are—
>
> (a) where the referral would relate to a child, or to a young person who is a registered pupil at a maintained school, a local authority;
>
> (b) where the referral would relate to a young person who is not a registered pupil at a maintained school, the body that prepares or maintains an individual development plan for the young person.
>
> (3) But a body may not make a referral under subsection (1) unless—
>
> (a) it has informed the child or young person and, in the case of a child, the child's parent, that it intends to make the referral,
>
> (b) it has given the child or young person and, in the case of a child, the child's parent, an opportunity to discuss whether the referral should be made, and
>
> (c) it is satisfied that making the referral is in the best interests of the child or young person.
>
> (4) If a matter is referred to an NHS body under this section, the NHS body must consider whether there is a relevant treatment or service that is likely to be of benefit in addressing the child's or young person's additional learning needs.
>
> (5) If the NHS body identifies such a treatment or service, it must—

(a) secure the treatment or service for the child or young person,

(b) decide whether the treatment or service should be provided to the child or young person in Welsh, and

(c) if it decides that the treatment or service should be provided to the child or young person in Welsh, take all reasonable steps to secure that the treatment or service is provided in Welsh.

(6) In this section, and in section 21, 'relevant treatment or service' means any treatment or service that an NHS body would normally provide as part of the comprehensive health service in Wales continued under section 1(1) of the National Health Service (Wales) Act 2006.

21 [IDPs]: [LHBs] and NHS trusts

(1) If an NHS body identifies a relevant treatment or service that is likely to be of benefit in addressing a child's or young person's [ALN] following a referral under section 20 it must—

(a) inform the body that made the referral of that treatment or service,

(b) if the referral was not made by a body that maintains an individual development plan for the child or young person, inform the body that maintains the [IDP] of that treatment or service, and

(c) if it considers that the treatment or service should be provided to the child or young person in Welsh, inform the persons mentioned in paragraphs (a) and (b) that the treatment or service should be provided in Welsh.

(2) If an NHS body does not identify a relevant treatment or service that is likely to be of benefit in addressing a child's or young person's [ALN] following a referral under section 20 it must—

(a) inform the body that made the referral of that fact, and

(b) if the referral was not made by a body that maintains an [IDP] for the child or young person, inform the body that maintains the individual development plan of that fact.

(3) If an NHS body informs a body that maintains an [IDP] for a child or young person that there is a relevant treatment or service likely to be of benefit in addressing a child's or young person's [ALN], the body that maintains the plan must describe the treatment or service in the plan, specifying that it is [ALP] to be secured by the NHS body.

> (4) If an NHS body informs a body that maintains an [IDP] for a child or young person that a relevant treatment or service should be provided to a child or young person in Welsh, the body that maintains the plan must specify in the plan that the treatment or service is [ALP] that should be provided in Welsh.
>
> (5) If an [IDP] specifies under this section that [ALP] is to be secured by an NHS body, the following duties do not apply to that [ALP]—
>
> > (a) the duty of a governing body to secure provision under section 12(7) (including the duty to take reasonable steps to secure provision in Welsh);
> >
> > (b) the duty of a local authority to secure provision under section 14(10)(a) and the duty to take reasonable steps to secure provision in Welsh under section 14(10)(c);
> >
> > (c) the duty of a local authority to secure provision under section 19(7)(a) and the duty to take reasonable steps to secure provision in Welsh under section 19(7)(c).
>
> (6) The description of the [ALP] specified in a plan under this section as provision an NHS body is to secure may only be removed or changed on review of a plan in accordance with section 23 or 24 and with the agreement or at the request of the NHS body.
>
> (7) If, on review of a plan, the NHS body requests a governing body or a local authority that maintains an [IDP] for a child or young person to remove or change the description of the [ALP] specified in the plan under this section as provision the NHS body is to secure, the governing body or local authority must comply with the request.
>
> (8) Nothing in this section affects the power of the [ETW] to make an order under this Part.
>
> (9) If the [ETW] orders the revision of an individual development plan in relation to [ALP] specified under this section as provision an NHS body is to secure, an NHS body is not required to secure the revised [ALP] unless it agrees to do so.
>
> (10) Regulations must provide that where an NHS body is under a duty to inform under subsection (1) or (2), it must comply with that duty within a prescribed period, unless a prescribed exception applies."

18. The following are worthy of note.

(i) X is a child and, although the same provisions apply to young persons, I need only refer to a child in this context; and to the local authority as being the body responsible for preparing and maintaining the IDP for a child.

(ii) Section 21(5) requires the local authority to specify in an IDP a relevant treatment or service identified by the NHS body itself as likely to be of benefit in addressing a child's ALN (including where such treatment or service actually comprises the ALP) as ALP to be secured by an NHS body. It is necessarily inferred that, where the NHS body has *not* identified such treatment or service, the IDP should not identify the relevant ALP as to be secured by an NHS body. The ALP to be provided by an NHS body is dependent upon that body agreeing to provide it on the basis of the criteria set out in the statutory scheme (subject to a challenge that its decision not to provide it is unlawful).

(iii) Whilst section 14(10)(a) imposes a duty on a local authority which maintains an IDP to secure the ALP in that plan, that duty does not apply if, following an NHS body agreeing that can provide a treatment or service which covers or assists with identified ALP, the IDP specifies that that ALP is to be secured by that NHS body (section 21(5)(b)). That is because the obligation falls upon another public body, i.e. the NHS body. Unsurprisingly, there is no lacuna of responsibility. If the NHS body ceases to be responsible for that ALP, then the local authority is obliged to amend the IDP to take out the specification that the ALP is to be secured by an NHS body (notably by taking that ALP out of Section 2C). But it remains ALP, for which (everything else being equal) responsibility reverts to the local authority under section 14(10)(a).

19. The ALN Code, as you would expect, is consistent with, confirms and reinforces these statutory provisions, effectively providing the same substantive content in narrative form. The following matters in the Code are worthy of note in the context of this case.

(i) By paragraph 23.38 (which the Council relied on in its appeal):

> "The body maintaining the IDP has duties about securing the ALP set out in it (see Chapters 11-17 of the Code). To be able to describe the ALP in sufficient detail and secure it, where others will be delivering and/or funding the ALP, the body maintaining the IDP may need to check these matters with those others. The detail of the ALP can then reflect this."

(ii) The ALN Code makes provision for, not only the description of ALN (Section 2A) and ALP required to meet those ALN (Section 2B), but also for any ALP that must be secured by an NHS body following the process of referral to, consideration by and the agreement of that NHS body (Section 2C), that ALP "having been identified by that body as a relevant treatment or service that is likely to be of benefit in addressing the [child's] ALN" (paragraph 23-43 of the ALN Code). Those sections of the IDP, which appear in the mandated form for an IDP, derive from the ALN Code.

(iii) Leaving aside Section 2C altogether, Section 2B requires, for each element of ALP, details of the organisation/service which will in fact provide that ALP where different from the body maintaining the IDP. These may include (e.g.) outsourced contractors or an NHS body under sections 20-21.

(iv) Paragraph 23.43 of the ALN Code makes clear that: "[Section 2C] only applies in cases where there has been a referral to an NHS body for consideration as to whether there is a relevant treatment or service". Paragraph 23.44 appears to envisage circumstances in which a referral has been made and no treatment or service has been identified by the relevant NHS body, so that that NHS body is under no obligation to provide the relevant ALP. In those circumstances, it indicates that the relevant part of Section 2C should be marked: "Referral made. No relevant treatment or service identified", and any difference of opinion is recorded. However, if and when it is clear that no NHS body will be responsible for the relevant ALP, then the relevant ALP has no place in Section 2C which is exclusively concerned with "Description and delivery of ALP to be secured by an NHS body". Where an NHS body is confirmed as responsible, paragraph 23.45 of the ALN Code makes clear that the IDP must ensure that the NHS body is content with the description of the ALP it is to secure. It seems to me that the suggested marking can only be relevant where the IDP has not been finalised.

(v) Section 76 of the 2018 Act and paragraph 33.21 of the ALN Code give the ETW a power to make recommendations to an NHS body about the exercise of the body's functions; and, when such a recommendation is made, within six weeks the NHS body must report to the tribunal on the action it has taken or proposes to take on the recommendation or why it does not propose to take any such action.

The Facts

20. X has Trisomy 21 (Down's Syndrome) with cognitive and communication disabilities and associated motor, learning and some sensory differences. His ALN are set out, now uncontroversially, in Section 2A of the Working Document IDP issued by the ETW Panel with its Decision on 25 November 2024.

21. X has been in receipt of both SALT and OT from the Health Board since 2016. Since 2017, his parents also employed a SALT therapist to work with X including at school on a 1:1 basis until February 2024, when the school (based on advice received from the Health Board) said that the therapist would no longer be allowed to give that support in school.

22. When he joined the school, X was in receipt of an SEN Statement under the 1996 Act. In 2023, the Council started the process of transitioning him from that Statement to an IDP under the 2018 Act. During the discussions towards that transition, various issues arose including in relation to the model and quantity of direct SALT therapy. Mrs X supported the recommendation of the SALT therapist who had worked with X since 2016, namely that X required intensive school-based intervention involving weekly speech and language sessions, i.e. ten sessions of one hour each per term during term time, and half termly home sessions ("Plan A"). The Health Board preferred the model proposed by an NHS SALT therapist who had also known X for some time, which involved four hour-long sessions each half term – two at the beginning and two at the end of the half term ("Plan B"). Plan B was therefore a different model from Plan A, with less SALT provision (eight rather than ten sessions per term).

23. On 22 May 2024, the Council issued a final IDP with the Plan B SALT and OT provision recommended by the Heath Board being listed in Section 2C and not in Section 2B.

24. On 10 June 2024, Mrs X appealed the IDP to the ETW challenging the Council's decision as reflected in the IDP as to (i) the model (and, thus, the amount) of direct SALT therapy, (ii) the provider of the therapy and (iii) where the SALT and OT provision should be listed in the IDP, i.e. whether it should be listed in Section 2B instead of (or, at least, as well as) Section 2C. Issue (iii) to an extent turned on issue (ii), because Mrs X contended that the therapy should be provided by private individuals rather than any NHS body: but she also submitted, more fundamentally, that, even if supplied by an NHS body, the provision should appear in Section 2B as well as Section 2C.

25. The ETW Panel concluded in the ETW Decision that:

(i) the OT provision should be that which the Health Board agreed to provide, and that should be listed in Sections 2B and 2C; and

(ii) in respect of SALT, Plan A would meet X's needs and Plan B would not, so the provision included in Plan A should be provided; and that provision should be listed in Section 2B only.

26. That decision was set out in the ETW Decision Reasons and in the IDP Working Document appended to that Decision. That Working Document was amended under the slip rule on 29 January 2025. The Council issued the IDP in accordance with the amended IDP Working Document on 17 February 2025.

Ground 1

27. Whilst the process has been long, during its course, most disputes between the Council and Mrs X have been resolved. For example, the Council now accepts that it will maintain X's IDP (see paragraph 32 of the ETW Decision); and the ETW Panel resolved the model and amount of SALT and OT, which neither party appeals.

28. However, as the Council's first ground of appeal, Ms Shepherd submitted that the ETW Panel erred in concluding that the SALT and OT should be included in Section 2B as well as, or instead of, Section 2C of the IDP. Although, by section 14(10)(a) (quoted at paragraph 11 above), where a local authority maintains an IDP (as does the Council in this X's case), it "must secure the [ALN] described in the plan", section 21(5)(b) (quoted at paragraph 17 above) explicitly disapplies the need for the local authority to secure provision where it is to be secured by an NHS body. Therefore, provision which is to be secured by an NHS body should be specified in Section 2C, but, given that Section 2B only relates to the body which maintains the IDP (paragraph 23.38 of the ALN Code, quoted at paragraph 19(i) above), not in Section 2B. In short, it was submitted that Section 2B should include only the ALP for which the local authority was responsible, and to place ALP for which an NHS body is responsible in Section 2B would be contrary to the legislative intent to make NHS bodies responsible for some ALP.

29. Furthermore, it was submitted that it would cause confusion if the same provision was specified in both Sections 2B and 2C as public bodies would not know who is responsible for securing the ALP.

30. However, I do not agree with the premise upon which this analysis is built. Like the ETW Panel in its Decision (paragraph 48), I consider the true effect of the statutory scheme to be unambiguously clear from the wording used in the scheme.

31. As I have described (and as required by the 2018 Act), the ALN Code makes clear that Section 2 of the IDP is required to set out (so far as relevant to this case):

(i) Section 2A: A description of the child's ALN as assessed by the local authority or, on appeal, the ETW.

(ii) Section 2B: A description of the intended outcome (Section 2B.1) and the ALP identified as being required and therefore "to be provided with a view to meeting the identified intended outcome" (Section 2B.2, descriptor heading), i.e. the ALP assessed by the local authority or, on appeal, the ETW as being required as responsive to the identified ALN.

(iii) Section 2C: A description of the ALP that must be secured by an NHS body having been identified by that body through the process set out in the statutory scheme as a relevant treatment or service that is likely to be of benefit in addressing the child or young person's ALN.

32. Section 2B expressly includes all ALP identified as being required. Whilst paragraph 23.38 of the ALN Code correctly states that: "The body maintaining the IDP has duties about securing the ALP set out in it (see Chapters 11-17 of the Code)…", nothing in that paragraph or Chapters 11-17 of the Code suggests that Section 2B should or can omit any ALP, e.g. on the basis that the statutory scheme allows or requires that particular provision be made by someone other than the local authority. Therefore, as the ETW Panel concluded (paragraph 48 of the ETW Decision), where ALP is described in Section 2C as being the responsibility of an NHS body, that does not affect or reduce the requirement to describe in Section 2B all ALP that is identified as being required by the child.

33. This construction does not arguably frustrate the legislative intention to make NHS bodies responsible for some ALP. If, following the process dictated by the statutory scheme, ALP is described in Section 2C as being the responsibility of an NHS body, then that is the responsibility of that NHS body and not the responsibility of the local authority because of section 21(5)(b) (quoted at paragraph 17 above). For the same reason, I see no arguable source of confusion in that

construction: it is clear beyond peradventure that ALP described in Section 2C is the responsibility of the NHS body and not the local authority and, in any event, Section 2B requires identification of the organisation/service to provide each specific element ALP and, where that is an NHS body, then that body (and not the local authority) should be identified there.

34. For those reasons, I do not consider that the ETW Panel erred in respect of this point of principle.

35. In respect of the OT, that disposes of this ground of appeal: the OT was correctly placed in both Section 2B and Section 2C of the IDP.

36. However, the ETW Panel's application of the principle to the SALT requires further consideration. The ETW Panel found – as they were entitled to do – that SALT Plan A would meet X's needs, and Plan B would not, so the provision included in Plan A should be identified in Section 2B and provided. Having heard evidence from the Health Board therapist relied on by the Council, they then found that "the Health Board is unlikely to agree to provide the direct weekly speech and language intervention we have found necessary to meet X's needs", i.e. the provision in Plan A. But, as I understand it, the Health Board were never asked whether, despite their preference for Plan B, if the ETW concluded that the appropriate SALT was that in Plan A, would they agree to provide that in Plan A. In any event, in the light of the ETW Panel conclusion, on 10 January 2025, in an internal email later copied to the Council, that same therapist set out the SALT the Health Board agreed to supply in terms of Plan A; and the Health Board have been providing SALT to X in accordance with Plan A since. On this evidence, which was before me, it is my understanding that the Health Board, subject to the usual reviews of the therapy from time-to-time, have agreed that the Plan A SALT is a treatment or service that is likely to be of benefit in addressing X's ALN; and they have agreed that they can and will provide X with that SALT.

37. In my view, the ETW Panel ought to have asked the Health Board in terms whether it would be responsible for Plan A SALT provision if the Panel determined (as, in the event, they did) that that provision would meet X's needs, and Plan B would not. We now know that the Health Board would have confirmed that, in those circumstances, they would have done so. However, had the Health Board given that confirmation, then, given that an NHS body cannot be made responsible for ALP unless it agrees to do so, the Panel ought to have made a recommendation to the Health Board under section 76 and paragraph 33.21 of the ALN Code that they should be responsible for providing SALT in accordance with Plan A to which the Health Board would have been required to respond within six weeks (see paragraph 19(iv)

above). If they had then not agreed to provide that SALT, the responsibility for providing it would have remained with the Council.

38. However, given that the Health Board have now accepted responsibility for making the Plan A SALT provision for X, I can simply order that the IDP be amended to describe the SALT provision which the Health Board have agreed to provide in Section 2C, and also to show in Section 2B that that provision is to be provided by the Health Board (and not the Council).

39. To that extent, and that extent only, the appeal is allowed.

Ground 2

40. At paragraph 49 of its Decision, the ETW Panel said:

> "If the approach of advocated by the [Council] was correct, then following a recommendation of the Tribunal if then the Health Board refused to secure the provision, a parent may have to resort to the lengthy, expensive and uncertain (in this context) remedy of judicial review to ensure that provision was delivered."

41. Ms Shepherd submitted that the ETW Panel erred in taking into account the means of enforcement, which was an entirely irrelevant consideration to the construction of the statutory scheme.

42. I do not consider that this ground has any force. As a tenet of construction, it is not inappropriate to consider whether one interpretation of provisions leads to a result which the legislature could not have intended. That is not the same as taking into account an irrelevant consideration when (e.g.) exercising a power or discretion. In any event, the key analysis of the ETW Panel is found in paragraph 48 of its Decision which, as described above, construes the relevant provisions correctly. Paragraph 49 is not material to that analysis: it simply points out that the (already rejected) alternative construction proposed by the Council would have curious and unhappy consequences.

43. Of course, for the reasons set out above, those consequences do not flow from the statutory provisions properly construed: there can be no "lacuna of responsibility" for ALP which is identified as being required to meet identified ALN. Any dispute as to responsibility is a matter between the local authority and an NHS body which refuses to accept

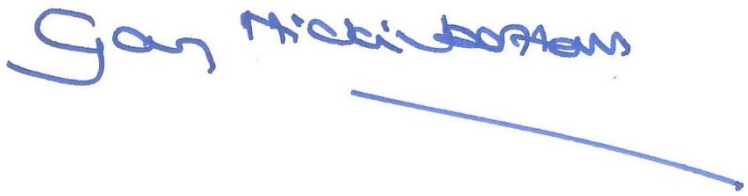
responsibility for ALP. Unless and until it does accept that responsibility (or is found to have acted unlawfully in not agreeing to do so), then the local authority will remain responsible for making the provision.

44. For those reasons, the appeal on Ground 2 is dismissed.

Conclusion

45. In respect of Ground 1, whilst the primary ground of appeal fails, I will allow the appeal and direct that X's IDP be amended to describe the SALT provision which the Health Board have agreed to provide in Section 2C, and to show in Section 2B that that provision is to be made by the Health Board (and not the Council).

46. The appeal on ground 2 is dismissed.



The Rt Hon Sir Gary Hickinbottom
President of Welsh Tribunals
Sitting as a Judge of the Upper Tribunal
Authorised for issue on 23 May 2025