Neutral Citation Number: [2026] EWHC 2978 (Admin)

Case No: AC-2026-LON-000708

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/11/2026

Before :

GUY VASSALL-ADAMS KC SITTING AS A DEPUTY HIGH COURT JUDGE

- -

Between :
The KING
On the application of
SKM (by her litigation friend and mother, SKW) **Claimant**
- and -

ESSEX COUNTY COUNCIL

Defendant

- -
- -

Ollie Persey (instructed by **Bindmans LLP**) for the **Claimant**
Ben Amunwa (instructed by Essex Legal Services) for the **Defendant**

Hearing date: 29 October 2026

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- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 17th November 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DHCJ GUY VASSALL-ADAMS KC:

Introduction

1. This is an application for judicial review challenging the Defendant local authority's home-to-school transport arrangements for a teenager with special educational needs.

Factual Background

2. The Claimant is a 15 year old girl who attends a mainstream Academy which is about 1.5 miles away from her home. She has an Education, Health and Care Plan ("EHCP"), which is maintained by the Defendant. Starting in June 2024, the Defendant provided home-to-school transport for the Claimant via a contractor, Acme Transport Services. The provider accommodated the Claimant's request to be dropped off at school early (8am for an 8.30am expected arrival time and an 8.40am start time) and to be picked up early (at 3.15pm, 5 minutes earlier than the end of the school day at 3.20pm). I will refer to these as the "early timings".

3. The reason why the Claimant and her mother had requested these early timings was to enable the Claimant to arrive at school 30 minutes before the expected arrival time, before the school became busy with the arrival of other teenagers. Likewise, the slightly early pick up allowed the Claimant to leave school before the corridors became crowded with other departing teenagers. The "early timings" aimed to create a buffer zone for the Claimant before the school day started, preventing her from becoming overstimulated and overwhelmed, which arose from her sensory needs/disability.

4. In September 2025, at the start of the 2025/2026 academic year, the Defendant changed the drop off and pick up times to accommodate another child, who was to share the taxi journey with the Claimant. The net result was that the provider could no longer accommodate the early timings and under the new arrangement the Claimant would be dropped off at school at 8.30am, the expected arrival time for all pupils, and would be picked up at 3.30pm, 10 minutes after the end of the school day. I shall call these the "new timings".

The appeals and the present claim

5. On 7 September 2025, the Claimant's mother and litigation friend raised a Stage 1 appeal regarding the Defendant's transport arrangements, which the Defendant refused on 22 September 2025. On 23 September 2025, the Claimant's litigation friend raised a Stage 2 appeal, which the Defendant refused on 7 October 2025. The Stage 2 appeal email of 7 October 2025 is the decision under challenge (the "Decision"). The Claimant requested reconsideration of the Decision, but the Defendant declined reconsideration, maintaining its decision.

6. On 16 February 2026, the Claimant's litigation friend issued these judicial review proceedings. On 18 March 2026, the Defendant filed and served an Acknowledgment of Service and Summary Grounds of Defence. At that time the Claimant advanced 7 different grounds of review. On 18 June 2026, David Pittaway KC sitting as a Deputy High Court Judge granted the Claimant and her litigation friend anonymity, made an order extending time and granted permission on all 7 grounds. On 17 July 2026, the Defendant filed and served Detailed Grounds of Defence.

7. The Claimant subsequently obtained legal aid and instructed solicitors and counsel. This led to the Claimant no longer pursuing grounds 2-7 and instead focussing exclusively on her first ground, which is breach of statutory duty under s.508B Education Act 1996. As a consequence, on 30 September 2026, the Claimant applied, by consent, to amend her Statement of Facts and Grounds to reflect her new case, with the Defendant making consequential amendments to its case. I approved that consent order at the start of the hearing, welcoming the fact that the Claimant had decided to focus her case on a single key ground of challenge.

8. At the start of the hearing I heard argument as to whether the Claimant should be granted permission to rely on the second witness statement of her litigation friend SKW, which had been filed as supplemental evidence in March 2026 by way of a reply. The Defendant's position was that this should not have been served as reply evidence and was not likely to assist the Court on the issues it had to decide. Having reviewed that evidence *de bene esse* I decided to postpone my decision to this judgment. In the event, I have not found it necessary to rely on that evidence in the context of what is now a narrowly focussed challenge, so I decline to admit it, although I fully understand why the Claimant's litigation friend wanted to give a detailed account of the factual background.

9. I would like to thank the parties' solicitors for their careful preparation of the evidence and paperwork in this case. I am also grateful to counsel for their excellent, focussed submissions.

The Claimant's case on appeal

10. Before looking at the Decision, it is necessary to say something about the nature of the evidence relied upon by the Claimant in her appeals.

11. First, the Claimant has diagnosed special educational needs which are documented in her EHCP, the latest version of which was issued by the Defendant on 4 February 2025. These diagnoses are Sensory Processing Disorder, Attention Deficit Disorder, Oppositional Defiance Disorder, Dyslexia and Hypermobility. The Claimant also has diagnoses of Autism, Auditory Processing Disorder/hyperacusis, Irlen Syndrome/visual stress, Dyspraxia, Postural Orthostatic Tachycardia Syndrome ('POTS') and beta thalassaemia trait, together with associated school anxiety and academic difficulties. The Defendant was aware of all of these conditions.

12. Secondly, the Claimant's EHCP documents her sensory needs and the difficulties she encounters in busy and crowded spaces. Section B (special educational needs) of the Claimant's EHCP identifies sensory needs, noting that "*she does not like busy, crowded environments, such as lifts or gatherings"* and that she *"usually leaves the setting if it becomes too busy or she will refuse to enter in the first place"*. Within the school environment, *"she finds the corridors between lessons, the lunch hall or assembly to be overwhelming experiences"*. Parental views are recorded in the EHCP, including that the Claimant's dysregulation *"causes aggression and frustrations, which make her very volatile and sometimes physically aggressive. She loses executive function; she can become nonverbal and overly emotional."*

13. Thirdly, the Defendant was informed that medication has been tried but *"was not effective"* as it *"made [the Claimant] more volatile and less tolerant of things. It made*

her lose her mask and ability to function within society. She became much more physically aggressive and more defiant too. She is on the verge of burnout and exhaustion: this is evident in the occurrence of dizziness and fatigue that she's been experiencing at school." This was a view shared by Child and Adolescent Mental Health Services.

14. The Claimant's case was that the "early timings" enabled the Claimant to enter school while it was quieter, regulate before lessons and access pastoral support if required. The 3.15pm departure allowed her to leave before the main pupil crowds and traffic, reducing sensory and emotional pressure at the end of the day. The Claimant also relied on the fact that her attendance rose from 88% in Year 8 to 93% in Year 9, when the Claimant's transport arrangements became more consistent than the previous academic year where different and less suitable arrangements were in place, although the Claimant realistically recognised that the Claimant's attendance was influenced by a number of different factors not just the transport arrangements.

15. The positive impact of the "early timings" and the potential risks posed by the "new timings" were addressed in a letter dated 8 September 2025 from the Claimant's Head of Year, which stated as follows:

> *"[the Claimant] has found arriving at school early incredibly useful since attending [the Academy]. Due to the size of the school and the number of students in the corridor, [the Claimant] finds arriving earlier less overwhelming and uses the time to regulate before the day starts. This period of time has allowed [the Claimant] to arrive in a quiet and calm manner gradually adjusting to the busyness of the school as other students begin to arrive. If [the Claimant] is unable to do this, she would be arriving with crowds of students which she has found overwhelming in the past. This has previously led to dysregulation and has prevented from being able to access her education for that day.*
>
> *Early arrival also allows [the Claimant] to access support from the year office and ask for support if she requires. This is incredibly important for [the Claimant] as it allows for early support on days where she is feeling dysregulated. [The Claimant's] dysregulation can lead to lack of attendance and I am concerned that her attendance would be hugely impacted should she not be able to access early support at school.*
>
> *We are supportive of an early arrival and departure from school to ensure [she] can access her education."*

16. Following the Defendant's decision to impose the revised transport arrangements with the "new timings" in September 2025, the Claimant's mother withdrew the Claimant from the Defendant's transport arrangements. SKW's evidence is that from 8 September 2025, she has been paying for a minicab out of her own limited resources, which she says is unaffordable long-term as she is on benefits.

The Decision under challenge

17. The Defendant's Decision on the Stage 2 appeal consisted of a lengthy email of about 18 pages written by Mr Shamsun Noor, Head of Education Operations in the Transport Department of the Defendant.

18. The key points in the Decision may be summarised as follows:

i) *"it may be better for [the Claimant] for her to arrive at school earlier, that is not tantamount to saying that the arrangements as they stand are unsuitable."*

ii) To accommodate the "early timings" proposed by the Claimant's mother would require the Defendant to provide separate taxi arrangements for the Claimant and the other child, costing the Defendant an additional £85.98 per school day, or £16,366 over a school year. It was not reasonable to expect the public purse to bear such additional costs when suitable transport arrangements were already in place for the Claimant.

iii) The appeal is about what happens after the Claimant arrives at the school and is not about the 'journey' itself [...] What happens after the Claimant arrives at school is not the transport provision itself.

iv) This is about 'arriving' at school ready to learn –the statutory guidance does not say *"arrive at school allowing for enough time for the child to undertake a transition period before being ready to learn".*

v) The Claimant is not "*medically unable to arrive at school for the start of the normal school day and remain at school for the duration of the normal school day."*

vi) Applying the statutory guidance, *"to enable children to attend extra-curricular activities and other commitments outside school hours",* it is *"entirely reasonable to suggest the requested 'early' arrival time each morning is self evidently'outside school hours', given the school day starts at 08:40."*

vii) The emphasis is on 'arriving' ready to learn and the Defendant's interpretation is that the transport arrangements themselves i.e. the 'journey' should enable that. The 'journey' itself is as reasonably short as it could be. It constitutes the provision of a door-to-door vehicle. It is scheduled to arrive immediately before the start of the school day and to pick up at the end of the school day. What may happen after the 'journey' is not about the 'journey' itself or its suitability for the purposes for which it is intended i.e. to enable access to education.

viii) It is difficult to understand how the 'condition' of travelling with one other child for the very short period of time in question could be seen to be creating an unduly stressful, unnecessary or disproportionate situation.

ix) [The Claimant's mother says] that the proposed 15:30 collection, would leave [the Claimant] waiting in a crowded, overstimulating environment when she is already exhausted from the school day. This delay, [the Claimant says], would trigger dysregulation, worsen her documented difficulties with emotional regulation and PTSD, and cause her to return home in a heightened state of crisis and that the consequences would extend way beyond school. It is entirely

reasonable to expect the school to consider what mitigating actions it could take in this respect. There is no 'delay' in the vehicle arranged by the Council arriving to collect [the Claimant] at the end of the normal school day.

x) *"There may be consequences beyond school and at home of any end of day dysregulation […] I do not consider it is the function of school transport to cater for and manage such issues."*

xi) There is no requirement for school transport, beyond the 'journey' itself to provide for in school or after school needs.

Legal Framework

Education Act 1996

19. Section 508B of the Education Act 1996 is entitled "Local authorities in England: travel arrangements for eligible children". S.508B(1) provides, so far as relevant, as follows:

> "A local authority in England must make, in the case of an eligible child in the authority's area to whom subsection (2) applies, such travel arrangements as they consider necessary in order to secure that suitable home to school travel arrangements, for the purpose of facilitating the child's attendance at the relevant educational establishment, are made and provided free of charge in relation to the child."

20. Section 508B(4) provides that, "Travel arrangements", in relation to an eligible child, are "travel arrangements of any description" including "arrangements for the provision of transport".

21. By section 508D(3) of the 1996 Act, a local authority must have regard to statutory guidance, "Travel to school for children of compulsory school age - Statutory guidance for local authorities" ("the Guidance"). The relevant guidance for the purpose of this claim dates from January 2024.

Statutory Guidance

22. Near the start of the Guidance is a section entitled Context. The opening words of that section are as follows:

"Home to school transport is an integral part of the school system. It ensures no child of **compulsory school age** is prevented from accessing education by a lack of transport or the cost of transport." (emphasis in original)

23. In a section entitled, "More information about travel to school for eligible children", the Guidance provides as relevant:

> [63] Local authorities must make arrangements to enable a child to travel to school for the beginning of the **school day**, and to return **home** at the end of the **school day**. They are not required to make arrangements: • for children to travel between institutions during the **school day**; • to enable children to attend extra-curricular activities and other commitments outside school hours; or • to

> enable children to get to and from before and after school childcare, whether formal (for example, a childminder) or informal (for example, a grandparent)" (emphases in original).
>
> "[64] Where particular classes, year groups or pupils have a start or finish time that is different from most pupils at the school, it will not normally be possible for the local authority to make separate arrangements. There may be a small number of circumstances in which local authorities consider it appropriate to arrange transport at an alternative time of day, for example if a child has a medical condition which means they are not well enough to attend school for the whole day."

24. Part 3 of the Guidance is entitled, "suitability of travel arrangements". The relevant parts provide as follows:

> "[81] Local authorities must ensure that the travel arrangements they make take account of the needs of the child concerned. For example, it would not be appropriate to provide a pass for free travel on a service bus to a child whose special educational needs meant they would be unable to travel on a service bus.
>
> 82. The arrangements should enable the child to travel in reasonable safety and comfort, and without undue stress, strain or difficulty, so that wherever possible they arrive at school ready to learn.
>
> 84. Some children may need particular arrangements to be made to meet their needs. For example, some children might require the support of a passenger assistant on their journey, or a child may use a wheelchair or walking frame that needs to travel with them."

25. Finally, in the section on Journey times, the following paragraph appears:

> "[99] Travel arrangements for children with special educational needs, disability or mobility problems can be particularly complex to make. Shorter journeys may be particularly desirable, perhaps because a child's special educational needs or disability mean they become distressed while travelling, but a child may need to travel a long way to the school that is able to meet their needs and one vehicle may need to collect several children."

26. Below [100] there is a box containing the following worked example on journey times, relied upon by the Claimant:

> "Child T is fourteen years old and has an **EHC plan** which names a school that is 10 miles from their **home**. Previously they travelled in a taxi with one other child and the journey took 30 minutes. The local authority then combined several stop routes into one. Child T now travels in a minibus with 11 other children. Due to the extra stops, the journey time is now 90 minutes. Child T's school makes the local authority aware that, due to their **special educational needs**, they often become very distressed at being in the minibus for that length of time. On arrival at school, it takes a long time to calm down. As a result, they miss some of the activities other children participate in. The local authority

> decides it is not reasonable to exceed the recommended journey time in Child T's case and reinstates their original travel arrangements." (emphases in original)

27. Annex 2 of the Guidance reminds local authorities that they must comply with the Equality Act 2010 in determining home-to-school transport arrangements.

Case law regarding home-to-school transport arrangements

28. Both parties relied on the same three cases concerning home-to-school transport arrangements: *R v Hereford and Worcester Council, ex parte P* [1992] 2 FCR 732; *R(M) v Hounslow LBC* [2013] PTSR 942 and *P v East Sussex CC* [2014] EWHC 4634 (Admin).

29. The *Hereford* case was decided under the materially similar predecessor legislation in s.55 of the Education Act 1944 and related regulations. 'G', a 5-year old child with Down's syndrome attended a special school. The local authority ("LA") arranged for shared minibus transport with 12 others plus an escort, resulting in a route that stopped at 3 schools. G had to be strapped in during the one-hour journey, owing to his needs. By the most direct route the journey time would take 30 minutes. G's mother issued proceedings that sought to challenge the LA's refusal to limit the journey time to a maximum of 45 minutes (via amendments to P's statement of SEN).

30. At p213, McCollough J held that:

> "It is implicit in s.55(1) that the LEA is under a duty to make such arrangements as it considers necessary for a child to reach school without undue stress, strain or difficulty such as would prevent him from benefiting from the education the school has to offer, just as it must be to make such arrangements as it considers necessary for him to travel in safety and in reasonable comfort."

31. At p214, McCollough J referred to the relevant part of the SEND Regulations as follows:

> "Sub paragraph two refers to the *opinion* of the LEA. It is *its* view, not that of the parents or the doctors or the school teachers or the social workers, which is referred to. Of course, in reaching its opinion the LEA must take account of what is said by these and others, but in the end it is the opinion of the LEA which counts."

32. The challenge failed. McCollough J held that there was no evidence that the length of the journey in that case was such that G was unable properly to benefit from the education that the school had to offer. The local authority's decision on the suitability of its transport arrangements was not *Wednesbury* unreasonable.

33. In *R (M) v Hounslow LBC* [2013] P.T.S.R. 942, Sales J considered a challenge to the imposition of pick-up points on home to school transport routes without parental consent. The children benefitted from pick-ups from home and their parents contended that s.508B Education Act 1996 obliged local authorities in every case to provide transport from a child's home to school and back again. Sales J held that:

> "17. …the local authority … must be satisfied that those travel arrangements are "suitable" for the purpose of facilitating the child's attendance at their school. As Ms Scolding submitted for the council, the question of what travel arrangements are suitable for this purpose involves consideration of the circumstances of the particular case concerning both the abilities and disabilities of the child and the position of the parent, and what can reasonably be expected of them.'
> …..
> '22 There may well be debate in individual cases whether transport arrangements established with a pick-up point other than at the home of an eligible child are "suitable", as required by section 508B(1). That is a matter of judgment, and it is primarily for the local authority to decide. It is only obliged to make such travel arrangements "as they consider necessary" to secure suitable home to school travel arrangements for an eligible child."

34. The challenge on grounds of *Wednesbury* unreasonableness failed, with Sales J holding that the local authority was entitled to consider that pick up points were a suitable travel arrangement.

35. In *P v East Sussex CC* [2014] EWHC 4634 (Admin) Timothy Straker QC sitting as a Deputy High Court Judge considered a claim brought on behalf of 'P', a 15-year-old girl with SEN and medical problems attending college 27 miles from her home. The local authority provided a door-to-door taxi service. Previously, it had been flexible about collection times and accommodated a 17.00 collection for P to attend an after school club. The local authority arranged transport to school following P's medical appointments on a few occasions. There came a point when other pupils shared the same taxi route, limiting it to collection at normal school times (here, 16.00) unless additional costs were to be incurred. P alleged breaches of s.508B, and ss.20 and 149 of Equality Act 2010.

36. The Court dismissed the claim, holding:

> (1) On the interaction between s.508B and the duty to make reasonable adjustments in s.20 of the 2010 Act, "…the concern, or principal concern, is with transport to somewhere, i.e. transport to and from the college rather than what happens at the *college.*" (para 25);
>
> (2) Regarding the principles underlying the s.508B duty: "*First, the travel to be* provided is such travel arrangements as the authority consider necessary...
>
> Second, the authority should consider it necessary in order to secure suitable home to school travel…Third, this is for the purpose of facilitating the child's attendance *at her school*." (paras 39-41);
>
> (3) Attendance at school, for the purposes of the s.508B duty, refers to attendance for the normal, compulsory part of the school day (paras 50-52);
>
> (4) The LA can legitimately take account of cost and practicability and such factors bear on the purpose of providing suitable home to school transport to facilitate attendance at school (para 58);

(5) The s.508B duty "is not a counsel of absolute perfection, nor is it a requirement that the claimant be provided with a chauffeur'. Moreover, 'it is not a duty for the purpose of facilitating matters other than attendance at school…. *it is essential* properly to analyse the statutory context or boundaries of the function for which provision is being made." (para 59);

(6) "The purpose behind the provision is not (even though that may be a very desirable purpose) for facilitating attendance at medical appointments, nor is it a duty which stands to be exercised on a kind of a perpetual stand-by basis, that is to say, to be available at various times to suit medical appointments rather than to provide for travel arrangements home to school, for the school day." (para 62);

(7) There is a valid distinction between activities that were beneficial (such as after school clubs) and the compulsory school day (paras 64 & 66);

(8) The LA did not breach its s.508B duty by not facilitating attendance at after-school activities on a flexible, '*bespoke*' or stand by basis (paras 61 & 64-69) nor was there a breach of the 2010 Act as "The real complaint is the inadequacy of local education provision, rather than the provision of transport" (paras 77, 81, 97 & 99).

Case law on Process Irrationality

37. There is now a single ground of challenge based on process irrationality. In *R (KP) v Secretary of State for Foreign and Commonwealth Affairs* [2025] EWHC 370 (Admin) at §56, Chamberlain J explained what was meant by process rationality:

> "Process rationality includes the requirement that the decision maker must have regard to all mandatorily relevant considerations and no irrelevant ones, but is not limited to that. In addition, the process of reasoning should contain no logical error or critical gap. This is the type of irrationality Sedley J was describing when he spoke of a decision that "does not add up – in which, in other words, there is an error of reasoning which robs the decision of logic": *R v Parliamentary Commissioner for Administration ex p. Balchin* [1998] 1 PLR 1, [13]. In similar vein, Saini J said that the court should ask, "does the conclusion follow from the evidence or is there an unexplained evidential gap or leap in reasoning which fails to justify the conclusion?": *R (Wells) v Parole Board* [2019] EWHC 2710 (Admin), at [33]."

38. At §77 Chamberlain J explained what a "*heightened standard of review*" (or anxious scrutiny) requires in the context of process rationality:

> "…the heightened standard of review has implications for the way the court evaluates complaints of both process and outcome irrationality. In the former case, the court will subject the decision to "more rigorous examination, to ensure that it is in no way flawed" (*Bugdaycay*, 531). In this connection, the court will expect the decision-maker "to show by their reasoning that every factor which might tell in favour of an applicant has been properly taken into account" (*YH (Iraq)* , [24])."

Analysis and Conclusions

39. The language of s.508B(1) Education Act 1996 states in terms that home-to-school transport arrangements are *"for the purpose of facilitating the child's attendance at the relevant educational establishment"* and the Guidance makes it clear that this duty is being imposed *"so that no child of **compulsory school age** is prevented from accessing education by a lack of transport or the cost of transport"* (emphasis in original).

40. In this way, the language of s.508B(1) and the Guidance make it clear that the purpose of placing local authorities under a duty to provide free home-to-school transport for eligible children of compulsory school age (including those with special educational needs) is to facilitate their attendance at school and their access to education.

41. Other parts of the Guidance also show that the focus is not just on the child's experience of the journey itself, but the impact of the transport arrangements on their ability to access education during the school day. The worked example of Child T is of a child who finds the long journey time so distressing that it takes them a long time to calm down when they arrive at school and they miss part of the school day. The Guidance gives this as an example of a situation where a local authority would be expected to organise a shorter journey time.

42. The suitability of home-to-school transport provision is therefore about facilitating access to education, which means not only a child's opportunity to attend school for the duration of the school day, but also their ability to engage with, and profit from, the education on offer. The suitability of particular transport arrangements must therefore be assessed holistically by reference to the statutory purpose, which is to support the education of children with special educational needs who are at risk of missing out on their education.

43. Unfortunately, in this case the Defendant states repeatedly in the Decision that the suitability of school transport is to be assessed solely by reference to the journey itself and is not about what it has called "in school" needs. For example, at one point in the Decision the Defendant states: "*The issues to which the Head of Year 10 refers are, again, all about what happens after [the child's] arrival at school – they are not about the transport arrangements i.e. the journey per se. I do not consider it the function of school transport to cater for needs that may arise after a child has arrived at school and rely on what guidance and case law has established here."*

44. The Defendant accepts that suitable transport arrangements *"should enable the child to travel …. without undue stress, strain or difficulty, so that wherever possible they arrive at school ready to learn",* in the language of [82] of the Guidance. However, in the Defendant's view, once a child arrives at school "ready to learn" that is the end of matters and "in school" needs are not relevant to the suitability of transport arrangements but become exclusively the responsibility of the school.

45. This narrow interpretation is inconsistent with the statutory purpose and the Guidance. The Child T case study shows that decisions about transport arrangements (in that case the length of journeys) for a child with SEN may have a major impact on their ability to access education later in the school day. As with the length of journeys, so too the timings of drop-offs and pick-ups at school are relevant to the suitability of travel arrangements. Here there was clear evidence that the "early timings" made a real

difference to the ability of the Claimant to access education during the school day. The Defendant's decision needed properly to engage with this evidence.

46. By adopting a narrow approach of focussing exclusively on the journey and the moment of arrival at school, the Defendant lost sight of the statutory purpose and irrationally excluded consideration of the impact of the drop-off and pick-up timings on the Claimant's ability to access education during the school day. This was a logical error or critical gap in the Defendant's reasoning that undermined the Decision.

47. In fairness to the Defendant, I accept that it did not simply ignore the Claimant's evidence about the beneficial impact of the "early timings" and the potentially detrimental impact of the "new timings". The Decision acknowledges that the "early timings" work better for the Claimant. But because of its very narrow approach, the Defendant treated these benefits as being tangential, a "nice to have", rather than as being directly relevant to the central issue of suitability.

48. Another problematic aspect of the decision is that it appears to rely on an impermissibly restrictive reading of [64] of the Guidance on the basis that a child must establish that they are medically unfit to attend school for some of the school day. This is not what the Guidance says. The Guidance states that usually a local authority will not be able to accommodate separate arrangements for different start and finish times, but then goes on to say that there may be a small number of cases where it is appropriate for the local authority to arrange transport at an alternative time of day, for example if a child has a medical condition which means they cannot attend at a particular time of day. The Guidance makes it clear that separate transport arrangements are the exception not the rule and will need to be justified in an individual case. However, the medical condition scenario is just an example of where separate arrangements may be justified; it is not a necessary condition for alternative timings.

49. A third difficulty is that the Decision has treated the Claimant's request for the "early timings" as being a request for the Claimant to "*attend school outside of school hours for extracurricular activities or equivalent*". This is obviously wrong and mischaracterises the nature of the Claimant's request. The purpose of the early timings is not to attend school out of hours for e.g. sports or a school play, but to enable the Claimant to make the transition into the school day in a way which facilitates her access to learning in the compulsory part of the school day.

50. Finally, the Defendant erred in stating that the school was better placed to make reasonable adjustments than the Defendant. It may be that in some situations a school is well placed to make such adjustments in relation to timings and buffer zones, but there was no evidence here about what steps were open to the school based on the "new timings". It is furthermore difficult to understand how this could have worked given that the "new timings" involve the Claimant being dropped off at school only 10 minutes before the formal start of the school day at 8.40am. Given the need for several minutes to find a classroom and settle in, there is no spare time at all and any buffer zone created by the school would necessarily impact on the Claimant's time for learning.

51. Mr Amunwa's fallback submission was that even if the Defendant did err in aspects of its approach, there was simply insufficient evidence here to justify a decision in the Claimant's favour. However, there was evidence both about the beneficial effect of the

early timings and the likely detrimental effect of the new timings from the Claimant's mother and her Head of Year at school. This evidence was grounded in her special educational needs, including the EHCP and an educational psychologist's report, reports which were before the Defendant. I accept that the weight to be accorded to that evidence was primarily a matter for the Defendant. The problem here is that the Defendant's whole approach to the evidence was tainted by erroneous reasoning.

s.31(2A) Senior Courts Act 1981

52. The Defendant invites me to conclude that s.32(2A) of the Senior Courts Act applies in this case. The statutory test is met if it *"appears to the court to be highly likely that the outcome for the claimant would not have been substantially different if the conduct complained of had not occurred"* and the court has not decided to disregard the requirements because it considers it is appropriate to do so for reasons of *"exceptional public interest"*.

53. In *R(Bradbury) v Brecon Beacons National Park Authority* [2025] EWCA Civ 489, [2025] 4 WLR 58, Lewis LJ on behalf of the Court of Appeal gave the following guidance on applying s.32(2A) at [72]:

> "In relation to section 31(2A), the court is concerned with evaluating the significance of the error on the decision-making process. It is considering the decision that the public body has reached, and assessing the impact of the error on that decision in order to ascertain if it is highly likely that the outcome (the decision) would not have been substantially different even if the decision-maker had not made that error. It is not for the court to try and predict what the public authority might have done if it had not made the error. If the court cannot tell how the decision-maker would have approached matters, or what decision it would have reached, if it had not made the error in question the requirements of section 31(2A) are unlikely to be satisfied."

54. Applying this approach, I am unable to accept that it is "highly likely" that, absent the errors I have identified, the decision would have been the same. It is possible that the decision would have been the same, but there was material before the decision-maker that could have justified a different outcome. In these circumstances, I cannot tell how the Defendant would have approached matters, or the decision it would have reached, absent the errors in this Decision. For these reasons, I decline to invoke s.31(2A).

Disposal

55. The Claimant has succeeded in establishing that this Decision was unlawful and in breach of s.508B of the Education Act 1996 by reason of process irrationality. Accordingly, I will grant the Claimant an order quashing the Decision and direct the Defendant to undertake a reassessment of the Claimant's home-to-school transport needs.