

TM and SM v Liverpool City Council [2024] UKUT 201 (AAC)

Considering The Child's Views.

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1. Introduction

The case of *TM and SM v Liverpool City Council* [2024] UKUT 201 (AAC) addresses critical issues concerning the consideration of a child's views, wishes, and feelings in decisions related to their educational placement under the Children and Families Act 2014. The Upper Tribunal's decision underscores the legal obligations of local authorities and tribunals to incorporate the perspectives of children in educational

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planning, particularly when determining appropriate school placements for children with special educational needs (SEN).

2. Factual Background

The appellants, referred to as TM and SM, are the parents of a seven-year-old boy, S, diagnosed with autism spectrum disorder (ASD), sensory processing difficulties, developmental coordination disorder (DCD), and symptoms of cerebral visual impairment (CVI). At the time of the tribunal hearing, S was not attending school and was receiving education at home. The dispute arose over the appropriate educational setting for S, with the parents advocating for a non-maintained special school (School Y), where S had been attending weekly enrichment sessions, while the local authority (Liverpool City Council) proposed a maintained mainstream primary school

with a special resourced provision for pupils with ASD (School X).

3. Procedural History

The parents appealed to the First-tier Tribunal (FTT) challenging the contents of S's Education, Health, and Care (EHC) plan, specifically Sections B (special educational needs), F (special educational provision), and I (placement). The FTT concluded that both School X and School Y were suitable to meet S's needs but determined that placing S in School Y would result in an inefficient use of resources due to significant cost differences. Consequently, the FTT named School X in Section I of the EHC plan.

Dissatisfied with this outcome, the parents appealed to the Upper Tribunal (UT), asserting that the FTT failed to adequately consider S's views, wishes, and feelings

regarding the proposed school placements, as mandated by Section 19 of the Children and Families Act 2014. They presented new evidence indicating S's strong opposition to attending School X, including expressions of severe anxiety and threats of self-harm if compelled to attend the mainstream setting.

4. Legal Framework

Several statutory provisions and legal principles are pertinent to this case:

- . Section 19 of the Children and Families Act 2014:** Mandates that local authorities, in exercising their functions under Part 3 of the Act, must have regard to the views, wishes, and feelings of the child or young person, the importance of their participation in decision-making,

and the need to provide information and support to facilitate such participation.

- **Section 39 of the Children and Families Act 2014:** Outlines the process for naming a school in an EHC plan, emphasizing parental preference unless it is incompatible with the efficient use of resources or the provision of efficient education for others.
- **Section 9 of the Education Act 1996:** Establishes the principle that children should be educated in accordance with their parents' wishes, provided this does not lead to unreasonable public expenditure or impede efficient instruction and training.
- **Tribunal Procedure (First-tier Tribunal (Health, Education and Social Care Chamber) Rules 2008:** Rule 21(2)(e)

requires local authorities to include the views of the child about the issues raised by the proceedings in their response to appeals.

5. Issues on Appeal

The primary issues before the Upper Tribunal were:

1. Whether the FTT erred in law by failing to have due regard to S's views, wishes, and feelings concerning the proposed school placements, as required by Section 19 of the Children and Families Act 2014.
2. Whether the new evidence presented by the parents regarding S's opposition to attending School X was admissible and, if so, its impact on the FTT's decision.

6. Arguments

Appellants' Position:

- . The FTT did not have any evidence of S's views regarding School X.
- . The local authority had a duty to present S's views and failed to do so.
- . S's subsequent reactions to being informed he would attend School X were significant and could have influenced the FTT's decision.
- . The FTT erred by not exercising its inquisitorial jurisdiction to gather S's views.

Respondent's Position:

- . The FTT adequately considered S's views, wishes, and feelings before determining that School X was appropriate.

- . S's views were not determinative due to his age, and it was reasonable for the FTT to rely on the views expressed by his parents.
- . The absence of S's comments in the tribunal bundle justified the FTT's reliance on parental input.

7. Decision of the Upper Tribunal

The Upper Tribunal allowed the appeal, finding that the FTT had erred in law by failing to adequately consider S's views, wishes, and feelings regarding the proposed school placements. The UT emphasized that Section 19 of the Children and Families Act 2014 imposes a duty on both local authorities and tribunals to have regard to the views, wishes, and feelings of the child when making decisions about their education. The UT noted that the FTT's

decision lacked any reference to S's views about School X and that there was no evidence that the FTT had considered how S felt about attending the local authority's preferred placement.

The UT also addressed the admissibility of the new evidence presented by the parents, applying the principles from *Ladd v Marshall* [1954] 1 WLR 1489. The UT concluded that the evidence was admissible, as it could not have been obtained with reasonable diligence before the FTT hearing, it was likely to have had an important influence on the outcome, and it was credible.

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