



NCN: [2026] UKUT 41 (AAC)
Appeal No. UA-2025-000968-HS and
UA-2023-001275-HS

RULE 14 Order:

The Upper Tribunal orders that, save with the permission of this Tribunal, no one shall publish or disclose the name or address of any of the following:

- (a) D, who is the child involved in these proceedings before the First-tier Tribunal and Upper Tribunal;
- (b) any of the other children mentioned in the evidence or argument;
or any information that would be likely to lead to the identification of any of them or any member of their families in connection with these proceedings (including D's date of birth, and the names of the appellants, but not including the name of the School or its Governing Body).

Breach of this order may be treated as contempt of court.

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

KTS

Appellant

- v -

GOVERNING BODY OF MILBY PRIMARY SCHOOL

Respondent

Before: Lord Justice Dingemans (Senior President of Tribunals), Mrs Justice Heather Williams DBE (Chamber President of UTAAC) and Upper Tribunal Judge Stout

Hearing date: 24 November 2025

Mode of hearing: In person

Representation:

Appellant: Stephen Broach KC

Respondent: Paul Greatorex

On appeal from:

Tribunal: First-Tier Tribunal (Health Education and Social Care) (Special
Educational Needs and Disability)

Tribunal Case No: EH937/22/00088

SUMMARY OF DECISION

SPECIAL EDUCATIONAL NEEDS - other (85.6)

The appellants brought a disability discrimination claim under the Equality Act 2010 against the respondent school governing body in respect of treatment afforded to their child (D). Following two hearings before the First-tier Tribunal, and an intervening appeal to the Upper Tribunal (UA-2023-001275-HS, [2024] UKUT 139 (AAC)), the claim largely succeeded. The appellants wished to publish the First-tier Tribunal decisions and applied to the First-tier Tribunal to vary the rule 14 order it had made so as to permit publication naming the respondent school (but not D). The First-tier Tribunal refused the application, noting in doing so that the rule 14 order made in the Upper Tribunal had specifically prohibited naming the respondent school. The Upper Tribunal allowed the appellant's appeal against the First-tier Tribunal's decision, and the appellant's application to vary the Upper Tribunal's order, and ordered the respondent governing body and the school to be named. The Upper Tribunal also gives guidance in relation to the use of rule 14 orders in special educational needs and disability cases in the First-tier Tribunal and the Upper Tribunal.

Please note the Summary of Decision is included for the convenience of readers. It does not form part of the decision. The Decision and Reasons of the judges follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal against the First-tier Tribunal's decision, and the application to vary the Upper Tribunal's rule 14 order. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007, we set that decision aside and remake the decision by varying the rule 14 order that applies to the First-tier Tribunal proceedings in the terms set out above. We also allow the application to vary the Upper Tribunal's order in the same terms.

REASONS FOR DECISION

Introduction and issues

1. This is a decision to which we have all contributed. The decision deals with issues about the approach that should be taken to orders made pursuant to rule 14 of the Tribunal Procedure (First tier-Tribunal) (Health, Education and Social Care)

Chamber Rules 2008 (the HESC Tribunal Procedure Rules) in special educational needs and disability discrimination in schools (SEND) cases, which are the cases heard by the First-tier Tribunal (Special Educational Needs and Disability) (the FTT SEND). The FTT SEND is part of the Health, Education and Social Care Chamber (HESC). As appears below, rule 14 of the HESC Tribunal Procedure Rules covers forms of “withholding orders”, “reporting restriction orders” and “anonymity orders”. The terminology of withholding orders, reporting restriction orders and anonymity orders is adopted from paragraph 2 of *PMC v Cwn Taf Morgannwg University Health Board* [2025] EWCA Civ 1126; [2025] EMLR 12 (*PMC*).

2. It is, however, important to remember when considering decisions from the High Court and Court of Appeal on withholding orders, reporting restriction orders and anonymity orders that, in contrast to both the High Court, and the Court of Appeal when hearing an appeal from the High Court, the FTT SEND is a statutory tribunal which does not have an inherent jurisdiction. Further, the FTT SEND does not have jurisdiction to grant an injunction. It is not necessary, for the purposes of this decision, to analyse the powers of the Upper Tribunal (Administrative Appeals Chamber) (UT) to grant injunctions. The powers that the FTT SEND has to make withholding orders, reporting restriction orders and anonymity orders derive from rule 14 of the HESC Tribunal Procedure Rules. There was no issue raised before us about the lawfulness of the HESC Tribunal Procedure Rules, which are made pursuant to statutory powers.
3. The default position under rule 26(2) of the HESC Tribunal Procedure Rules is that hearings in the FTT SEND should be in private. The effect of this provision, together with the conjoint effect of an order made pursuant to rule 14 of the HESC Tribunal Procedure Rules and section 12(1)(e) of the Administration of Justice Act 1960 (AJA 1960), means that in practice most hearings in SEND cases are not reported, and that it would be a contempt of court to act in breach of the rule 14 reporting restriction order.
4. The underlying claims in these proceedings were for disability discrimination. The claim was brought by the appellants, the parents of a pupil at a school, pursuant to section 116 and Part 2 of Schedule 17 of the Equality Act 2010 (EA 2010) against the respondent Governing Body (the Governing Body) of the school (the School). The pupil has disabilities. In such proceedings, the tribunal may, if it finds that discrimination has occurred, make such order as it thinks fit, but that does not include a power to order the payment of compensation, see paragraph 5 of Part 2 of Schedule 17 of the EA 2010. The points of principle are relevant to the majority of the cases heard by the FTT SEND, which are appeals relating to Education and Health Care (EHC) needs and plans pursuant to section 51 of the Children and Family Act 2014 (CFA 2014).
5. Following the decisions in this case of the FTT SEND, the Upper Tribunal (UT) on an appeal, and a further decision by the FTT SEND, the parents sought an order that the rule 14 orders made by the tribunals in this case should be discharged so as to permit the parents to share the decisions of the FTT SEND

identifying the Governing Body and School, and using initials for D's name. The FTT SEND did not make the order sought by the parents.

6. These proceedings come before us in two ways. First, as an appeal against a decision of the FTT SEND refusing to vary an order made by the FTT SEND pursuant to rule 14 of the HESC Tribunal Procedure Rules. There are four grounds of appeal: (1) the judge had erred in law in failing to recognise that open justice is the starting point when carrying out the balancing exercise; (2) the judge erred in its assessment of risk to D or her relatives; (3) the judge erred in requiring the appellants to establish why it would be of wider benefit for an almost complete version of the decision to be published; and (4) the judge erred in finding that the underlying decision does not have any wider public interest. Secondly, as an application to vary an order by the UT to similar effect.
7. By the conclusion of the hearing before us, which was held in public with the parties not referring to themselves and each other by name to maintain anonymity, there was much common ground between the parties. It was common ground that the decisions of the FTT SEND in this case could be published in some form. It was common ground that the pupil should not be identified by name. This meant that the real issues in dispute before us were whether: (1) the judge below had erred in law; (2) the rule 14 order should be varied so that the Governing Body and the School should be named if the decisions were published; and (3) the part of the rule 14 order which provided that there should be no publication of any matter likely to lead members of the public directly or indirectly to identify the pupil should be removed from the varied order. We are very grateful to Mr Broach KC and Mr Greatorex for their helpful written and oral submissions.

The claim and the proceedings

8. The appellants are the parents of a child. The parents were referred to as KTS and the child was referred to as D in the previous decision of the UT in this matter (UA-2023-001275-HS, [2024] UKUT 139 (AAC)). That was when the UT allowed an appeal against one finding made by the FTT SEND and remitted the matter for a rehearing. We approve of the practice, adopted in other courts, of giving three random letters to the names of parties where there is to be anonymity of that party or a person who will be identified when that party is named.
9. D was born in February 2012 and is now 13. D has a diagnosis of Autistic Spectrum Disorder (ASD) and has had an Education Health and Care Plan (EHC plan) made and maintained by the local authority under the CFA 2014 since December 2015.
10. D used to attend the community primary school for which the Governing Body is "the responsible body" for the purposes of the EA 2010. By a claim form received by the FTT SEND on 12 September 2022, the appellants brought claims that the Governing Body had discriminated against D by treating her unfavourably for a reason relating to disability contrary to section 15 of the EA 2010 and failing to

comply with the duty to make reasonable adjustments under sections 20 and 21 of the EA 2010.

11. When the claim was registered on 4 October 2022, the FTT SEND made its standard reporting restriction order under rule 14 of the HESC Tribunal Procedure Rules to the effect that:

“No party may disclose information or documents relating to this claim which is likely to result in members of the public being able to identify the name of the child who is the subject of this claim.”
12. In accordance with rule 26(2) of the FTT SEND Rules, and the normal practice of the FTT SEND, the claims were heard in private on 17 April 2023 by a panel consisting of District Tribunal Judge Bradley and Specialist Member Ms Ernstoff (the Bradley Tribunal). By a final decision issued on 16 May 2023, the Bradley Tribunal upheld the claims made pursuant to section 15 of the EA 2010, but dismissed the claim for failure to make reasonable adjustments made pursuant to sections 20 and 21 of the EA 2010. A further reporting restriction order under rule 14 of the HESC Tribunal Procedure Rules, that was wider in scope than the first rule 14 order, was made by the Bradley Tribunal:

“We direct that there is to be no publication of any matter likely to lead members of the public directly or indirectly to identify any person who has been involved in the circumstances giving rise to this appeal.”
13. As the hearing was in private, no question of a wider rule 14 order was raised, and as the decision was not published by the First-tier Tribunal, the full names of KTS and D were given in the decision, as were the names of the Governing Body and School. There were other potential identifying details such as D’s date of birth, the names of teachers and other professionals. The FTT SEND does not currently have a practice of publishing decisions, so the decision was sent only to the parties in accordance with the FTT SEND’s normal practice.
14. The appellants appealed to the UT in relation to the dismissal of the reasonable adjustments claim. In accordance with rule 37(1) of the Tribunal Procedure (Upper Tribunal) Rules 2008 (the Upper Tribunal Rules), and normal practice in the UT, the appeal hearing was held in public on 24 April 2024, before Judge Stout. No anonymity, reporting restriction, withholding or other order was made before the hearing, but the rule 14 order made by the FTT SEND on 4 October 2022 remained.
15. In a decision sent to the parties on 2 May 2024, Judge Stout allowed the appeal against the dismissal of the failure to make reasonable adjustments claim, and remitted that claim to FTT SEND for re-hearing before a fresh tribunal. Judge Stout’s decision was published online under neutral citation [2024] UKUT 139 (AAC). It contained an order under rule 14 of the Upper Tribunal Rules in the following terms:

“THE UPPER TRIBUNAL ORDERS that, save with the permission of this Tribunal:

No one shall publish or reveal the name or address of any of the following:

- (a) D, who is the child involved in these proceedings;
- (b) any of the other children mentioned in the evidence or argument; or any information that would be likely to lead to the identification of any of them or any member of their families in connection with these proceedings (including the name of the school)."

16. Following publication of the UT judgment, the appellants, by email dated 18 September 2024, enquired of the UT whether the rule 14 order could be removed. This was because the parents considered that the UT's judgment (which set out guidance on the approach to be taken by the FTT SEND to disability discrimination claims) had "broader implication for other cases involving children with special needs". By e-mail from the UT administration dated 23 September 2024, Judge Stout explained that the judgment had been published online on the UT website, and was also available on BAILII and the National Archives, and had been picked up by legal commentators. Judge Stout asked whether this answered the appellant's concerns or whether they still wished to pursue their application to remove the rule 14 order. It does not appear that the appellants responded to that email.
17. The remitted hearing of the reasonable adjustments claims took place on 4 November 2024 before a fresh panel of the FTT SEND, comprising Judge Sutherland Williams (Chamber President), Judge Eden and Specialist Member Mr Aziz (the Sutherland Williams Tribunal). The hearing was again held in private. The Governing Body did not attend and was not represented.
18. In a decision issued on 20 November 2024, the remitted claim succeeded before the Sutherland Williams Tribunal, who directed the Governing Body to send to the appellants a written apology, in addition to the apology that had already been given, acknowledging that there was unlawful disability discrimination and the effect of the particular issues identified in the Sutherland Williams Tribunal's decision. The Governing Body was also ordered to arrange staff training on the reasonable adjustments duty and to complete a review of its practices, policies and processes in light of the issues raised in the decision, with the support of an Ofsted inspector or a SEND Consultant. The Sutherland Williams Tribunal's decision again was sent only to the parties and contained all the names and similar potential identifying details as the decision of the Bradley Tribunal.

The FTT SEND's anonymity decision

19. On 4 March 2025, the appellants emailed the FTT SEND, without copying in the Governing Body, seeking a variation to the rule 14 order made by the FTT at the outset of the proceedings in order to allow them to publish the Sutherland Williams Tribunal's decision in "recognised public interest forums such as the National Autistic Society, Autism Speaks and other advocacy organisations to raise awareness about the challenges faced by children with disabilities in mainstream education and the importance of reasonable adjustments". They

stated that they would ensure that any published material did not disclose D's name or sensitive personal data or identifying details beyond D's initials.

20. The application was dealt with by Judge Eden, who directed the Governing Body to respond and provide comments on the application. The Governing Body argued that the current order should be maintained on the basis that it struck the right balance between the risk of D and other relatives being discoverable and allowing information about the Sutherland-Williams Tribunal's decision to be published. The Governing Body also indicated that the appellants had already disclosed information about the claim on a WhatsApp group from which it would be possible to identify D. The appellants in reply argued that they did not consider that the other relatives were likely to be identified if D's name and personal details were redacted. They said that the WhatsApp group was private and that some information about the claim in relation to D was already "widely known within the school community".
21. In her decision sent to the parties on 16 May 2025, Judge Eden refused the appellants' application and maintained the rule 14 orders as previously made by the FTT SEND. Judge Eden began by clarifying (at [5]) that both the standard rule 14 order made by the FTT SEND at the outset of proceedings, and the rule 14 order made by the Bradley Tribunal continued to have effect, and that their effect was that "the claimants are free to discuss and publicise the Tribunal's decision, provided that they do not disclose information which could lead to [D] or the other people involved being identified".
22. At [8], Judge Eden noted that it was implicit in the appellants' application that they recognised that there was a risk that D would be identified even if the FTT SEND decision was published with D's name and personal details redacted. At [9], Judge Eden identified the task for her as being "to balance the effects of the potential of jigsaw identification of [D] because of the circulation of a redacted version of the Tribunal's decision as against the benefits identified by the claimant".
23. At [10], Judge Eden observed that it was "reasonable to conclude that if the decision were to be published with [D's] name redacted, those who are familiar with the family or with Milby Primary School would be able to read a detailed account of the extent of her disabilities when she was ten years old and understand that it related to her". At [11], Judge Eden noted that D's cognitive difficulties were such that the pupil may not be able to understand the implications of the decision being published as sought by the appellants, and that she had not been provided with any information about D's views. At [12], Judge Eden observed that publication of the decision would potentially have implications for D's other relatives, who would be identifiable as such if the D were to be identified. She noted that she also did not have any information about their views.
24. At [13]-[15], Judge Eden considered what the appellants had said about the benefits of publication. She observed that it was not clear to her that the circulation of the whole of the decision would promote good practice in other

schools because much of the decision was dealing with matters of background, or what the Governing Body did well, or with remedy. Judge Eden considered that the appellants had failed to explain why it was necessary to identify the Governing Body or to publish the whole decision in order to achieve their goal.

25. At [16]-[18], Judge Eden referred to the open justice principle and the Supreme Court's decision in *Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2025] UKSC 15; [2025] 2 WLR 815 (*Abbasi*), to which the appellants had referred in their submissions. She noted that the case was "somewhat more complicated than the claimants make it appear", and that the Supreme Court "was clear that it is acceptable and consistent with the principle of open justice to put in place reporting restrictions in order to protect the interests and confidentiality of a child", and that "the right to freedom of expression under article 10 ECHR needs to be weighed against the right to private life under article 8 ECHR".
26. At [19]-[20], Judge Eden went on to balance what she identified as the competing interests as follows:

Balancing the competing interests

19. The factors against publication are, therefore, an unquantified but possibly significant risk that [D] or [her relatives] would feel that their privacy had been breached by circulation of the redacted decision. This is relevant to their rights under article 8 of the ECHR. Although neither party has provided evidence on this risk, I am mindful that [D] and [her relatives] are children. They cannot put their case themselves. The Tribunal has an independent duty to protect them. If the claimants are asserting that there is no interference with the children's article 8 rights, or that it is proportionate to interfere with their article 8 rights, they should provide evidence of the children's views and explain why their right to privacy would not be infringed.

20. The factors in favour are the claimants' argument that publicising the decision in internet forums would help to raise public awareness so that support for autistic children in schools would be improved, the claimants' rights to freedom of expression and the principles of open justice. I have identified concerns about whether the whole decision needs to be published in order to raise awareness. As regards open justice, the case of *Abbasi* referred to by the claimants makes clear that it is compatible with principles of open justice to protect the interests and privacy of children. I would also observe that the issues in the *Abbasi* case were of considerable wider public importance. Whilst this disability discrimination claim is of clear importance to the parties, it is not exceptional and does not have any wider public interest.

27. At [21]-[22] she referred to the rule 14 order made by the UT and noted that any order she made would not vary that order in any event.

28. At [23]-[24] she concluded:

23. I have concluded that the claimants' case for publishing the Tribunal's entire decision with the redaction of [D's] name is weak. They can achieve the improvements to good practice they are seeking by summarising the decision or including some paragraphs. My view is that it would not be a breach of the existing rule 14 order to publicise a summary of the decision about reasonable adjustments or to circulate an extract from the decision, provided that [D's] name is redacted and the names of [the school] and the professionals working with [D] are redacted.

24. As regards the principle of open justice, this needs to be weighed against the article 8 rights of [D] and [her relatives]. Although I have very limited evidence about the impact of publication on them, they are children, and my starting point is that they require protection. The article 8 infringement in respect of [D] would be serious because the decision contains very sensitive information about her. I consider that the article 8 rights of the children outweigh the article 10 rights of the claimants.

29. At [25] Judge Eden emphasised that she was not refusing the application in order to protect the Governing Body and that the only reason why the School could not be named was because it would make it easier for the public to identify D. At [26] she made clear that she had not taken account of what either party had said about the appellants' references to the case in WhatsApp messages as she had not had any evidence about this from either side.

This appeal and the application to vary

30. The appellants sought permission to appeal Judge Eden's decision of 16 May 2025. Judge Eden granted permission to appeal on the ground that it was arguable that she had erred in law in failing to recognise that open justice is the starting point when carrying out the balancing exercise (Ground 1). Permission to appeal was refused on other grounds.

31. The appellants then appealed to the UT, seeking in addition permission to appeal on the grounds that: (a) the Tribunal erred in its assessment of risk to D or her relatives (Ground 2); (b) the Tribunal erred in requiring the claimants to establish why it would be of wider benefit for an almost complete version of the decision to be published (Ground 3); and (c) the Tribunal erred in finding that the underlying decision does not have any wider public interest (Ground 4).

32. The appellants also applied to the UT to vary the rule 14 order made by Judge Stout in the previous appeal so as to permit them to publish a version of the decisions of the Bradley and Sutherland Williams Tribunals decisions naming the Governing Body.

33. Judge Stout gave permission to appeal on all grounds and joined the appeal together with the application to vary. So as to “hold the ring” pending the determination of the appeal and the application, Judge Stout extended her previous rule 14 order to cover both appeals.
34. The then Chamber President, Mrs Justice Heather Williams, then gave directions on 23 September 2025 for the joined matters to be listed together before a three-judge panel of the Upper Tribunal.
35. It is convenient to note at this point that the application to vary the UT’s rule 14 order was accompanied by a witness statement from the appellants dated 15 June 2025 dealing principally with the views of D’s relatives about the publication of the FTT SEND decisions. The appellants invited us to take this into account in dealing with the appeal as well, and there was no objection from the respondent to us doing so, provided that we did so on the basis that nothing in the witness statement could be relied on to show that Judge Eden erred on the basis of the material that was before her at the time of her decision. Likewise, following the hearing before us, the appellants submitted a document from a Speech and Language Therapist summarising a session with D in which she had sought to elicit D’s views on publication. There was no objection by the respondent to the admission of this report. In the absence of objection from the respondent, we admitted both the statement and the report, as we are permitted to do under rule 15(2)(a) of the UT Rules, as it seemed to us to be appropriate to take this material into account in relation to the both the application to vary the UT’s order and (having decided to allow the appeal) in relation to the re-making of the First-tier Tribunal’s decision. The material has not, however, made any difference to the decision that we would have reached in any event.

The parties’ submissions

36. Mr Broach KC had submitted that orders should be made allowing both of the Bradley and Sutherland-Williams’ substantive decisions in this matter to be published in full, with only D’s name redacted. In oral submissions, Mr Broach clarified that, although the appellants’ original application related to publishing only the decision of the Sutherland Williams Tribunal, the appellants wish to publish the decision of the Bradley Tribunal as well. Mr Broach confirmed that it was accepted that there would be a need for the appellants to remain anonymous in addition to D, and that there may be a need to redact other details such as D’s date of birth. He submitted that it was a matter for the parents to judge what further details were released, exercising their parental responsibility for D in her best interests. Mr Broach emphasised the adversarial nature of the proceedings in this claim, the open justice principle, and that identification of parties was a fundamental part of open justice. He pointed out that HESC Tribunal Procedure Rules provided for a private hearing, but did not provide for anonymity as the norm, as was provided for in rule 14(7) in mental health cases. Although there might be reasons to derogate from open justice in most disability discrimination cases against schools, the decision whether to do so required a fact-sensitive assessment in each case. There was a significant interference with the rights of

the appellants under article 10 of the European Convention on Human Rights (ECHR), to which domestic effect had been given by the Human Rights Act 1998 (HRA 1998). Mr Broach accepted that there was “some risk” of ‘jigsaw identification’ of D and her relatives, but submitted that even if they were identified, there was no reason to consider there would be any particular harm to them as a result of the content of the decision. It was not a case where the decision included anything that might embarrass D.

37. Mr Greatorex on behalf of the Governing Body submitted that the appeal should be dismissed as Judge Eden made no material error of law in her decision and, even if she did, the UT should make the same decision. For that reason, the application to vary the rule 14 order should also be refused, although Mr Greatorex in fact invited us to extend the rule 14 order and to give guidance that the FTT SEND should make a different standard order. Mr Greatorex submitted that it was desirable for the FTT SEND to have a consistent approach in relation to SEND cases, given the number of appeals dealt with (21,000 appeals under the CFA 2014 registered in 2023/24 and 360 disability discrimination claims). The default position, as seen in practice across the legal system as a whole, is for children to be anonymised in relation to legal proceedings. This is the normal practice in the courts, even in cases other than family proceedings and youth justice proceedings where there is no specific requirement in legislation or the rules that private hearings and anonymity should be the norm. He submitted that, given that the norm is for SEND cases to be heard in private, anonymity was also the correct starting point for the FTT SEND.

Relevant statutory provisions

38. Rule 14 of the HESC Tribunal Procedure Rules provides, so far as relevant:

14. — Use of documents and information

(1) The Tribunal may make an order prohibiting the disclosure or publication of—

- (a) specified documents or information relating to the proceedings;
- or
- (b) any matter likely to lead members of the public to identify any person whom the Tribunal considers should not be identified.

...

(7) Unless the Tribunal gives a direction to the contrary, information about mental health cases and the names of any persons concerned in such cases must not be made public.

39. Rule 14(1) and (7) of the UT Rules make provision in identical terms. In addition, rule 14(11) of the UT Rules provides, so far as relevant:

(11) The Upper Tribunal must conduct proceedings and record its decision and reasons appropriately so as not to undermine the effect of an order made under paragraph (1) ...

40. Rule 26 of the HESC Tribunal Procedure Rules provides, so far as relevant:

26. — Public and private hearings

(1) Subject to the following paragraphs, all hearings must be held in public.

(2) Hearings in special educational needs cases and disability discrimination in schools cases must be held in private unless the Tribunal considers that it is in the interests of justice for a hearing to be held in public.

(3) Subject to paragraph (2), the Tribunal may give a direction that a hearing, or part of it, is to be held in private.

...

(4) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(5) The Tribunal may give a direction excluding from any hearing, or part of it—

(a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;

(b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;

(c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm);

(d) any person where the purpose of the hearing would be defeated by the attendance of that person; or

(e) in a special educational needs case or a disability discrimination in schools case brought by a parent of a child or by a young person who lacks capacity to conduct their case, that child or young person, if the Tribunal considers that their presence at the hearing would be adverse to their interests.

...

41. Rule 37 of the UT Rules provides, so far as is relevant:

37.— Public and private hearings

(1) Subject to the following paragraphs, all hearings must be held in public.

(2) The Upper Tribunal may give a direction that a hearing, or part of it, is to be held in private.

...

- (3) Where a hearing, or part of it, is to be held in private, the Upper Tribunal may determine who is entitled to attend the hearing or part of it.
- (4) The Upper Tribunal may give a direction excluding from any hearing, or part of it—
 - (a) any person whose conduct the Upper Tribunal considers is disrupting or is likely to disrupt the hearing;
 - (b) any person whose presence the Upper Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
 - (c) any person who the Upper Tribunal considers should be excluded in order to give effect to the requirement at rule 14(11) (prevention of disclosure or publication of documents and information);
 - (d) any person where the purpose of the hearing would be defeated by the attendance of that person; or
 - (e) a person under 18, other than a young person who is a party in a special educational needs case or a disability discrimination in schools case.

...

- 42. We note that the HESC Tribunal Procedure Rules provide for hearings in SEND cases to be in private by default, and include express provision permitting the child or young person to be excluded from the hearing if that is adverse to their interests. In contrast, the UT Rules provide by default for hearings to be in public, and do not on their face permit a child under the age of 18 to be excluded from a hearing if they are themselves the claimant in a SEND case.
- 43. By section 6 of the HRA 1998, public authorities, including courts and tribunals must act compatibly with the European Convention on Human Rights (ECHR). By section 3 of the HRA 1998, legislation must be interpreted compatibly with the ECHR so far as it is possible to do so.
- 44. Articles 6, 8 and 10 of the ECHR provide, so far as relevant as follows:-

ARTICLE 6

Right to a fair trial

1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial ... where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. ...

ARTICLE 8

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society ... for the protection of the rights and freedoms of others.

ARTICLE 10

Freedom of expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society... for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

45. Section 12 of the HRA 1998 provides:

12 Freedom of expression.

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made ("the respondent") is neither present nor represented, no such relief is to be granted unless the court is satisfied—

(a) that the applicant has taken all practicable steps to notify the respondent; or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

(a) the extent to which—

(i) the material has, or is about to, become available to the public; or

(ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.

(5) In this section—

"court" includes a tribunal; and

"relief" includes any remedy or order (other than in criminal proceedings).

46. The requirement in section 12(2) to notify a “respondent” to the application only requires the press or other third party to be notified where they are specific respondents to an application, although the court may require their notification in other cases, see generally *A v British Broadcasting Corporation* [2014] UKSC 25, [2015] AC 588 (*A v BBC*) at [66]-[68].
47. As noted above, the effect of rule 14 orders made by the FTT SEND is affected by the terms of the AJA 1960. Section 12 of the AJA 1960 provides:

12 Publication of information relating to proceedings in private

(1) The publication of information relating to proceedings before any court sitting in private shall not of itself be contempt of court except in the following cases, that is to say—

(a) where the proceedings—

(i) relate to the exercise of the inherent jurisdiction of the High Court with respect to minors;

(ii) are brought under the Children Act 1989 or the Adoption and Children Act 2002; or

(iii) otherwise relate wholly or mainly to the maintenance or upbringing of a minor;

(b) where the proceedings are brought under the Mental Capacity Act 2005, or under any provision of the Mental Health Act 1983 authorising an application or reference to be made to the First-tier Tribunal, the Mental Health Review Tribunal for Wales or the county court;

(c) where the court sits in private for reasons of national security during that part of the proceedings about which the information in question is published;

(d) where the information relates to a secret process, discovery or invention which is in issue in the proceedings;

(e) where the court (having power to do so) expressly prohibits the publication of all information relating to the proceedings or of information of the description which is published.

(2) Without prejudice to the foregoing subsection, the publication of the text or a summary of the whole or part of an order made by a court sitting in private shall not of itself be contempt of court except where the court (having power to do so) expressly prohibits the publication.

(3) In this section references to a court include references to a judge and to a tribunal and to any person exercising the functions of a court, a judge or a tribunal; and references to a court sitting in private include references to a court sitting in camera or in chambers.

(4) Nothing in this section shall be construed as implying that any publication is punishable as contempt of court which would not be so punishable apart from this section (and in particular where the publication is not so punishable by reason of being authorised by rules of court).

48. Section 12(3) of the AJA 1960 makes it clear in terms that the section applies to tribunals as well as courts. Section 12(1) provides that the fact that a court or tribunal has sat in private does not mean that it will be a contempt of court to publish material relating to those proceedings, save in specified cases.
49. The specified cases under section 12(1)(a) include proceedings: (i) that relate to the exercise of the inherent jurisdiction of the High Court with respect to children; or (ii) that are other family law proceedings concerning children under the Children Act 1989 or the Adoption and Children Act 2002; or (iii) that “otherwise relate wholly or mainly to the maintenance or upbringing of a minor”.
50. The phrase “relate wholly or mainly to the maintenance or upbringing of a minor” is also used in section 1(1) of the CA 1989 to describe the proceedings in which, under that Act, the welfare of the child will be the paramount consideration. Section 105(1) of the CA 1989 further defines “upbringing” as “in relation to any child, includes the care of the child but not his maintenance”; there is no definition of “maintenance”. The parties have not been able to identify any relevant case law or other materials to assist us with interpreting the phrase in the context of the AJA 1960.
51. Our view is that disability discrimination in school cases do not fall within section 12(1)(a)(iii). Disability discrimination claims are claims for breach of statutory duties that relate to what has been done to a child in the past. They are essentially backward-looking claims. That said, we note that if a claim succeeds the remedy might be forward-looking. This is because a Tribunal may make such order as it thinks fit (other than compensation), and “may, in particular”, exercise that power “with a view to obviating or reducing the adverse effect on the person of any matter to which the claim relates” (EA 2010, Sch 17, para 5). The remedy is usually an order that the respondent school do something that relates to the claim that has succeeded, as appears from the orders made in this case (namely an apology). This does not alter the fact that a disability discrimination claim is not, in our judgment, concerned with a child’s “maintenance”, which term is generally understood to relate to financial provision for a child’s daily needs, not to the educational provision made by a school. Further, we do not consider that a disability discrimination claim is concerned with “upbringing”, as that term is usually understood as relating to the way a child is brought up by its parents or those with responsibility for the child. We also accept the submissions that section 12(1)(a)(iii) needs to be construed with sub-sections (i) and (ii). Those sub-sections refer to types of child care proceedings, and not adversarial claims for breach of statutory duty such as this.
52. We are not in this case concerned with proceedings under the CFA 2014 in respect of EHC needs and plans, which is the other (and much larger) category of case dealt with by the FTT SEND, but counsel addressed us briefly on whether appeals under the CFA 2014 would fall within section 12(1)(a)(iii). We consider that appeals relating to EHC plans, concerned as they are with what, if any, special educational provision should be made for a child or young person by a local authority, also do not relate to “maintenance” or “upbringing” of a child within

the meaning of those terms in section 12(1)(c) of the AJA 1960 for broadly similar reasons to those we have set out above in paragraph 49.

53. It follows that, in a case where the hearing is held in private, unless the FTT SEND makes a specific order under rule 14 of the HESC Tribunal Procedure Rules that “expressly prohibits the publication of all information relating to the proceedings”, it will not be a contempt of court for a person to publish information relating to what happened at the private hearing. In this case, where rule 14 orders were made preventing the publication of specified information, the effect of section 12(1)(e) is to confirm that it will be a contempt to publish that information. As Judge Eden noted in her decision, the rule 14 orders in this case do not prevent the publication of other information relating to the proceedings, including the decision, provided that any publication is in a form that complies with the rule 14 order.

Some general principles

54. It is possible to identify some relevant general principles. First, open justice is a fundamental principle of the common law. Although we noted in paragraph 2 above that the FTT SEND does not have an inherent jurisdiction and does not have power to grant an injunction, the principles of open justice apply to the FTT SEND as much as they apply to any other tribunal or court. The facts that the proceedings involve children or vulnerable young persons, or that the HESC Procedure Rules provide for hearings normally to be in private, does not create any separate “shielded justice” environment in the FTT SEND any more than the statutory restrictions on publicity in relation to family proceedings do, see *Tickle v BBC* [2025] EWCA Civ 42, [2025] Fam 105 (*Tickle*) at [45] *per* the Master of the Rolls. Open justice means that: hearings should be open to the public; the parties’ names should be made public; the public should have access to the documents necessary to further the open justice principle; judgments and orders should be given in public; and the media and public have the right to publish reports of proceedings: see generally *JIH v News Group Newspapers Ltd* [2011] EWCA Civ 42, [2011] 1 WLR 1645 (*JIH*) at [21] and also *PMC*. Open justice enables: public scrutiny of the way in which the courts decide cases so as to provide public accountability and secure public confidence; and public understanding of the justice system: see *Re HMP* [2025] EWCA Civ 824; [2025] 1 WLR 5201 at [21].
55. Secondly, derogations from open justice are, however, necessary in certain circumstances, particularly where children and protected or otherwise vulnerable parties are concerned: see *JMX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96, [2015] 1 WLR 364 (*JMX*), especially at [14] *per* Moore-Bick LJ, approved by the Court of Appeal in *PMC* at [98]-[103], where the Master of the Rolls emphasised at [103] “children and protected party claimants are generally vulnerable and are persons whom the court should look to protect”. Derogations from open justice are only permitted where (applying the structured approach at [128] of *Abbas*): (i) the derogation is permitted under relevant tribunal procedure rules (or other legislation) and thus ‘prescribed by law’; (ii) the derogation pursues

the legitimate aim of furthering the administration of justice or protecting the rights of others; and, (iii) it is necessary in a particular case.

56. In deciding whether a derogation from open justice is necessary in a particular case, the tribunal must balance the competing rights, paying particular regard to the right to freedom of expression (as required by section 12(2) of the HRA 1998) and starting with the scales substantially weighted in favour of open justice: see *PMC* at [91]. In cases involving a child, the best interests of the child are a primary consideration, but they are not the paramount consideration. Where the rights of children and vulnerable parties are engaged, an intense focus is required on the rights of the parties and public to know about the proceedings on the one hand, and the rights of the children and vulnerable parties on the other hand: see *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593 at [17] *per* Lord Steyn.
57. Thirdly, the parties' views as to whether there should be a derogation from open justice in a particular case are relevant but not determinative. In the ordinary course, if a person with capacity to make the relevant decision determines that they do not wish to be anonymised in relation to proceedings, the court or tribunal should not anonymise them unless it is necessary to do so to safeguard someone else's rights, see generally *A v BBC*; *Abbasi* and *Tickle*. A child may have the capacity to make that decision too: see, for example, *Re Roddy* [2003] EWHC 2927 (Fam), [2004] EMLR 8 (*Re Roddy*) at [57]. However, the authorities show that the court's concern in cases involving children is the protection of the child, even in adversarial proceedings where the court is not itself exercising a best interests jurisdiction in respect of the child. Although outside the context of legal proceedings those with parental responsibility for children are normally able to decide what aspects of their children's lives are made public and which are not, within the context of legal proceedings that decision is a matter for the court. It may be relevant for the court or tribunal to consider whether the parent is exercising their parental responsibility as regards a child appropriately (see, for example, *M v F and anor* [2025] EWHC 801 (Fam) at [69] and [73]). In all cases, however, it remains a matter for the court or tribunal to decide in any particular case what is required having regard to the competing interests.
58. Fourthly, it is apparent from *PMC* itself where there had already been publicity in relation to the child, that the fact that a child has already been identified in connection with the proceedings does not mean that an anonymity order will not be regarded as appropriate. Nor does the fact that the child risks being identified from other information that is publicly available about the case mean that an anonymity order is not appropriate (see, for example, *Re Roddy* where the baby's identity remained subject to anonymity orders, despite the mother being named). We consider that this is in part because the making of an anonymity order in such cases is recognised as being in itself a form of protection for the child, since its effect will be that anyone who does know, or learns of, the identity of the child from another source, is still prohibited from further publishing or disclosing the identity of the child in connection with the proceedings.

59. Fifthly, in relation to the publication of judgment, where an anonymity order or an order restraining publication of normally reportable details is made, then, at least where a judgment is or would normally be given, a version of the judgment that is suitable for publication should normally be given together with a copy of the consequential court order: see *JIH* at [21(9)].

Orders under rule 14 in the FTT SEND and UT

60. Applying these general principles to the FTT SEND and UT in SEND cases, we consider that as such cases involve children or young persons who are vulnerable, in most cases it will be necessary to derogate from open justice in order to protect the identity of the child or vulnerable young person. It is therefore permissible and, indeed, necessary (as the Court of Appeal in *PMC* recognised at [98]-[103] when approving Moore-Bick LJ's guidance in *JMX*), for the FTT SEND to have standard procedures in place to ensure that the identity of the child or vulnerable young person is protected from the outset of proceedings, and that the name of the child is not published on any public cause list before a formal decision is made on whether anonymity is appropriate in the particular case. The making of such an order for pragmatic reasons does not, however, change the relevant legal principle, which is that the starting point is open justice and the scales start heavily weighted in its favour. Nor can the standard procedure dictate the answer in any particular case about whether an anonymity order should be maintained.
61. Secondly, in SEND cases, given the express terms of rule 26(2) of the HESC Tribunal Procedure Rules, it is also right to proceed on the basis that the hearing will be in private unless either party, or the FTT SEND of its own motion, raises an issue about whether the hearing in a particular case should be in public. A private hearing might be required to enable the parties or witnesses to speak freely about sensitive evidence so as to enable justice to be done in the particular case. Many, but not necessarily all, cases in the FTT SEND are likely to be in this category. In the UT, where oral evidence, or even detailed discussion of the evidence is rare, the norm should continue to be for hearings to be held in public in accordance with the UT Rules.
62. Thirdly, at some point in the proceedings, a decision must be made about whether, and to what extent, it is necessary to maintain a derogation from open justice. In every case, even where a formal decision has been taken at an earlier stage in the proceedings, the FTT SEND and UT should review with the parties at the final hearing whether and, if so, what rule 14 orders are necessary in the particular case, having regard to the relevant principles identified above. The tribunal will also have to deal with any specific application made and allow the parties an opportunity to make submissions. While a case-specific decision is required in every case, in most cases this process should not involve much elaboration, and there is unlikely to be a need for additional evidence.
63. Where a rule 14 order is made, the FTT SEND should make clear that (unless it has made an order specifically prohibiting publication of its decisions or orders),

the parties (and any other person) are free to publish any decision or order of the FTT SEND under section 12(2) of the AJA 1960, provided that they comply with the terms of any rule 14 order in doing so. It should normally itself produce a publishable version of the decision.

64. Any rule 14 order that is made should be effective. That means that, normally, the order should, in addition to prohibiting disclosure or publication of the identity of the child, also prohibit (as permitted by rule 14(1)(b)) the disclosure or publication of any matter likely to lead members of the public to identify the anonymised child.
65. As a matter of good practice, rule 14 orders should include a penal order making clear that failure to abide by their terms may be punishable as contempt of court. Where a judgment, decision or order is subject to a rule 14 order, that should be made clear on its face so that anyone reading it is aware of the terms of the rule 14 order. This should be made clear regardless of whether the FTT SEND will itself be publishing the decision or order or not.
66. Save where (as in this case) the Upper Tribunal is allowing an appeal against the decision of the FTT SEND and thus is able by virtue of section 12(4) of the TCEA 2007 to exercise the powers of the FTT, it is necessary for the FTT SEND and UT to make separate rule 14 orders as each tribunal only has jurisdiction to make orders as to the identification of persons in relation to their proceedings (see the decision of the Upper Tribunal in *Re a Teacher (Rule 14 Order)* [2023] UKUT 39 (AAC), [2023] AACR 6 *per* Judge Ward at [29]-[32]). In the UT, standard practice is for all decisions to be published, in anonymised form where the UT has made a rule 14 order to that effect. That practice should continue.

The appeal against the FTT SEND's anonymity decision in this case

67. We turn now to the specific issues before us in relation to the appeal from Judge Eden.
68. The UT can only allow an appeal pursuant to section 12(1) of the Tribunals, Courts and Enforcement Act 2007, if it finds that the making of the decision by the First-tier Tribunal involved the making of an error on a point of law. Errors of law include misunderstanding or misapplying the law, taking into account irrelevant factors or failing to take into account relevant factors, procedural unfairness or failing to give adequate reasons for a decision. An error of fact is not an error of law unless the First-tier Tribunal's conclusion on the facts is perverse. That is a high threshold: it means that the conclusion must be irrational or wholly unsupported by the evidence. These principles are set out in many cases, including *R (Iran) v SSHD* [2005] EWCA Civ 982 at [9]-[13].
69. In this case, though, we are dealing with an appeal against a decision where the task of the First-tier Tribunal, having considered the particular facts of the case, was to balance Convention rights and the fundamental common law principle of open justice in deciding what, if any, rule 14 order to make. That balancing

exercise is not an exercise of discretion, but a question in respect of which there is, as a matter of law, in principle a right or wrong answer: see *PMC* per Nicklin J ([2024] EWHC 2969 (KB) at [33] - a point not doubted by the Court of Appeal). However, it is well established an appellate court should still exercise restraint before concluding that a trial judge has erred in carrying out that balancing exercise. In the authorities before us in this case, that point is made by the Master of the Rolls in the Court of Appeal at [26] in *H v News Group Newspapers Ltd* [2011] 1 WLR 1645.

70. Nonetheless, we conclude that Judge Eden did err in law as identified in the first ground of appeal, in that she did not direct herself that the starting point is open justice or that the scales even in cases involving children start with the scales heavily weighted in favour of open justice. Of course, a Tribunal will not err in law merely because it does not include an express statement of the proper legal test in its decision. However, in this case, we consider that Judge Eden failed to apply the correct test in substance too. She approached the balancing exercise by putting the onus on the appellants to justify derogations from the FTT SEND's established privacy practices rather than considering whether derogation from the open justice principle was necessary in order to safeguard the interests of D (and her relatives).
71. The second ground of appeal is that Judge Eden erred in her assessment of the risk to D and her relatives from identifying the School. We consider, as the appellants accept, that there is some risk of identification of the appellant from identifying the School, and that it is not possible to produce a version of the decision that names the School that removes that risk while still containing sufficient detail to enable public understanding of the case and the decision. We do not therefore consider that Judge Eden erred in that aspect of her factual assessment; it was open to her to reach that conclusion. However, we do consider that Judge Eden erred in failing to take into account in her assessment of the risk to D and her relatives the fact that the making of a rule 14 order in a form that prohibits the disclosure not only of D's name but also of any other information likely to identify her itself reduces the risk to D and her relatives, and that provides an answer to her concerns.
72. In view of our conclusions on grounds 1 and 2, we do not have to deal with grounds 3 and 4. We are satisfied the errors on grounds 1 and 2 are material because, for the reasons that follow, we have concluded that in this case the School and Governing Body should be named in any published decision. We therefore set the decision of Judge Eden aside.

Our reasons for re-making the decision and deciding that: (1) the Governing Body and School may be named in any published decision; and (2) the order should still prohibit the publication of other information likely to identify D

73. We have concluded that the rule 14 orders made by both the FTT SEND and UT in this case struck the wrong balance between open justice and privacy. For the following reasons, on the issues of substance that remained in dispute between

the parties at the conclusion of the hearing, we have decided that: (1) the Governing Body and School may be named in any published decision, but the names of D, her parents and D's date of birth must not be published; and, (2) the order should still prohibit the publication of other information likely to identify D.

74. We have applied the principles that we have identified above. We give substantial weight to the principle of open justice and have particular regard to the importance of the Convention right to freedom of expression. We take into account the evidence as to the views of D and her relatives that the parents have submitted on this appeal. We apply the *Abbasi* structured approach.
75. We are satisfied that the variation to the rule 14 orders sought is permitted under the FTT SEND and UT rules.
76. As to whether the School should be anonymised, we accept that doing so would pursue the legitimate aim of protecting the Article 8 rights of D and her relatives. There has never been any dispute between the parties that D requires to be anonymised. We agree that is necessary. Although we recognise the efforts that have recently been made by the Speech and Language Therapist to engage with D with a view to helping her to understand the legal decision that we are making, and that D appears to be broadly positive about the prospect of a legal decision of a court that is all about her even if it does not name her, it is evident that her special educational needs and disabilities mean that she does not have the capacity to decide for herself that she should not be anonymised (and no one has suggested otherwise). Her parents consider that she should remain anonymous and we consider that it is necessary in order to protect her Article 8 rights as a child that she should be anonymised in relation to these proceedings. The parties, Judge Eden and we agree that naming the School brings with it a risk that D and her relatives will be identified. Accordingly, anonymising the School would pursue the legitimate purpose of protecting their Article 8 rights.
77. However, anonymising the School is a further derogation from the important principle of open justice, which normally requires the public naming of the parties. The question for us is whether it is necessary to have that further derogation from open justice in this case in order to protect the interests of D and her relatives. We consider this question on the basis that any order we make would still prohibit the publication of all other matters that would be likely to identify D. This will (at the least) mean that D's date of birth and the names of the appellants would have to be redacted if the decision were published; there may be other details in the decision that the appellants will, on reflection, consider need to be redacted in order to protect D's identity. We reject Mr Broach's submission that there is no need to restrict the publication of other matters that would be likely to identify D; a failure to include this restriction would risk entirely undermining the prohibition on publishing her name.
78. Approached on that basis, we do not consider that it is necessary to anonymise the School in relation to these proceedings. To the extent that details of the case are already known to the School community, any order we make cannot undo

that. There are 400 pupils in the School, and it is now over two years since D left the School. There is nothing in the decisions about her relatives and it seems to us that the risk of anyone in the School community who does not already know about D and her case identifying her as a result of the decisions being published in compliance with our order is low. Anyone who does know, or guesses, having read the decisions will also at least be aware that D has been anonymised in those decisions. Even if they are not aware of the terms of the rule 14 order, the concept of information relating to children being anonymised is so well established that any person reading the anonymised decision will in our judgment be alerted to the need to maintain anonymity. We consider that the risk of D's identity being further disclosed or published by a member of the public is therefore low.

79. Further, although the risk of harm to D as a result of publication is sufficient to require D to be anonymised, we do not consider that the extent or nature of the risk is sufficient to require the additional safeguard of also anonymising the School. Whilst we bear in mind that both decisions contain personal information, this is not a case involving anything that is particularly intimate or embarrassing or otherwise likely to be detrimental to the reputation of D or her relatives so far as any member of the general public is concerned. Although any publicity always brings with it the risk of adverse publicity, the effects of which cannot readily be 'undone', in our judgment the risk of harm to D or her relatives of identifying the School in relation to these proceedings is low. It is not sufficient to require the further derogation from open justice of anonymising the School.
80. We take into account in reaching this conclusion that there is no evidence before us that the appellants have taken anything other than a responsible attitude to their parental responsibility for D and that they will continue to take care to protect her from harm.
81. We have also borne in mind Mr Greateorex's argument that publication of the decisions naming the School may place the School and the Governing Body in a difficult position if they are asked about the case and wish to respond. However, the respondent is free to respond provided that they comply with the rule 14 order. This is not an argument that persuades us that a different balance should be drawn between the competing interests in this case.

Disposal of the appeal and the application to vary Judge Stout's rule 14 order

82. It follows from our conclusion above that: (a) the decision of Judge Eden must be set aside and the decision re-made in the terms we have set out above; and (b), for the same reasons, Judge Stout's rule 14 order must also be varied and her decision re-published naming the School.
83. We therefore allow the appeal and the application to vary. Exercising our powers under section 12(2)(b)(ii) of the TCEA 2007 in respect of the First-tier Tribunal proceedings, and our powers under rule 14 of the Upper Tribunal rules in relation

to the Upper Tribunal proceedings, we re-make the rule 14 orders in relation to the FTT SEND and UT proceedings in the following terms:-

The Upper Tribunal orders that, save with the permission of this Tribunal, no one shall publish or disclose the name or address of any of the following:

(a) D, who is the child involved in these proceedings before the First-tier Tribunal or Upper Tribunal;

(b) any of the other children mentioned in the evidence or argument; or any information that would be likely to lead to the identification of any of them or any member of their families in connection with these proceedings (including D's date of birth, and the names of the appellants, but not including the name of the School or its Governing Body).

84. The effect of our order is to permit the appellants to publish the decisions of the FTT SEND, provided that in doing so they comply with its terms. In accordance with the general principles that we have set out above (see paragraph [59]), it would normally be for the FTT SEND to produce a publishable version of its decision. If the appellants wish the FTT SEND to do so in this case, or if any dispute arises as to the need to redact information from the decisions other than the matters we have specifically identified in our order, then the parties are at liberty to make an application to the FTT SEND for a review of the decisions under rule 48 of the HESC Procedure Rules, on the basis that our judgment has changed circumstances relevant to the decisions.

**Lord Justice Dingemans
Senior President of Tribunals**

**Mrs Justice Heather Williams DBE
Chamber President**

**Holly Stout
Judge of the Upper Tribunal**

Authorised by the Judges for issue on 27 January 2026