Neutral Citation Number: [2026] UKUT 127 (AAC)
Appeal No. UA-2025-001677-HS

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

THE TRIBUNAL PROCEDURE (UPPER TRIBUNAL) RULES 2008

Applicant:	LM
Respondent:	Birmingham City Council
Tribunal:	First-tier Tribunal (HESC Chamber)
Tribunal Case No:	EH330/24/00380
Decision Date:	21 July 2025

Summary of Decision: When considering whether an institution of choice is defeated under CFA 2014 s.39(4) on the grounds of incompatibility with the efficient use of resources, the FtT should exercise caution about proceeding by reference to a version of the Working Document which includes neither Section A ("the views, interests and aspirations of the child and his parents or the young person") nor Section E ("the outcomes sought for him or her") which may provide valuable context for what has to be decided. In the present case, even were it to be the case that the FtT had failed to have regard to those Sections, the annual difference in costs was so great as realistically to be unbridgeable and permission to appeal was refused.

Keyword Name: 85.8 special educational provision - naming school or other institution in EHC plan

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

NOTICE OF DETERMINATION OF APPLICATION FOR PERMISSION TO APPEAL

I refuse permission to appeal.

I direct that, although given on an application for permission to appeal, a copy of this ruling be placed on the Chamber's website.

REASONS

1.The Applicant, a young person, supported by her mother, seeks to challenge the decision of the First-tier Tribunal ("FtT") that College A be named in Section I of the Applicant's EHC Plan and not College B, which the Applicant and her mother, had specified. There is undisputed evidence that the cost of the Applicant attending College A would be £30,324.86 per annum, while for College B, the cost would be £107,792.22 per annum.

2. The FtT directed itself by reference to s.39(4) of the Children and Families Act 2014 which, so far as relevant, provides that the institution specified by the young person must be named unless

> "(b) the attendance of the … young person at the requested … institution would be incompatible with—
> …
> (ii) the efficient use of resources."

3. In naming College A, the FtT concluded that the difference of £77,467.36 would be an inefficient use of resources. It went on to consider any extra benefit it was claimed attending College B would bring for the Applicant. It accepted that a placement at College B would result in the Applicant being able to undertake a jewellery course, which was her preference. It also bore in mind the position of the Applicant and her mother that the Applicant might not attend a placement unless College B were named but nonetheless concluded that to name College B would be incompatible with the efficient use of resources. That. on the face of it. was a decision that was plainly open to the FtT.

4. The ground of appeal, as expressed by the Applicant's mother, is in summary that:

> "I do not agree with the Tribunal naming [College A] just because the costs are lower. I would have to force my child to do something she is not interested in which no parent wants to do. The costs should not be the only factor that plays into the decision of where my child attends college."

5. I do not accept that the FtT named College A "just because" the costs are lower, nor were the costs "the only factor". As set out above, it also considered the claimed advantages of College B but concluded that an incompatibility with the efficient use of resources nonetheless existed. That was a matter for the specialist tribunal to decide and disagreement with it, while one may appreciate a parent's perspective, does not give rise to an arguable error of law. The legislation does make incompatibility with the efficient use of resources a ground for not naming a school or institution of choice and the grounds in places come close to a challenge to s.39(4) itself.

6. I would add that the Applicant and her mother had sought an amendment to Section F to include a wish to participate in lessons for "e.g. pottery, glass making, jewellery making". This was rejected by the FtT, agreeing with the Respondent that it did not constitute special educational provision. No challenge is made to that conclusion, which was again one for the specialist tribunal. Its absence from Section F is a further factor supporting the FtT's conclusion.

7. Why then am I directing that this ruling be placed on the website? It concerns the way in which the Working Document was presented to the FtT, as follows.

8. Section A of the Working Document is required to set out "the views, interests and aspirations of the child and his parents or the young person." Section E has to set out "the outcomes sought for him or her": see The Special Educational Needs and Disability Regulations 2014, reg.12(1). Those are ideal spots to capture what might motivate a young person and potential outcomes in terms of skills and employment. See generally paras. 9.64 to 9.68 of the Code concerning the nature and purpose of Outcomes.

9. In the present case, version 13 of the Working Document, on which the FtT had to reach its decision, contained neither Section A or Section E. No doubt that was because the FtT has no jurisdiction over Section A and only the ability to make consequential amendments to Section E. Three earlier versions of the Working Document which did not contain Sections A and E were also in the bundle which the Respondent had prepared. Only the earliest version, the Amended Plan dated 7 May 2024 (also in the bundle), contained them.

10. It seems to me that there are clear risks of a tribunal having insufficient regard to a young person's aspirations and the outcomes which they and those supporting them consider appropriate if it does not have Sections A and E before it to provide context for what it has to decide. Their importance can be seen from the requirements of reg 12 of the 2014 Regulations, including that each section must be separately identified, while, as para 9.68 of the Code puts it, "Outcomes underpin and inform the detail of EHC plans."

11. I cannot know from its Decision what weight, if any, those Sections of the version of the Plan dated 7 May 2024 played in the Decision before me when the version under active consideration did not contain the Sections at all. Even if it were the case that the Decision was reached without regard to them, having regard to their content and to the magnitude of the difference in costs in this case, I do not consider that, if that would otherwise be an error of law, it would be a material one. Permission to appeal is given where an error of law is arguable with a realistic prospect of success: in my view there is no realistic prospect of overturning the FtT's decision notwithstanding the point I have made in paras 7 to 11, nor of doing so on any other ground.

12. Accordingly, permission to appeal is refused. The Applicant does have a right to renew the application to an oral hearing before a different judge, but I encourage her and her mother to consider carefully what I have written above before doing so.

CG Ward
Judge of the Upper Tribunal
Authorised for issue 17 March 2026