



2026UT67

Ref: UTS/AP/26/0031

DECISION OF

Lord Lake

**ON AN APPEAL
IN THE CASE OF**

CG
per Govan Law Centre

Appellant

- and -

Falkirk Council
per Anderson Strathern LLP

Respondent

FTS Case Reference: FTS/HEC/AR/25/0014

8 September 2026

Introduction

1. The appellant seeks to appeal a decision of the First-Tier Tribunal (FTS) dated 16 December 2025 confirming a decision of the respondent, Falkirk Council. The council had refused a placing request made by the petitioner on behalf of her son, X. Permission to appeal was given in relation only to one of the lines of argument identified in the Application for Permission to Appeal dated 16 February 2026. Although it is difficult to reconcile the



paragraph numbers of the Application with the paragraph numbers discussed within the decision on the Application, it is apparent that permission was given only in relation to the challenge to Paragraph 152 of the original FTS decision. The Application contains the following statements in relation to this paragraph:

“12. At paragraph 152, the tribunal found that “the specified school offer 1:1 SLT for 30 minutes a day for four days a week. We did not hear evidence to the effect as to how this would benefit the child more than the current embedded SLT support at the current school”.

13. That finding is not supported by the evidence of Angela Evans.”

This is followed by a summary of the evidence of the evidence of Ms Evans according to notes taken by the solicitor for the Appellant.

2. In relation to this matter, the decision on the Application for Permission to Appeal states:
“24. It is arguable that the tribunal erred in its findings in fact (at paragraph 93), leading to a mistaken contrast in the SLT provision at the two schools in paragraph 152.”

Submissions for the Appellant

3. For the pursuer it was argued that there was a failure to give adequate reasons for the decision. Mr Fyffe emphasised that the written reasons given for a decision must leave a reader in no substantial doubt what the reasons were for the decision that had been taken. In this case it was said there was a real and substantial doubt. FTS had conducted a comparative exercise but had erred in comparing the provision of 30 minutes of 1:1 Speech and Language Therapy that X would receive on four days a week at the specified school with the embedded support that he received at the current school. This was an error as it did not take account of the embedded support that would be provided at the specified school in addition to the one-to-one therapy. It was submitted that this was an error of fact so significant as to amount to an error of law.



4. I was referred to the summary of evidence of Ms Evans that was included in the application to appeal and a copy of the statement of Ms Evans that had been before FTS. It was submitted that the statement supported what was said in the table and that they both supported the contention that FTS had erred in reaching the conclusion they did. The issues before the FTS turned on the respective suitability of the two schools. The error made by FTS vitiated the comparison exercise that had been undertaken by leaving out of account the provision of embedded SLT at the specified school.

Submissions for the Respondent

5. For the respondents it was submitted that the appellant sought to move beyond the 'reasons' challenge for which permission had been granted and now sought to make a challenge to the way in which FTS had analysed the evidence and the findings that were made. It was submitted that in that the Upper Tribunal did not have a complete record of the evidence it was not in a position to conduct such a review. All it had before it was a summary of questions and answers prepared by an interested party present at the hearing and that was not an adequate basis on which to interfere with the decision of the FTS.
6. In relation to the point made by the appellant regarding the comparison said to have been carried out by FTS, it was submitted that paragraph 152 does not make the comparison which the appellant claims it does. In that paragraph, FTS are considering only the value of *additional* support that would be available at the specified school. The reasons that the decision that the specified school is not as suitable as the current school are stated in paragraph 148 to 152. There is no challenge by the appellant to the conclusion in paragraph 151 that further 1:1 support is required. The point was that even if the specified school offered this, the conclusion was that it would not benefit X.



7. My attention was drawn to the Inner House decision in *JB v Glasgow City Council* 2013 CSIH 77, 2014 SC 209 and the statement there that where an appeal is from the decision of a specialist tribunal, that decision ought not to be subjected to unduly critical analysis. It was submitted that this is what the appellant was doing.
8. It was submitted that there is nothing in the summary of evidence in the Application for Permission to Appeal in relation to the challenge to paragraph 152 of the FTS decision that would indicate that the decision was incorrect. In paragraph 152, FTS had identified evidence that they had not heard. Nothing in what the appellant claimed was said by Ms Evans indicated that FTS were wrong in this regard.

Reply for the Appellant

9. The appellant argued that the reference to 1:1 support in paragraph 151 of the FTS decision dealt with matters other than Speech and Language Therapy and it was therefore irrelevant.

Analysis and Decision

10. The issue that was before FTS arose out of the Education (Additional Support for Learning) (Scotland) Act 2004, Schedule 2. The general issue was whether the duty to place a child in accordance with a placing request stated in paragraph 2(1) of that Schedule did not apply because the conditions specified in paragraph 3(1)(f) applied. The issue with which paragraphs 146 to 152 of the FTS decision are concerned is condition (iii) – whether, having regard to the respective suitability of the provision for the additional support needs of the child in the specified school and in the school in the in which the authority are able to make provision for the child, it can be said it is not reasonable to place the child in the specified school. That paragraph requires also that there is consideration of the respective



costs that would be incurred for each of the alternatives. That is considered in paragraphs 153 to 155 of the FTS decision and it is not the subject of the appeal.

11. It is necessary to be clear as to what the decision of the FTS was in relation to the issue before it. The issue of respective suitability is considered in paragraphs 146 and 147. In paragraph 146 the current school is said to be suitable. The conclusion in paragraph 147 is that “the specified school is not as suitable for the child’s additional support needs as the current school.” Paragraphs 148 and 149 state some reasons why the current school is the more suitable of the two. Paragraph 150 identifies factors where there is no difference between the suitability of two. Paragraph 151 then considers 1:1 support. Although it is not entirely clear, I accept the submission for the appellant that this is not dealing with Speech and Language Therapy being provided on a 1:1 basis. However, in that FTS concluded that further support was required, it is apparent that in assessing respective suitabilities, this factor does not weigh in favour of the specified school. Reading these paragraphs as a whole, they identify the current school as being the more suitable.

12. Turning then to paragraph 152, it is in the following terms;

“The specified school offer 1:1 SLT for 30 minutes a day for four days a week. We did not hear evidence to the effect as to how this would benefit the child more than the current embedded SLT support at the current school.”

In my view this says nothing about whether there is or is not embedded support at the specified school. It expressly identifies something not available at the current school which has been put forward as something in favour of the specified school – 1:1 SLT. Read fairly, the conclusion reached in relation to this is that it has not been established that this would benefit X more than the SLT support he already receives. It does not state that he would not receive embedded SLT support at the specified school – only that it has not been shown that the 1:1 support that he would receive there in addition would confer a benefit.



13. The conclusion that the current school is more suitable than the specified school is stated in paragraphs 146 and 147. The reasons for this are stated in paragraphs 148 to 152 in a way that leaves no real doubt as to how that decision was reached. The requirements in this regard were stated by Lord Brown of Eaton-under-Haywood in *South Bucks District Council v Porter* [2004] UKHL 33, [2004] 1 WLR 1953, at paragraph 37, as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration.”

All aspects of that test are met in this case. It is not necessary to invoke the respect that is to be afforded to specialist tribunals. In relation to the respective suitabilities of the two schools it is clear what FTS decided and how they came to their decision. It is clear what factors they have taken into account and what decision they made in relation to each of them.

14. Although the Application to Appeal and the decision on it describe the appellant’s position as a challenge to the adequacy of the FTS reasons, I agree with the submissions for the respondent that, in substance, this was a challenge to the evaluation of evidence by FTS and the conclusions reached. This was apparent from the submission for the appellant in which it was acknowledged that the appeal was on the facts. It is apparent also from paragraph 13 of the Application (quoted above) which refers to a finding not being supported by evidence and paragraph 24 of the decision in relation to the Application (also



quoted above) which refers to error in the findings in fact. I reject the submission for the appellant that an error of fact can be so significant it amounts to an error of law. No authority was cited for that proposition. The appeal asks that I reach a view as to what had or had not been said by a witness without any authoritative record of the witness's evidence had been and conclude that FTS were wrong in their conclusions as to the facts. It is not open to me to do this.

15. Although an appeal to the Upper Tribunal is not open in relation to disputed issues of fact, I have considered the statement from Ms Evans to assess whether it might be said that FTS had erred in leaving relevant evidence out of account. That could be an error of law. However, while the statement refers to the availability of an in-house Speech and Language Therapist and makes general statements about what might be achieved, it does not state how any 1:1 Speech and Language Therapy which might be provided at the specified school would benefit X over and above the SLT he receives at the current school. Therefore, there is nothing on the face of the statement that would suggest that FTS were not entitled to express the view they did in paragraph 152 – that there was no evidence as to how 1:1 SLT would benefit him more than the embedded SLT support at the current school.
16. For completeness, I note that the decision to grant leave to appeal refers also to paragraph 93 in the FTS decision and states that it is arguable that in making this finding of fact it is arguable that the tribunal erred leading to a mistaken view when contrasting SLT provision at the two schools. Paragraph 93 states "The specified school would provide the child with constant 1:1 support, which would be reviewed after one year." A suggestion that this conclusion is incorrect is clearly a challenge to the view of the facts taken by FTS and not an issue of law and cannot be considered by the Upper Tribunal. In addition, it may be noted that, (a) read in context, it is not apparent that paragraph 93 is referring to SLT support rather than support more generally, and (b) the contents of paragraph 93 are



supported by the terms of Ms Evans statement and do not appear to have been an issue in dispute so it is not apparent what error it is even claimed has been made.

17. For the reasons stated above, the Appeal is refused.

*A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within **30 days** of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Lord Lake
Member of the Upper Tribunal for Scotland