Neutral Citation Number: [2026] UKUT 129 (AAC)
**Appeal No. UA-2025-001191-HS**

**RULE 14 ORDER: It is prohibited for any person to disclose or publish any matter likely to lead members of the public to identify the appellants or the appellants' child in these proceedings. This order does not prevent publication or disclosure of the respondent or the names of the schools concerned. *Failure to comply with this order may be contempt of court and could lead to imprisonment, a fine, or other penalties.***

**IN THE UPPER TRIBUNAL**
**ADMINISTRATIVE APPEALS CHAMBER**

**Between:**

**LL and MM**

**Appellants**

**- v -**

**TELFORD AND WREKIN COUNCIL**

**Respondent**

**Before: Upper Tribunal Judge Stout**
**Hearing date:** 13 February 2026
**Mode of hearing:** In person

**Representation:**
**Appellants:** In person
**Respondent:** Lachlan Wilson (counsel)

*On appeal from:*
Tribunal: First-Tier Tribunal (Health Education and Social Care) (Special Educational Needs and Disability)
Judge/Panel: Tribunal Judge Diamond, Mrs L Baker and Mrs J Young
Tribunal Case No: EH894/23/00059
Decision Date: 20 December 2024

## SUMMARY OF DECISION

### SPECIAL EDUCATIONAL NEEDS (85)

The First-tier Tribunal named in Section I of the appellant's child's EHC plan a specialist hub operated by a maintained special school but located on the site of a

mainstream primary school. The parents contended that it was unlawful to name the hub in Section I.

The Upper Tribunal dismissed the appeal, holding:

(1) The Tribunal was right to treat this specialist hub as part of the maintained special school that operated it, and not as a separate school or institution, consistently with the approach in *TB v Essex County Council* [2013] UKUT 0534 (AAC), [2014] ELR 47 and *MA v Royal Borough of Kensington and Chelsea* [2015] UKUT 0186 (AAC);
(2) Provided the special school of which the hub is a part is named in Section I, it is lawful also to refer to the hub. This is not prohibited by regulation 12(1)(i) of The Special Educational Needs and Disability Regulations 2014 (SI 2014/1530) and the Tribunal has power to include such wording in appropriate cases where the parties agree (by virtue of regulation 43(1)) or by order as a "consequential amendment" under regulation 43(2)(f). (*East Sussex County Council v TW* [2016] UKUT 0528 (AAC) and *NN v Cheshire East Council* [2021] UKUT 220 (AAC) distinguished);
(3) The hub may also be referred to by description or by name in Section F where that is necessary to ensure that the provision reasonably required to meet the child's special educational needs is properly identified;
(4) Even if the Upper Tribunal was wrong and inclusion of reference to the hub in Section I was an error of law, it was not a material one in this case.

The decision of the First-tier Tribunal was therefore upheld.

***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 judge follow.***

## DECISION

**The decision of the Upper Tribunal is to dismiss the appeal.** The decision of the First-tier Tribunal did not involve an error of law.

## REASONS FOR DECISION

### Introduction

1. This appeal is concerned with the question of what information may properly be included in Section I of a child's Education, Health and Care (**EHC**) plan, and whether the First-tier Tribunal in this case erred in naming in Section I of an EHC plan a "hub" run by a special school, but located within a maintained mainstream school. The structure of this decision is as follows:

## Factual background and the First-tier Tribunal's decision

2. The appellants' son, who I will refer to as "**D**", was at the time of the hearing before the First-tier Tribunal nearly 8 years old. He is now nearly 9 years old. He has diagnoses of Autism Spectrum Disorder (**ASD**) and Attention Deficit Hyperactivity Disorder (**ADHD**). He attended two different maintained mainstream schools before then being educated at home for a period. At the time of the hearing before the First-tier Tribunal he was not attending an educational placement.

3. Following an EHC needs assessment, the respondent local authority (**the Council**) issued an EHC plan for D on 11 September 2023, against which the appellants appealed to the First-tier Tribunal under section 51 of the Children and Families Act 2014 (**CFA 2014**).

4. By the time of the hearing before the First-tier Tribunal, the matters that remained in dispute between the parties included certain issues as to: the description of D's special educational needs in Section B of the EHC plan; the provision required to meet those needs in Section F; recommendations for social care and health care provision to be made in Sections G and H, and the question of which school or other institution should be named in Section I. The appellants wanted the First-tier Tribunal to name an independent special school approved under section 41 of the CFA 2014 (**Lamledge School**), the Council wanted to name a specialist communication and interaction hub operated by a maintained special school (**Haughton School**) and based at the site of a maintained mainstream community primary school (**Hollinswood Primary School**).

5. The First-tier Tribunal first considered whether each placement was suitable for D and concluded that they were both suitable. At [58]-[64] of the decision, the Tribunal set out the evidence relating to the Council's proposed placement, and its reasons for concluding that it was suitable. The Tribunal's reasons included the following description of the Council's proposed placement, as relevant to the present appeal:

> 58. Haughton is a maintained special school, currently rated 'Good' by Ofsted. The school operates a specialist Communication and Interaction Hub, based at Hollinswood Primary School (a mainstream primary school), where [D] would be based. According to the Hub information document, staff in the Hub are employed and managed by Haughton School, and the children in the Hub "...are on the Haughton School roll but wear the uniform of the mainstream setting i.e. Hollinswood Primary School and are expected to identify themselves as Hollinswood Primary School children". The Hub currently contains 7 other children, with a teacher and 3 TAs who all have extensive SEN training and experience.
>
> 59. At the hearing, we heard oral evidence from … the Deputy Headteacher at Haughton School. The Deputy Head told us that the main Haughton School site is geared towards children whose primary needs are cognition and learning. The 'Hub' was opened 5 years ago and is based at Hollinswood Primary School. It is aimed at those with communication and interaction as their primary need, and the Deputy Head confirmed that children at the Hub are on roll at Haughton School. She told us that [D's] cohort would consist of 8 pupils in total, with a teacher and 3 TAs. In terms of the chronological age of the other 7 children, 2 are currently Year 4, 1 is Year 5 and 4 are Year 6.
>
> 60. Pupils in the Hub have a 'link' class in the mainstream setting, with the goal being that they will eventually join that mainstream class for some lessons. [The Deputy Head] said that how soon (and how often) the 'linking' occurs is tailored to each child's needs and can be a very slow process – some children want to do it quickly, but some may take a long time to be ready. … There are always at least 2 or 3 children in the Hub at all times, so [D] would not be there alone at any stage and there are other opportunities for being with other children throughout the day if appropriate, such as lunchtimes and assemblies. The Hub has its own outside space, but the children also have the opportunity to use the Key Stage 2 playground for the mainstream setting if they would like to do so.
>
> 61. [The Deputy Head] told the Tribunal that, as a special school, Haughton School has "a natural link" with NHS services and that the relationship works very well. She said that they do not experience any delays in this regard and that they work closely alongside NHS Speech and Language Therapists.

6. At [65]-[68] the First-tier Tribunal considered the costs of the two placements and concluded that the additional cost to the Council of D attending Lamledge School would be £80,502 per year.

7. At [69]-[74], under a heading "Section 9 of the Education Act 1996", the First-tier Tribunal considered the appellants' arguments as to why Lamledge School should be named notwithstanding the difference in cost. The Tribunal concluded at [73]:

> …we are not persuaded that the reasoning for a placement at Lamledge School is sufficiently strong or well-founded to justify the additional level of public expenditure that would be incurred by naming the parents' preferred school. As such, we find in favour of the LA, and we name Haughton School Hub in Section I

8. The order at the end of its decision in relation to Section I was as follows:

> It is ordered that Telford & Wrekin Council amend the Education, Health and Care Plan of [D] as follows: …
>
> 3) In Section I, by replacing the existing wording with the following:
>
> Name of Educational Placement: Haughton School Specialist Hub at Hollinswood Primary School.
>
> Type of Placement: Special school (with a specialist hub within a mainstream school).

## Legal framework

Legislative provisions relating to the contents of an EHC plan

9. Provision in relation to EHC plans is made in Part 3 of the CFA 2014. That Part replaced the similar statutory regime for statements of special educational needs in Part IV of the Education Act 1996 (**EA 1996**).

10. By section 37(1) of the CFA 2014 where, in the light of an EHC needs assessment, it is necessary for special educational provision to be made for a child or young person in accordance with an EHC plan: (a) the local authority must secure that an EHC plan is prepared for the child or young person; and, (b) once an EHC plan has been prepared, it must maintain the plan. Sub-sections (2) to (4) of section 37 make provision about EHC plans as follows:

> (2) For the purposes of this Part, an EHC plan is a plan specifying—
> (a) the child's or young person's special educational needs;
> (b) the outcomes sought for him or her;
> (c) the special educational provision required by him or her;

(d) any health care provision reasonably required by the learning difficulties and disabilities which result in him or her having special educational needs;
(e) in the case of a child or a young person aged under 18, any social care provision which must be made for him or her by the local authority as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970;
(f) any social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs, to the extent that the provision is not already specified in the plan under paragraph (e).

(3) An EHC plan may also specify other health care and social care provision reasonably required by the child or young person.

(4) Regulations may make provision about the preparation, content, maintenance, amendment and disclosure of EHC plans.

11. The Special Educational Needs and Disability Regulations 2014 (SI 2014/1530) (**the 2014 Regulations**) are made under section 37(4). Regulation 12 provides (so far as relevant) as follows. The sub-section with which this appeal is particularly concerned is highlighted in bold:

**Form of EHC plan**
12.—(1) When preparing an EHC plan a local authority must set out—
(a) the views, interests and aspirations of the child and his parents or the young person (section A);
(b) the child or young person's special educational needs (section B);
(c) the child or young person's health care needs which relate to their special educational needs (section C);
(d) the child or young person's social care needs which relate to their special educational needs or to a disability (section D);
(e) the outcomes sought for him or her (section E);
(f) the special educational provision required by the child or young person (section F);
(g) any health care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section G);
(h) (i) any social care provision which must be made for the child or young person as a result of section 2 of the Chronically Sick and Disabled Persons Act 1970 (section H1);
(ii) any other social care provision reasonably required by the learning difficulties or disabilities which result in the child or young person having special educational needs (section H2);
**(i) the name of the school, maintained nursery school, post-16 institution or other institution to be attended by the child or young person and the type of that institution or, where the name of a school or other institution is not specified in the EHC plan, the type**

> **of school or other institution to be attended by the child or young person (section I)**; and
> (j) where any special educational provision is to be secured by a direct payment, the special educational needs and outcomes to be met by the direct payment (section J),
>
> and each section must be separately identified.
> …
> (3) Where the child or young person is in or beyond year 9, the EHC plan must include within the special educational provision, health care provision and social care provision specified, provision to assist the child or young person in preparation for adulthood and independent living.
>
> (4) The advice and information obtained in accordance with regulation 6(1) must be set out in appendices to the EHC plan (section K).

12. Sections 38(1) and (2) of the CFA 2014 make provision requiring parents to be consulted about the content of a draft EHC plan and given an opportunity to request that "a particular school or other institution within subsection (3) is named in the plan". Sub-section (3) provides:

> (3) A school or other institution is within this subsection if it is—
> (a) a maintained school;
> (b) a maintained nursery school;
> (c) an Academy;
> (d) an institution within the further education sector in England;
> (e) a non-maintained special school;
> (f) an institution approved by the Secretary of State under section 41 (independent special schools and special post- 16 institutions: approval).

13. There are definitions of each of the types of school listed in sub-section (3) elsewhere in the CFA 2014 and the EA 1996. I do not need to go through the definitions of all those types of school for the purposes of this decision, but it is relevant to note that each of those types of school has a specific definition within the legislation which relates to its legal status. Thus, for example, "maintained school" is defined in section 83(2) of the CFA 2014 as "(a) a community, foundation or voluntary school, or (b) a community or foundation special school not established in a hospital". By section 83(5), the definition of those types of school is the same as in the School Standards and Framework Act 1998 (**SSFA 1998**). In turn, section 20 of the SSFA 1998 provides that (in short summary) a school will be a school of one of those types if it was established as such under any enactment, or (if not established as such) became a school of that type by virtue of certain legislative provisions. Similarly, an "Academy" is, by virtue of section 83(7) of the CFA 2014 and section 579 of the EA 1996, "an educational institution to which Academy arrangements relate", and "an institution approved by the Secretary of State under section 41" is, self-evidently, an institution that has been so approved by the Secretary of State.

14. Under section 39(3), where a parent has expressed a preference for a school or institution of the type listed in section 38(3), the local authority must specify that school or institution, unless one of the exceptions in section 39(4) applies (i.e. the placement is unsuitable, or naming it would be incompatible with the efficient use of resources or the efficient education of others).

15. The list in section 38(3) does not include independent schools that are not approved under section 41, or institutions within the higher education sector, or any other type of institution. A superficial consideration of the legislation might lead one to conclude that a parent is unable to express a preference for a school or other institution not falling within the list in section 38(3). However, it is well-established that is not the case and that a parent may express a preference for any other school or institution. Where they do, the request falls to be considered under section 40 (as if "no request" has been made), rather than under section 39. The preference must then be considered by reference to section 9 of the EA 1996: see *Hillingdon v SS and others (SEN)* [2017] UKUT 0250 (AAC), [2019] AACR 9 *per* Judge Ward.

16. If the school or institution of parental preference is not named by virtue of section 39(3) (whether because the school requested is not of a type listed in section 38(3), or because one of the exceptions in section 39(4) applies), then, whether under section 39(5) or section 40(2), "the local authority must secure that the plan-

> (a) names a school or other institution which the local authority thinks would be appropriate for the child or young person, or
> (b) specifies the type of school or other institution which the local authority thinks would be appropriate for the child or young person."

17. Section 39(5) and section 40(2) thus use the terms "school", "other institution" and "type". There is no definition of these terms in the CFA 2014 itself. However, by section 83(7) of the CFA 2014, the provisions of Part 3 of the CFA 2014 are to be read as if they were contained in the EA 1996. The EA 1996 does contain a definition of "school" in section 4 as follows. (It does not contain definitions of "other institution" or "type".) Section 4(1) of the Education Act 1996 provides that (subject to exceptions not relevant here) a "school" is defined as:

> (1) …an educational institution which is outside the further education sector and the higher education sector and is an institution for providing
> (a) primary education;
> (b) secondary education; or
> (c) both primary and secondary education,
> whether or not the institution also provides part-time education suitable to the requirements of junior pupils or further education.

18. The definitions of "primary" and "secondary education" for this purpose are in section 2 of the EA 1996 and, so far as relevant to the present appeal, are, respectively, "full-time education suitable to the requirements of junior pupils of compulsory school age who have not attained the age of 10 years and six

months" and "full-time education suitable to the requirements of pupils of compulsory school age who are … senior pupils". "Junior" and "senior pupils" are in turn defined in section 3(2) of the EA 1996 as, respectively, children under the age of 12 and persons aged between 12 and 19.

19. Finally, section 42(2) of the CFA 2014 imposes a duty on the local authority responsible for maintaining an EHC plan to "secure the specified educational provision for the child or young person". The local authority is only relieved of that duty "if the child's parent or the young person has made suitable alternative arrangements". Where the school or other institution named in the EHC plan is one of the type listed in section 38(3), then its governing body, proprietor or principal is placed under a duty to admit the child or young person by section 43(2) of the CFA 2014. Such schools and institutions may therefore be required to admit a child or young person even if they have not offered them a place. Such schools and institutions are also under a duty by virtue of section 66 to use best endeavours to secure that the special educational provision called for by a pupil's or student's special educational needs is made.

20. There are no equivalent duties on other types of school or institution, so independent schools and other institutions not approved under section 41 are, as a matter of practice, only named in an EHC plan if they have consented to be named and have offered the child or young person a place. Where the EHC plan specifies special educational provision is to be provided at a non-maintained school or post-16 institution or place at which relevant early years education is provided, the local authority is under a duty to pay the fees by virtue of section 63(2) of the CFA 2014.

Legislative provisions relating to the powers of the First-tier Tribunal

21. Section 51 of the CFA 2014 provides for a right of appeal to the First-tier Tribunal in relation to EHC plans as follows (so far as material):

> **51 Appeals**
>
> (1) A child's parent or a young person may appeal to the First-tier Tribunal against the matters set out in subsection (2), subject to section 55 (mediation).
>
> (2) The matters are—
> ….
> (c) where an EHC plan is maintained for the child or young person—
> (i) the child's or young person's special educational needs as specified in the plan;
> (ii) the special educational provision specified in the plan;
> (iii) the school or other institution named in the plan, or the type of school or other institution specified in the plan;
> (iv) if no school or other institution is named in the plan, that fact;
> …

> (4) Regulations may make provision about appeals to the First-tier Tribunal in respect of EHC needs assessments and EHC plans, in particular about—
> (a) other matters relating to EHC plans against which appeals may be brought;
> (b) making and determining appeals;
> (c) the powers of the First-tier Tribunal on determining an appeal;
> (d) unopposed appeals. …

22. The 2014 Regulations include provision as permitted by section 51(4), as follows:

> **43.— Powers of the First-tier Tribunal**
>
> (1) Before determining any appeal, the First-tier Tribunal may, with the agreement of the parties, correct any deficiencies in the EHC plan which relate to the special educational needs or special educational provision for the child or the young person.
>
> (2) When determining an appeal the powers of the First-tier Tribunal include the power to—
> (a) dismiss the appeal;
> …
> (f) order the local authority to continue to maintain the EHC plan with amendments where the appeal is made under section 51(2)(c), (e) or (f) so far as that relates to either the assessment of special educational needs or the special educational provision and make any other consequential amendments as the First-tier Tribunal thinks fit;
>
> (g) order the local authority to substitute in the EHC plan the school or other institution or the type of school or other institution specified in the EHC plan, where the appeal is made under section 51(2)(c)(iii) or (iv),(e) or (f);
>
> (h) where appropriate, when making an order in accordance with paragraph (g) this may include naming—
> (i) a special school or institution approved under section 41 where a mainstream school or mainstream post-16 institution is specified in the EHC plan; or
> (ii) a mainstream school or mainstream post-16 institution where a special school or institution approved under section 41 is specified in the EHC plan.

Relevant case law

23. The present case concerns a specialist hub that is co-located with a mainstream school. The issue is as to what wording it is lawful to include in Section I of an EHC plan where it is decided that the hub is the appropriate placement for the child. A number of previous decisions of the Upper Tribunal are relevant and I need to go through them in some detail.

24. In *TB v Essex County Council* [2013] UKUT 0534 (AAC) (***Essex***) Judge S Lane had to consider whether an alternative provision project called "GROW" (which was not a pupil referral unit) constituted an "educational institution" and thus a school within the meaning of section 4 of the EA 1996. The case was decided under the predecessor framework in the EA 1996 for Statements of Special Educational Needs. As relevant to the present case, Judge Lane opined as follows:

> 29. Like so many words in English, "institution" can bear more than one meaning, but the common meaning is an establishment or organisation. In my view the linking of "educational" and "establishment" also indicates formality of structure.
>
> 33… unless the context otherwise requires, it is not justifiable to encrust the words "educational institution" in section 4 with the technicalities relating to the regulation, governance financing and administration of schools associated with the various categories recognised for those purposes.
>
> 34. That is not to say that the technicalities of "school" or, indeed the other indicia [governance structures, registration as a school, formal attachment to an existing pupil referral unit, inspection, external reference, whether the local authority considers that it could be named in the statement as a school] are irrelevant. In my view, they are factors which are helpful in assessing whether an entity is an educational institution. This is not, however, a tick-box exercise. Depending on the circumstances, a greater or smaller number of factors may serve to answer the question.

25. Having concluded that the First-tier Tribunal erred in law by failing to consider whether GROW itself was a school, Judge Lane went on to re-make the decision. He determined that GROW was a "school" for the purposes of section 4 of the EA 1996, and for the purposes of being named in a statement of special educational needs, even though it had not been established as such by the local authority. The unusual nature of GROW is described most fully in [39] of the judgment. It is unnecessary to set that paragraph out in this judgment. However, the key elements of Judge Lane's reasoning are necessary to this judgment and are to be found in the following paragraphs:

> 33 I have come to the conclusion that Mr Lawson is correct in saying that, unless the context otherwise requires, it is not justifiable to encrust the words 'educational institution' in s. 4 with the technicalities relating to the regulation, governance, financing and administration of schools associated with the various categories recognised for those purposes.
>
> 34 This is not to say that the technicalities of 'school' or, indeed, the other indicia set out by Ms Walker, are irrelevant. In my view, they are factors which are helpful in assessing whether an entity is an educational institution. This is not, however, a tick-box exercise. Depending on the

> circumstances, a greater or smaller number of factors may serve to answer the question.
>
> …
>
> 40 GROW does not have its own premises, but I do not consider that to be of any real significance in the context of an entity funded by a Local Authority and closely monitored by it. It is also, in my view, not determinative that GROW does not fall within a recognised category of school for other purposes. It is true that both the Local Authority and the Tribunal considered it necessary to name both CSS and GROW in Part 4 of the Statement of Special Educational Needs, though they did not give their reasons. This does not suggest to me that GROW cannot be of sufficient standing to be an educational institution for the purpose of fulfilling a child's special educational and behavioural needs with a view to sending the child back into a more formal setting when he is ready. In any event, this is only one factor amongst many.
>
> 41 Taken overall, I consider that the factors in paragraph [39] point strongly to the conclusion that GROW is a school for the purposes of s. 4, and I so find.

26. *MA v Borough of Kensington and Chelsea* [2015] UKUT 0186 (AAC) (***Kensington***) was also a decision under the EA 1996 framework. The local authority wanted to name a unit (called "The Grove") attached to a maintained mainstream primary school. The parents' argument was that The Grove was in reality a special school and could not be named as their preference for mainstream education needed to be considered under section 316 of the EA 1996. In fact, Judge Levenson held that the parents' preferred school was not a mainstream school either, so that the section 316 argument fell away. However, he nonetheless considered whether the First-tier Tribunal had erred in concluding that The Grove was not a separate special school to the maintained mainstream primary school to which it was attached.

27. Having considered Judge Lane's observations in *Essex* (set out above), Judge Levenson held at [28] that the issue was a question of fact for the First-tier Tribunal. The First-tier Tribunal had not erred in that case in holding that the hub was not a separate school as (among other things: see [21]) its management was shared with the mainstream school, admissions were dealt with through the mainstream school, there was no separate governing body or funding, no separate Ofsted inspection and the purpose of the hub was to enable pupils to integrate in time with the mainstream school. Accordingly, the First-tier Tribunal had not erred in naming in Section I the mainstream school of which the hub was a part. I note that at [7] in that case, Judge Levenson explained that he proceeded on the assumption that both the mainstream primary school and The Grove were lawfully established.

28. *East Sussex County Council v TW* [2016] UKUT 0528 (AAC) (***East Sussex***) was a decision by Judge Jacobs. In that case, the First-tier Tribunal had substituted the following for the type of placement in Section I:

> An independent specialist day college working together with an off college site residential setting.

29. And the following for the name of the placement:

> A day placement at … College …, together with supported living provided by Brighton and Sussex Care Ltd.

30. Judge Jacobs held that the First-tier Tribunal had erred in law as follows:

> *How the tribunal went wrong in law*
> 32. There are a number of problems with these entries. The most fundamental is that they do not comply with regulation 12(1)(i). That subparagraph provides that Section I must contain the name or type of institution 'to be attended by' the person. It is not necessary for me to define precisely what types of institution are within that provision. It is sufficient to say three things. First, a tribunal may not add information to Section I in order to avoid the risk of a placement breaking down. That is not permitted under regulation 12(1)(i). Second, there must be something that is 'attended by' the person. The phrase 'supported living provided by Brighton and Sussex Care Ltd' identifies the form of the provision that is to be made for Theo and the body that is to provide it. It does not identify something that Theo can attend. Third, in so far as the tribunal's version envisages that the supported living will be provided in Theo's home, that is not permissible within regulation 12(1)(i). Theo's home is where he lives. It is not a proper use of language to say that his home is somewhere 'to be attended by' him. Nor is it a proper use of the word to describe his home as an institution, whatever the specific meaning of that word.
>
> *Section 61*
> 33. The tribunal tried to avoid this by adopting an argument put by Mr Friel. He argued that a local authority may approve home tuition under section 61. That may be so, but it does not follow that the home can properly be entered into Section I. It does not fit into the language used by regulation 12(1)(i), which deals with just the type of school or institution that must be inappropriate in order for section 61 to apply.
>
> 34. I am grateful to Judge Melanie Lewis, who gave permission to appeal in the First-tier Tribunal, for drawing to my attention a change in the wording of the legislation. Section 61 re-enacts and extends section 319 of the Education Act 1996. Section 324(2)(c) of that Act required that the statement of special educational needs should:

> specify any provision for the child for which they [the local authority] make arrangements under section 319 and which they considered should be specified in the statement.

And Schedule 2 to the Education (Special Educational Needs) (England) (Consolidation) Regulations 2001 (SI No 3455) required this to go into Part 4 of the Statement. There is, as Judge Lewis pointed out, no equivalent in the 2014 Act. That confirms my analysis.

31. *Derbyshire County Council v EM and DM (SEN)* [2019] UKUT 240 (AAC), [2020] ELR 27 (***Derbyshire***) was a decision by Judge Wright. The issue was whether there is always a requirement to name a school or other institution (or type of either) in Section I. Judge Wright held that there was no such requirement if the case was one to which section 61 of the CFA 2014 applied so that it was inappropriate for the child's education to be provided in any school and education was to be provided otherwise than at school. That was a case in which it had been determined that it was not appropriate for the child's education to be provided at an institution either. Judge Wright held that, in those circumstances, Section I should be left blank. He accepted at [23] that to hold otherwise would (in the words of counsel in that case) "risk EHCPs becoming divorced from the reality".

32. *NN -v- Cheshire East Council (SEN)* [2021] UKUT 220 (AAC) (***Cheshire East***) was a decision by Judge Rowley. The local authority wanted a particular school to be named in Section I, but education initially to be provided to the child at home, with a gradual transition to school. The parent wanted Section I to be left blank and for education otherwise than at school to be specified in Section F. The Tribunal accepted the local authority's argument and ordered the following text to be included in Section I:

> Specialist Provision: [the school], Bespoke provision.

33. Judge Rowley considered the authorities of *East Sussex* and *Derbyshire* referred to above. She agreed with both. Having quoted what Judge Jacobs said at [32] of *East Sussex* (see above paragraph 30), at [46] she held:

> 46. Thus, Section I must be limited to what is provided by regulation 12(1)(i), i.e. the name of the school and type of school to be attended by the child, or where the name of the school is not specified, the type of school to be attended by the child. Anything which is added to that, for whatever reason, is likely to be classified as an error of law.

34. At [47] she set out guidance as to the approach to be taken in cases potentially involving bespoke provision, including the following:

> c. If the tribunal is satisfied that it would be inappropriate for any … special educational provision to be made in any school, then Section I must be left blank.

d. Conversely, if the tribunal is not satisfied that it would be inappropriate for any such special educational provision to be made in any school, it follows that a particular school or type of school would be appropriate for the child ([*Derbyshire*] (above)) in relation to at least part of the provision to be made. This will lead to consideration of what should be specified in Section I of the EHC plan. That, in turn, will involve consideration of regulation 12 of the 2014 Regulations.

e. If a particular educational institution is proposed, and if it is in issue as to whether or not that institution is a 'school', the tribunal must consider whether it falls within the definition of a 'school' as set out section 4 of the Education Act 1996. This is a question of fact to be determined in the light of all the evidence including, where relevant, matters such as regulation governance, financing and administration ([*Kensington*] (above), [*Essex*] (above)).

f. If it is in issue, the tribunal must consider whether the school or type of school will be 'attended by' the child. If it is satisfied that the child will be present at a school or type of school for at least part of the time, that is sufficient and so the school or type of school must be specified in Section I. Attending provision provided by the school as part of a bespoke package outside a conventional classroom setting will nonetheless mean that the school is to be attended by the child within the meaning of regulation 12(1)(i).

g. What is specified in Section I must be strictly limited to the name of the school and type of school to be attended by the child, or where the name of the school is not specified, the type of school to be attended by the child. No more and no less.

h. For the avoidance of doubt, education in a child's home cannot be named in Section I ([*East Sussex*] (above)).

i. Any special educational provision which will be made otherwise than in a school or type of school will be set out in Section F.

35. Judge Rowley remitted that case to a fresh First-tier Tribunal to take a new decision in the light of that guidance.

**The parties' submissions**

36. The appellants confirmed that they have in substance only one ground of appeal. They argue, relying in particular on what Judge Rowley said in *Cheshire East*, that it is not lawful for a hub to be named in Section I. Only a school or other institution can be named in Section I. Anything that is added to that, for whatever reason, is, they submit, unlawful. They further argue that Haughton School could not be named because that special school had refused to offer D a place because the special school itself was not suitable for D. Likewise, the hub could not be named because that was not a separate school or institution responsible for

admissions and there was no means by which they could enforce his admission to the hub. Nor could Hollinswood Primary School be named because, as a mainstream primary school, it was not suitable for D who requires a special school placement. They emphasised that they still consider the hub itself is not suitable for D, although they acknowledged that they had not appealed the First-tier Tribunal's conclusion on suitability because they recognised the difficulty of contending that there was any error of law in the First-tier Tribunal's conclusion in this respect.

37. Mr Wilson for the respondent argued that there was nothing wrong with the wording that the First-tier Tribunal had ordered be included in Section I. He said that the admissions authority for the hub is Haughton School and admission could be enforced against Haughton School. Although Haughton School had refused to offer D a place at the main site of the special school because that would not be suitable, it had offered D a place at the hub. While the parties and the Tribunal were agreed that a mainstream school placement at Hollinswood Primary School would not be suitable for D, the Council's case, which the First-tier Tribunal had accepted, was that placement in the hub would be suitable, and that what was proposed by way of liaison and involvement with the mainstream school was appropriate for D. Mr Wilson submitted that Judge Rowley had gone too far in *Cheshire East* in saying that adding "anything" to the name or type of school or institution in Section I was likely to be an error of law. He submitted there is no objection to wording being added to Section I that clarifies for the parties the provision that is to be made for the child. Regulation 12(1)(i) says what Section I must contain, it does not say it may only contain that information.

## Analysis

38. For convenience, I set out again here the wording that the First-tier Tribunal directed be included in Section I of D's EHC plan:

> Name of Educational Placement: Haughton School Specialist Hub at Hollinswood Primary School.
>
> Type of Placement: Special school (with a specialist hub within a mainstream school).

39. This wording would plainly be lawful if the hub itself is a school within regulation 12(1)(i) of the 2014 Regulations, and sections 39(5) and 40(2) of the CFA 2014. However, neither of the parties in this case regard it as being a separate school and nor, it seems, did the First-tier Tribunal.

<u>Why the First-tier Tribunal did not err in proceeding on the basis the hub was not a separate school</u>

40. In what follows, I use the term "organisation" when a neutral term not designating any particular type of school or institution is required. Although the legislation refers to "child or young person", as this case is concerned with a child, I refer only to "child" when referring to the legislation.

41. No doubt because neither party raised the argument, the First-tier Tribunal did not specifically consider whether the hub should be regarded as a school separate to either Haughton School or Hollinswood Primary School. However, at [58]-[64] of its decision, the First-tier Tribunal took into account the sort of factors that Judge S Lane in *Essex* and Judge Levenson in *Kensington* indicated were relevant to that question. In particular, the Tribunal noted at [58] that staff in the hub are employed and managed by Haughton School (a maintained special school) and the children in the hub are on the roll of Haughton School, although the hub is located in Hollinswood Primary School (a mainstream community primary school), the children wear the uniform of Hollinswood Primary School and are expected to identify themselves as "Hollinswood children". Having considered those factors, the Tribunal proceeded on the basis that the hub was part of Haughton School.

42. In my judgment, the Tribunal was entitled to proceed on the basis that the hub was part of Haughton School and not part of Hollinswood Primary School or a separate school. Indeed, while I agree with Judge Lane and Judge Levenson that, whether or not "an organisation" is a "school" for the purposes of section 4 of the EA 1996 and Section I of an EHC plan is a question of fact for the Tribunal, I would sound a note of caution about the suggestion in those cases that the Tribunal should not concern itself with whether or not the organisation has been properly and lawfully established as a school.

43. The definitions of school and the various types of school are consistent across all the education acts. This includes not only the CFA 2014 and the EA 1996 with which this case is concerned, but also the Education and Inspections Act 2006 (**EIA 2006**) (which deals, among other things, with the establishment of maintained schools), the School Standards and Framework Act 1998 (**SSFA 1998**) (which deals, among other things, with admissions to maintained schools) and the Education and Skills Act 2008 (**ESA 2008**) (which, among other things, requires all independent schools to be registered). Thus, in addition to the provisions I have already set out above at paragraph 13, section 187(2) and (3) of the EIA 2006 provide that the definition of "school" is the same as it is in the EA 1996, and section 32(1) of the EIA 2006 defines "maintained school" in the same way as it is defined for the purposes for sections 38(3) and 43(2) of the CFA 2014. See also section 142(8) and (9) of the SSFA 1998 and section 168(2) of the ESA 2008, which provide that those Acts, too, are to be read together with the EA 1996, so that the same definition of "school" and the various statutory types of school apply.

44. I am not persuaded that an organisation could be a school for the purposes of some parts of those statutes, but not for the purposes of being named in an EHC plan (or vice versa), unless there was an express provision to that effect (as contemplated, for example, in section 142(9) of the SSFA 1998). I say that not just because of those definition sections to which I have referred, but also because of the way the CFA 2014 makes specific provision in relation to different types of schools and the way that the legislation deals with school admissions. Let me explain.

45. Section 28(1) of the EIA 2006 prohibits the establishment of a maintained school otherwise than in pursuance of proposals under Part 2 of that Act. Section 6A requires a local authority, if it considers there is a need for a new school in its area, to invite proposals first for the establishment of an Academy (which includes an alternative provision Academy if the need is for a new pupil referral unit). This is the so-called "Academy presumption". New community, foundation and voluntary schools and special schools may be founded in other, more limited, circumstances as provided elsewhere in Part 2 of the EIA 2006, and Part 2 makes detailed provision as to the process to be followed when a local authority wishes to establish any new school.

46. A decision by a First-tier Tribunal that a hub of the sort with which this case is concerned was a school separate to the established maintained school of which the relevant local authority understood it to be a part would (at least) imply that it was a school that had not been lawfully established under the statutory framework. It would also in principle follow that it was not a school or institution within the list in section 38(3) of the CFA 2014, that it lacked an "admission authority" as defined in section 88 of the SSFA 1998 and that there was no body responsible for it to whom the "duty to admit" in section 43(2) of the CFA 2014 applied and no body to whom the "best endeavours" duty in section 66 applied.

47. A Tribunal may be driven to the conclusion on the facts of a particular case that such an organisation is nonetheless a "school" within the statutory definition. It seems to me that the *Essex* case is one such example for the convincing reasons that Judge Lane gave. However, a Tribunal should be slow to reach such a conclusion. The presumption of legality is a principle of general application. If an alternative analysis is reasonably open to a Tribunal, it should not in the ordinary course conclude that an educational institution funded by the local authority, and providing education to children of school age, is a school unless it has been lawfully established as such by the local authority.

48. I add that such a hub is unlikely to be an "other institution" rather than a "school" (or part of a school) within the meaning of the legislation. This is because of: (i) the definition of "school" in section 4 of the EA 1996 being "an educational institution … for providing primary education" and/or "secondary education"; and, (ii) the definition of "primary" and "secondary education" being "full-time education suitable to …" the requirements of "junior" or "senior pupils". It seems to me that any institution (whatever name it goes by) providing full-time education suitable to a child or young person of a relevant age with an EHC plan is likely to be a "school" as defined and therefore not an "other institution". Even if it only provides part-time education, it will likely also fall within the definition of "school" by virtue of section 4(2) of the EA 1996. It was essentially for these reasons that Judge Lane in *Essex* concluded that GROW was a school rather than an "other institution": see especially [36], [39] and [40] of that case.

49. Accordingly, I am satisfied that the First-tier Tribunal in this case did not err in regarding the hub as being part of the established Haughton School, which had set it up and was responsible for admissions to it and the management of it. Nor

did the Tribunal err in failing to address this question directly, given that neither party contended that the hub was a separate school.

50. It follows from the foregoing that the First-tier Tribunal, having concluded that the hub was an appropriate placement for D, was required by sections 39(5) and 40(2) of the CFA 2014 and regulation 12(1)(i) of the 2014 Regulations to name in Section I the school of which it was a part, i.e. Haughton School.

51. That still leaves the question of whether the First-tier Tribunal erred in law by doing more than that and adding words to Section I to indicate that it was specifically the hub on the Hollinswood Primary School site that it considered was appropriate for D.

Why the First-tier Tribunal did not err in naming the hub in Section I in addition to the school

*Why the previous case law is not determinative of the present case*

52. In *Essex*, Judge Jacobs said that a Tribunal could not lawfully add wording to Section I to avoid the risk of a placement breaking down. What he said was plainly right so far as the circumstances of that case was concerned. The Tribunal in that case had sought to add into Section I social care provision that it considered necessary to the success of the school placement. At that time the First-tier Tribunal had no powers in relation to social care (the case having been decided some time before *The Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017* (SI 2017/1306) came into force). The social care provision was also to be made at the child's home so it was not a school or institution that could be "attended" by the child. There were also other problems with the Tribunal's additional wording in that case for the reasons Judge Jacobs gave.

53. Judge Rowley in *Cheshire East* built on what Judge Jacobs said in *Essex*, but *Cheshire East* was also concerned with a different issue to that which arises in this case. In *Cheshire East*, the additional wording related to "bespoke provision" that was to be made for the child otherwise than at school. In accordance with Judge Wright's decision in *Derbyshire*, that needed to be set out in Section F.

54. I do not doubt that *Essex* and *Cheshire East* were correctly decided, and that what was said about Section I in those cases was right so far as concerns the particular circumstances in those cases. However, those cases were not dealing with the issue that arises in the present case, and, insofar as what they said about the limits of Section I went beyond what was strictly necessary to decide those cases, I am free to depart from them.

*Including a description of hub provision in Section F*

55. In cases where the hub is not itself a school or other institution (see discussion above at paragraphs 40-51), then it can be regarded as part of the means by

which the school or other institution will make the educational provision for the child specified in the EHC plan.

56. If the provision made in or by the hub is educational provision that is reasonably required to meet that child's special educational needs, then it needs to be specified by description in Section F. That is so whether the decision that provision in a hub is reasonably required is arrived at either: (1) because that is what would be required to meet the child's needs wherever he or she was placed; or (2) because the local authority or Tribunal determines that is what is required to meet the child's needs at the particular school or other institution.

57. In the latter respect, it is well established that it is legitimate to depart from the rigid formula of proceeding from "diagnosis" (Section B), to "prescription" (Section F) to placement (Section I), and to allow Section F to be "informed" by the school or other institution that has been identified as appropriate in Section I: see *GC & JC v Tameside Metropolitan Borough Council* [2011] UKUT 292 (AAC) at [34]–[38] *per* Judge Wikeley. Indeed, sections 39(7) and 40(4) of the CFA 2014 require a local authority, after consulting the school or other institution that it is proposed to name in an EHC plan as required by those sections, to "secure that any changes it thinks necessary are made to the draft EHC plan", thus underscoring that there is no objection to revisiting Section F in the light of the provision available at the particular school or other institution.

58. What matters most in all cases is that the EHC plan specifies the special education provision that is in reality required to meet the child's special educational needs so that it is clear to the local authority what it is under a duty to provide by virtue of section 42(2) of the CFA 2014. It is also important for the school to be clear as to what it is required to use its best endeavours to provide as required by section 66 of the CFA 2014. See *London Borough of Redbridge v HO (SEN)* [2020] UKUT 3232 (AAC) (**Redbridge**) *per* Judge Lane at [14]-[21], especially at [15] and [21a]. Securing the child's place in the hub where that is what is reasonably required to meet the child's special educational needs at that particular school is part of the way in which the local authority and the school fulfil their statutory duties to the child. It is important in such cases that this is clear from the EHC plan. The child and the parents of course also have an interest in the EHC plan being clear in this respect.

*Naming the hub in Section F*

59. It seems to me to follow from the above that the name of the hub can in principle also be specified in Section F as a means of identifying the provision required by the child. This is not a point that it is necessary for me to determine in this case, but as my consideration of it has informed my conclusion below as to why there is no (or no material) error of law in this case, I include my reasoning here.

60. As already noted, if placement in the hub is required to meet a child's special educational needs in a particular case, then it is important this is clear from the EHC plan. This may require the hub to be identified by name, at least in Section F.

61. The objections that are generally raised to specifying in Section F provision by a named organisation or person, or provision that can in practice only be made by one provider are that: (1) it may render the EHC Plan unworkable if the local authority can only fulfil its duty under section 42(2) by engaging one particular provider: see, eg, *DM v Cornwall CC (SEN)* [2022] UKUT 230 (AAC) at [27] *per* Judge Wright; and (2) in principle it is preferable for Section F to be transferable between placements, whether on a move within the local authority's area or on a move to a new local authority. (When moving to a new local authority, regulation 15(6) of the 2014 Regulations requires the new local authority, if it is no longer practicable for the child to attend the school named in the EHC plan, to arrange attendance at an alternative school until it is possible to amend the plan.)

62. Those are important considerations, and it is, rightly, widely accepted as a general rule that Section F should not contain wording that is placement or provider specific. However, it does not follow that it will be unlawful in every case for Section F to specify provision that is placement or provider specific, if that is what is necessary to identify with sufficient specificity the provision that is reasonably required to meet the child's needs, applying the well-established principles as drawn together by Judge Lane in *Redbridge*. If placement in the particular named hub is the provision that is reasonably required to meet the child of young person's special educational needs, then it belongs in Section F.

63. Further, the objections that are generally raised to placement or provider-specific wording in Section F are not insuperable. As already noted: (i) there is no objection to Section F being "informed" by the specific school or other institution named in Section I; and, (ii) where a child moves to a different authority, regulation 15 of the 2014 Regulations envisages that amendment of the EHC plan (or, even, re-assessment of needs) may be required. Further, (iii), an EHC plan may be reviewed at any time under regulation 28 of the 2014 Regulations, and thus, if part of the specified provision becomes unavailable, consideration could be given to specifying an alternative way of meeting the needs in question: see *Essex County Council v FA* [2019] UKUT 38 (AAC), [2019] ELR 195 at [22]-[31] and *R (S) v LB Camden* [2018] EWHC 3354 (Admin), [2019] ELR 129 at [64].

64. As Judge Lane put it in *Redbridge*:

> 16.The devil resides in the level of detail that the plan must contain. The EHC plan is a legal document of an unusual type. Insofar as the Tribunal has made an order, the order must have sufficient certainty to be enforced in case of dispute. On the other hand, the plan is a living document for a developing pupil. The tension is between the certainty the parties, in particular the LA, need to comply with or enforce their respective duties and rights and the need for sufficient flexibility for the plan to remain relevant until the next review of the plan takes place. The child [can] develop or deteriorate considerably during that period.

65. Whether or not it is appropriate to specify placement or provider-specific provision in a child's EHC plan will depend on how the local authority or First-tier Tribunal

consider the tension to which Judge Lane refers should be resolved in a particular case.

*Why it may be desirable to name the hub as well as the school of which it is a part in Section I*

66. Where it is determined that a child's needs will be appropriately met in a specialist hub attached to a mainstream school, the parties often have good reasons for wanting the hub itself to be identified in the EHC plan. While it is in my judgment lawful for the name of the hub to be included in Section F for the reasons I have set out above at paragraphs 59-65, it is in practice often felt that the most convenient place for this information to be set out is Section I. As already noted, such hubs are generally funded separately by the local authority, and there will usually be a specific number of allocated places in the hub. It is often important to the local authority, the school and the parents that the child's EHC plan identifies the child as having one of those allocated hub places. Further, in many cases (and the present is such an example) naming only the school in Section I feels misleading as the main part of the school constitutes an unsuitable and inappropriate placement, and it is placement in the hub that makes the school appropriate. Because a hub is in many cases conceptually like a "school within a school", it makes sense for it to be referred to as such in Section I, even if it is not a separate "school" for the purposes of the legislation (for the reasons discussed at paragraphs 40-50 above).

*There is nothing in the legislation that prohibits the naming of the hub in Section I of an EHC plan*

67. It seems to me that, provided that the school of which the hub is a part is named in Section I, there is nothing in the legislation that prevents Section I also naming the hub.

68. In this respect, I accept Mr Wilson's submission that regulation 12 of the 2014 Regulations does not have the effect of making it unlawful to include in an EHC plan information relating to the child or young person's special educational needs or special educational provision that goes beyond the matters identified in that regulation. Regulation 12 states that an EHC plan must set out the matters listed, but it does not say that these are the only things that may be included.

69. Nor do I consider sections 37(2) and (3) of the CFA 2014 set out the limits of what may be contained in an EHC plan. Although those sub-sections on their face define an EHC plan as a plan specifying the various matters there set out, there is no need to construe them as restricting the contents of an EHC plan only to those matters. The drafter of the 2014 Regulations did not regard those sub-sections as having that effect because regulation 12 includes a number of elements as "contents" of a plan that are not mentioned in sections 37(2) and (3). These include: Section A containing "the views, interests and aspirations of the child and his parents or the young person"; the requirement for pupils in Year 9 and above to include "provision to assist the child or young person in preparation for adulthood and independent living"; and Section I itself since sections 37(2)

and (3) of the CFA 2014 contain no reference to naming a school or other institution or otherwise identifying placement – that requirement is in regulation 12(1)(i) only.

70. I turn now to deal with the powers of the Tribunal on appeal.

*Naming the hub as well as the school in Section I where that is agreed by the parties*

71. In light of my conclusions at paragraphs 52-70 above, it seems to me that there is no difficulty in the local authority and the parents **agreeing** that additional wording relating to a hub should be included in Section I of an EHC plan, provided that the school itself is also named so that it is clear which body is responsible for admitting the child to the school (under section 43 of the CFA 2014), and using best endeavours to meet their special educational needs (section 66).

72. However, the right of appeal to the First-tier Tribunal under section 51(2)(c)(i), (ii),(iii) and (iv) is only against the special educational needs specified in the EHC plan, or the special educational provision specified in the plan, or the school (or type of school) or other institution named in the plan, or if no school or other institution is named in the plan, that fact. Unless a hub is itself a school (see discussion above at paragraphs 40-51), there is therefore no right of appeal against the naming (or not naming) of a hub in Section I of an EHC plan, as distinct from the naming (or not naming) of the school of which it is a part. The nature and scope of the right of appeal cannot be either eroded or expanded by the addition of wording into Section I of the EHC plan and nothing that I say below is intended to suggest otherwise. There is, of course, a right of appeal against the provision specified in Section F of an EHC plan and, insofar as what is in Section F leads to the placement of a child in a hub, or names the hub, the remedy for a parent who is not content with that is an appeal against the contents of Section F of the EHC plan.

73. Although the right of appeal to the First-tier Tribunal in relation to Section I is restricted to the name of the school (and the type), the Tribunal on appeal has a discretion to permit further amendments where those are agreed between the parties. Regulation 43(1) of the 2014 Regulations provides that, "Before determining any appeal, the First-tier Tribunal may, with the agreement of the parties, correct any deficiencies in the EHC plan which relate to the special educational needs or special educational provision for the child or the young person". This, it seems to me, is broad enough to permit the Tribunal to include agreed wording in an EHC plan that "relates to" the child or young person's special educational needs or special educational provision, if the plan is considered to be 'deficient' without that information.

74. The limits of this power may need to be further explored in future cases, but it seems to me that it readily covers a case such as the present where reference to the school in Section I without also including reference to the hub would mean that the EHC plan was, as I have said, almost misleading. In such cases, not including reference to the hub in the EHC plan can reasonably be regarded as

leaving the EHC plan deficient means that the plan fails properly to identify the provision to be made for the child, and where it is to be made.

75. I am therefore satisfied that an EHC plan can, by agreement between the parties, specify a hub in Section I in addition to the school of which is a part, and that a tribunal has power on appeal to include such wording if that is agreed between the parties.

76. As a matter of good practice, I suggest the reference to the hub should be in brackets after the name of the school so that it is clear that the hub is being referred to as being a part of the school, rather than as a school or other institution in its own right. This will assist in avoiding confusion as to the identity of the body responsible for complying with the duties under sections 43 and 66 of the CFA 2014.

77. The parties may also wish to agree to such wording as a 'fallback' position in cases such as the present where parental preference is for a different school altogether. The parties may agree that, in the event of the Tribunal not finding it appropriate to name the parents' preferred school, the school and hub will be named in Section I.

*Why the appellants do not agree to naming the hub in Section I*

78. At the Upper Tribunal hearing, I explored with the appellants why they were not content with an agreed approach such as that in this case. The appellants oppose placement in the hub because they consider that the hub-attached-to-mainstream-school model is not appropriate for D and that he requires a special school place (but not the main part of Haughton School, which it is agreed is not appropriate).

79. In some cases, parents in the situation of the appellants would, once the First-tier Tribunal had concluded that their preferred school should not be named, wish it to be made clear in the EHC plan that their child **did** have an allocated hub place as they would likely view that as being preferable to the mainstream school being named without reference to a hub.

80. As I understood their position, the appellants in this case were not content with that approach because they believe it to be an error of law in the light of authorities, in particular *Cheshire*. Their hope is that they will through this appeal process secure a second hearing on the question of the suitability of the placement, even though that is not raised as a ground of appeal.

81. As the appellants in this case do not agree to the hub being referred to in Section I, I must therefore consider whether it is lawful for a First-tier Tribunal to order that the hub is referred to in Section I in the absence of agreement.

*The Tribunal's power to order that a hub is named in Section I in addition to the school*

82. I have already decided (see above paragraphs 55-59) that the hub may be specified, by description, in Section F, and that it may also be lawful in appropriate cases to identify the hub by name in Section F (above, paragraphs 59-65). I have also decided that there is nothing preventing additional wording being added to an EHC plan that goes beyond that stipulated in regulation 12 (see above, paragraphs 67-70), that it may be desirable in some cases to include reference to a hub in Section I (see above paragraph 66), and that the Tribunal may order such wording to be included in Section I where the parties agree (see above paragraphs 71-77). As such, even if I am wrong in what I say in the next paragraph about the Tribunal's power to order the hub be named in Section I, it is unlikely to be a material error of law for the Tribunal to do so. Provided that the name of the school is also specified in Section I, and the provision required for the child is properly specified in Section F, it is unlikely to make any material difference to the parties or the outcome of the case that the hub is referred to in Section I even if it should properly only have been referred to in Section F, or should not have been referred to by name, or only referred to if the parties were in agreement.

83. As I have also already said, the right of appeal to the First-tier Tribunal remains limited to the right to appeal against the school or other institution named in Section I, or the provision in Section F (or the description of needs in Section B). However, regulation 43(2)(f) of the 2014 Regulations provides that, in an appeal made under section 51(2)(c), the First-tier Tribunal may "**order** the local authority to continue to maintain the EHC plan with amendments …. so far as that relates to either the assessment of special educational needs or the special educational provision **and make any other consequential amendments as the First-tier Tribunal thinks fit**". In *S v Worcestershire County Council (SEN)* [2017] UKUT 0092 (AAC) and *LB Hillingdon v SS and ors (SEN)* [2017] UKUT 0250 (AAC), the Upper Tribunal accepted that regulation 43(2)(f) enabled the Tribunal lawfully to make amendments to Sections A and E of the EHC plan, even though there is no freestanding right to appeal in respect of those sections. On the same principle, it seems to me that the First-tier Tribunal has jurisdiction on an appeal to make "consequential amendments" to the EHC plan by way of adding or removing wording about a hub from Section I where that is appropriate in consequence of its findings on an appeal against the contents of Section F or the school named in Section I.

**My conclusion in this case**

84. I do not therefore consider that the First-tier Tribunal erred in law in this case in including reference to the hub as well as the school in Section I. This was a case where, once the First-tier Tribunal had decided that Lamledge School was not to be named in Section I, the only other suitable placement 'on the table' was that proposed by the local authority. The First-tier Tribunal was satisfied that placement in the hub was suitable and appropriate for D, and that the provision to be made for D there was what was reasonably required to meet D's special educational needs. It was not in dispute that the special school of which the hub was a part (Haughton School) was not generally suitable for D, only placement in

the hub was judged suitable by the Tribunal. Nor was it in dispute that placement in the mainstream primary (Hollinswood) was also unsuitable.

85. In those circumstances, for the reasons explored in detail above, this was a case in which it was lawful and appropriate for the hub to be named in Section I in addition to Haughton School, which would be the body responsible for admitting D to the hub and using its reasonable endeavours to meet his needs there. Reference to Hollinswood Primary School as a way of identifying the hub was also appropriate.

86. If I am wrong about it not being an error of law, I am nonetheless satisfied that it was not a material error of law. This was information that could (or, perhaps, should) have been in Section F or, if not, it was simply identifying by name (and thus with greater clarity) the provision that the Tribunal had determined was reasonably required to meet D's special educational needs and the organisation (or part of a school) where it was to be provided.

87. Moreover, as already noted, this was a case where, if Lamledge School was not named, the hub was the only other option 'on the table'. The position might have been different if there had been a dispute as to whether D should not be allocated a hub place, but should be placed either on the Haughton School main site, or in the Hollinswood mainstream primary school itself. (By way of example of the latter type of dispute, see *AA v London Borough of Hounslow* [2025] UKUT 226 (AAC) where the parent wanted her child to have a "mainstream experience" and thus did not want her child to have a hub place.) If that had been the argument in this case, it would have been a dispute to be resolved by way of an appeal against the provision specified in Section F, in consequence of which reference to the hub in Section I would have fallen to be retained or excised depending on the outcome of the appeal about Section F. Even in such a case, however, provided that the inclusion of the reference to the hub in Section I matched the provision in Section F, it is unlikely that it would be a material error to include reference to the hub in Section I.

*A final observation about "type" of school*

88. I asked the parties at the hearing whether they were satisfied that the First-tier Tribunal in this case had properly described the "type" of school in Section I as "Special school (with a specialist hub within a mainstream school)".

89. As noted (above, paragraph 17) there is no definition of "type" in the legislation. I do not consider that it is limited to the "types" of school listed in the legislation (see above paragraphs 12-13), since it will usually be immaterial to whether a school can meet a child's educational needs that it is a maintained or non-maintained school or a foundation school or Academy or community school. What it is relevant to specify as a "type" of school in Section I is usually whether it is mainstream or special, primary or secondary, residential or non-residential or, sometimes, a school with a particular specialism such as a "special school for children with moderate learning difficulties".

90. I do not see any difficulty with "a mainstream school with a specialist hub" being a "type" of school for the purposes of Section I because that has become such a common arrangement. However, it is much less common (indeed those representing the local authority were not aware of another example) for the hub on the site of the mainstream school actually to be part of a separate special school, as in this case. I was therefore doubtful as to whether such an arrangement could properly be described as a "type" of school. However, whether or not it does is immaterial in the present case because the First-tier Tribunal also identified the school by name, and neither party is concerned about how the Tribunal described the "type" of school..

## Conclusion

91. For all these reasons, I am satisfied that the First-tier Tribunal did not materially err in law by referring to the hub in Section I in addition to the special school of which it was a part, and the mainstream primary school wherein it was located.

92. I add this: nothing in this decision should be taken as indicating that in every case involving a school hub it will be necessary or appropriate to name it in the EHC plan. There are many different models of hub provision. Each case must be dealt with on its own facts.

**Holly Stout**
**Judge of the Upper Tribunal**

Authorised by the Judge for issue on 18 March 2026