



Neutral Citation Number: [2026] UKUT 346 (AAC)
Appeal No. UA-2025-001403-HS

RULE 14 Order: Save with the permission of the Upper Tribunal, no one shall publish or reveal the name or address of M or his parent, or the respondent, or any information that would be likely to lead to the identification of them. *Breach of this order may be treated as a contempt of court, punishable by imprisonment, fine or other sanction.*

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

Between:

M

Appellant

v

PROPRIETOR OF AN ACADEMY

Respondent

**Before: Upper Tribunal Judge Stout
Decided on consideration of the papers**

Representation:

Appellant: M's parent

Respondent: Alice de Coverley (counsel)

On appeal from:

Tribunal:	First-Tier Tribunal (Health Education and Social Care) (Special Educational Needs and Disability)
First-Tier Tribunal No:	EH351/24/00064
Judge/Panel:	Judge Lom
Tribunal Venue:	On the papers
Hearing Date:	7 May 2025

SUMMARY OF DECISION

DISABILITY DISCRIMINATION IN SCHOOLS (89)

The First-tier Tribunal erred in striking out all the appellant's claims that had not previously been struck out as the judge failed to identify that the appellant had brought a claim of failure to make reasonable adjustments in relation to GCSE examinations

that he sat in May and June 2024 and failed to give reasons for why that claim did not stand a reasonable prospect of success. The decision of the First-tier Tribunal was set aside and the case remitted for further determination.

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 judge follow.

DECISION

The decision of the Upper Tribunal is to allow the appeal. The decision of the First-tier Tribunal involved an error of law. Under section 12(2)(a), (b)(i) and (3) of the Tribunals, Courts and Enforcement Act 2007, I set that decision aside and remit the case to be reconsidered by a fresh Tribunal in accordance with the law as set out in this decision.

REASONS FOR DECISION

Introduction

1. This appeal is concerned with a claim of disability discrimination brought by the appellant (**M**) against the respondent school under the Equality Act 2010 (**EA 2010**). The appellant appeals against the decision of the First-tier Tribunal (Special Educational Needs and Disability) (**SEND**) of 7 May 2025 by which the First-tier Tribunal (Judge Lom): (i) refused to review her previous order of 27 January 2025 striking out a number of the appellant's claims as out of time; and (ii) struck out the appellant's remaining claims as standing no reasonable prospects of success. Permission to appeal was refused by the First-tier Tribunal on 10 September 2025. The appeal was lodged with the Upper Tribunal, in time, on 16 September 2025. Following an oral hearing on 20 January 2026 at which both M and the respondent were represented, I granted permission to appeal, limited to one ground which is as follows:

... whether the First-tier Tribunal [judge] erred in law in her decision of 7 May 2025 in striking out all of the appellant's claims that had not previously been struck out on 27 January 2025, without identifying that the appellant had brought, or wished to bring, an in-time claim of failure to make reasonable adjustments in relation to GCSE examinations that he sat in May and June 2024, or giving reasons for why that claim did not stand a reasonable prospect of success and/or why the claimant should not be permitted to amend his application (if necessary) in order to bring such a claim.

Why I have determined this appeal without a final hearing

2. The parties have provided further submissions in response to the grant of permission. Both parties have indicated a willingness to attend a final hearing, but neither party has specifically requested a hearing.

3. I have considered carefully whether a hearing is required in order fairly to determine this appeal, but have concluded that it is not. That is because the issue to be determined is a narrow one, where the focus is what a First-tier Tribunal judge might, or might not, reasonably be expected to have understood about a party's case from the documents she had before her. That is an issue I can fairly assess on the papers. Further, both parties attended the oral permission hearing, so I had the opportunity of hearing from them both orally at that stage, and both have since put in detailed written submissions. In short, I do not consider that an oral hearing would be any benefit to the parties or the Upper Tribunal.
4. I am also mindful that this is a case about a young person's education that concerned events that occurred over two years ago. I apologise to the parties for the contribution that I have made to that delay since my grant of permission (a result in part of periods of sick leave and annual leave). However, listing a hearing will further delay resolution of this matter, and increase costs to the parties. In the circumstances, it is in accordance with the overriding objective for me to determine the appeal on the papers without a hearing.

Relevant background

5. The appellant is a young person who is represented in this appeal by his parent. In order to assure myself that the appellant has capacity to bring these proceedings, and that they have been properly brought on his behalf by his parent, I directed him to attend the oral permission hearing. As a result, I was able to satisfy myself of these matters by speaking directly to M.
6. In the academic year 2023/2024 the appellant was in Year 11 at an academy school. According to the decision of the First-tier Tribunal under appeal:
 13. The evidence of the [respondent] was that from October 2022 until September 2023 [M] did not attend the [respondent]. From September 2023 [M] remained on the roll of the [respondent] until July 2024. In the academic year from September 2023 [M] attended school for only 17 sessions or 8.5 days and 3 of these were during his GCSE examinations in May and June 2024. Each attendance was for a matter of hours only.
 14. Until March 2023 Staff from the [respondent] tried to engage [M] at home and take him to school. These visits did not secure [M's] attendance beyond that recorded. The visits ceased because of safeguarding concerns.
 15. There was a conflict between the [respondent] and [M] as to when he ceased to attend the [respondent].
7. On 18 November 2024, the appellant lodged a claim for disability discrimination with the First-tier Tribunal. In the claim form, the appellant identified the date of the most recent incident of discrimination as being 3 June 2024 and completed the box explaining why the appeal was late. It is not necessary to detail here all the matters mentioned in the claim form. As relevant to this appeal to the Upper

Tribunal, the document attached to the claim form included the following (emphasis added):

“I was disadvantaged because the school failed to make reasonable adjustments ...

4. Frequent Breaks and Reduced Task Lengths (from ADHD Questionnaire)

- **Needed:** Breaks during tasks to manage focus and reduced task lengths to accommodate his limited attention span.
- **What happened instead:** He was required to complete assignments and exams without adjustments, leading to increased frustration and ultimately affecting his academic performance.”

8. In accordance with the First-tier Tribunal’s usual procedure, the claim form was reviewed by a First-tier Tribunal judge (Judge Brandon) at registration. In directions dated 8 January 2025, Judge Brandon identified the appellant as making the following complaints of unfavourable treatment for a reason relating to disability:
 - a. A suspension for 2 days on 4 November 2021 for persistent generally disruptive behaviour;
 - b. A suspension for 2 days on 25 November 2021 for inappropriate use of social media or online conduct;
 - c. A suspension for 5 days on 25 March 2022 after an incident involving a physical altercation with another pupil;
 - d. A permanent exclusion on 3 October 2022 for assaulting a teacher;
 - e. “Countless detentions and isolations”.
9. And the following matters as complaints of failure to make reasonable adjustments (emphasis added):
 - a. In September 2023 failing to co-ordinate with M’s parents regarding reinstatement to the school including supporting his needs for a successful return ensuring a smoother transition;
 - b. A failure to implement a structured support plan including access to a learning support assistant and a safe place to regulate emotions;
 - c. Failing to provide a consistent daily routine and clear step-by-step instructions to help him stay organised and engaged in learning activities;
 - d. Failing to provide breaks during tasks to manage focus and failing to reduce task lengths to accommodate his limited attention span, including requiring him to complete exams without adjustments;
 - e. From December 2021 onwards a failure to make accommodation to address his challenges with focus, impulsivity and behaviour regulation.
10. Judge Brandon noted that the application notice had been received by the First-tier Tribunal on 18 November 2024 and that accordingly part or all of the claims in respect of matters occurring before 19 May 2024 may be out of time. He made

directions requiring the appellant to provide further information so that the question of time limits could be considered further. The appellant responded to those directions by email on 10 January 2025.

11. The question of time limits in this case was considered by Judge Lom on the papers on 27 January 2025. She decided that the following five claims were out of time and should be struck out:
 - i. A fixed term exclusion for 2 days from 4 November 2021;
 - ii. A fixed term exclusion for 2 days from 25 November 2021;
 - iii. A fixed term exclusion for 5 days from 25 March 2022;
 - iv. A permanent exclusion from 3 October 2022;
 - v. From September 2023 failing to put in place a reintegration programme at the time of the readmission.
12. Judge Lom went on in her decision to note that the appellant had also made claims of failure to make reasonable adjustments, which she described as “continuing claims which in themselves are not out of time because they may have continued up until the time that this claim was lodged [or] at least until 19 May 2024”. She gave directions for the appellant to provide the following further information:
 - a. The dates of each incident of unfavourable treatment by the [respondent] experienced by [M] as a consequence of his alleged disability between 19 May 2024 and 18 November 2024.
 - b. A precise description of each incident of unfavourable treatment by the [respondent] experienced by [M] as a consequence of his alleged disability between 19 May 2024 and 18 November 2024.
 - c. A precise description of each provision, criterion or practice of the [respondent]’s during the period up to 19 May 2024 and/ or 18 November 2024 that [M] relies on in his Claim of disability discrimination.
 - d. A precise description of the characteristics of the group of pupils allegedly put at a substantial disadvantage by each provision, criterion or practice identified in reply to the request above.
 - e. A precise description of the substantial disadvantage alleged.
 - f. Details of each and every adjustment the Claimant alleges should have been made and why that adjustment was reasonable.
 - g. If the Claimant alleges that the discrimination arose as a consequence of a failure to provide an auxiliary aid, the Claimant’s should identify the auxiliary aid that was not provided and how the absence of that aid amounted to discrimination.
 - h. Any other matters relied on in support of any Claims that were still current on 19 May 2024 and have not been struck out.
 - i. Representations as to why this Claim in its entirety should not be struck out because it has no genuine prospects of success due to insufficient details and/or delay in bringing the Claim.
13. Although Judge Lom’s decision in relation to the claims that were struck out was a decision on a preliminary issue that finally disposed of part of the appellant’s claim, she did not notify the appellant of his right to appeal that decision as

required by rule 41(2)(c) of the FTT Procedure Rules. She also sent the decision only to the appellant, even though the respondent had been required by Judge Brandon's order of 8 January 2025 to file a response to the claim and thus, in fairness, should also have been sent a copy of that decision and order.

14. The appellant did not appeal Judge Lom's order. He responded to it by letter of 3 February 2025. As relevant to this permission application, under the heading "Reasonable adjustments the school should have made", the appellant wrote again that the respondent could have "provided extra time for tasks and exams". He did not identify when those exams were. Elsewhere in the letter he asserted that "The school's failures continued up to at least November 2024, making this a continuing claim, not an out-of-time claim", but he did not identify any specific incidents that supported this assertion that it was a "continuing claim".
15. On 19 February 2025, the respondent provided a response to the claims. This was provided in ignorance of Judge Lom's decision of 27 January 2025 and thus began by urging the First-tier Tribunal to strike out the claimant's claims in relation to the exclusions and "detentions and isolations" that the First-tier Tribunal had in fact already struck out. The respondent went on to set out a general defence to the claim, explaining the adjustments it had made for the appellant, which included having withdrawn him from all subjects apart from English and Maths, and allocating him a tutor. At [45] of its response, the respondent stated:

"...He only attended school for a total of 17 sessions (8.5 days) and 3 of these days were during his GCSE examinations in May and June 2024..."
16. At [50], the respondent set out the reasonable adjustments claims as they had been identified by Judge Brandon, including at sub-paragraph d "... requiring him to complete exams without adjustment". At [52], the respondent submitted:

52. Given the significant challenges with getting [M] to school and to engage in learning when present, safeguarding concerns including cannabis use, the [respondent] submits that it would not have been reasonable, in the circumstances, to expect that the School would have been in a realistic position to provide the adjustments noted above (b to e). Nor is it clear whether such adjustments would have alleviated any alleged disadvantage either. In any event, the school had tutors, LSAs, safe places, and support available, such as for routines, if [M] had come into school to access them.
17. The respondent went on to detail the action it had taken to make provision for the claimant, but said nothing specific about his GCSE examinations.
18. By directions of 19 February 2025, Judge Lom noted that the claimant's further evidence and submissions had failed to identify the precise dates or details of incidents falling within the period 19 May 2024 to 18 November 2024 as required by her order of 27 January 2025. She made further directions requiring those details again. She directed that the case be listed for a telephone case

management hearing in order to decide whether the claim or any part of it should be struck out.

19. I noted when granting permission to appeal that I had not been able to identify in the documents the appellant's written response to Judge Lom's order of 19 February 2025. If he produced submissions, neither party has provided them in response to my grant of permission to appeal or sought to rely on any such submissions (or absence of them).
20. A telephone hearing took place before Judge Lom on 23 April 2025. When that hearing was listed, the respondent had still not been provided with Judge Lom's decision of 27 January 2025 and was thus not aware that a large part of the appellant's case had already been struck out. In advance of that hearing, the respondent put in written submissions inviting the First-tier Tribunal to strike out the whole or part of the claim on the basis that it was out of time and/or inadequately particularised.

The First-tier Tribunal's decision

21. On 7 May 2025 the parties were sent Judge Lom's decision and reasons striking out the whole claim.
22. At [2] of her decision Judge Lom noted the claims she had previously struck out in her order of 27 January 2025 and that her order had been "a final order and not appealed". At [10] of her decision she noted that the appellant was asking her to revisit that order on the basis that the appellant "was a minor and could not be expected to understand the law". At [18]-[19] she noted that there was agreement that the provision of education by the respondent had been interrupted from October 2022 to September 2023 because M went to alternative provision during that period. She was satisfied that this interrupted any continuing claims. She stated that she was not persuaded that the appellant had identified any grounds that would cause her to revisit her decision to strike out the claims because the appellant had failed to identify any exceptional reasons that would merit the admission of those old claims.
23. At [8]-[10] Judge Lom noted that the appellant had not provided the further information she had directed in her orders of 27 January and 19 February 2025, although she did at [9] record the appellant's submission (presumably made orally at the hearing) that the respondent had failed to make adjustments by providing "extra time for tasks and exams". At [13] she noted that the respondent's evidence as set out above at paragraph 6 of this decision.
24. At [20]-[25] Judge Lom considered whether she should strike out as standing no reasonable prospects of success any of the claims that had not already been struck out by her on 27 January 2025 as being out of time. In summary, she decided that the claim that the respondent had excluded M's parents from supporting delivery of education could not be properly formulated as a claim under the EA 2010 (see [20]).

25. At [22] Judge Lom identified the “remaining claim” made by the appellant as being that from September 2023 the respondent’s practice of delivering education put disabled pupils at a disadvantage and that the respondent failed in its duty to make reasonable adjustments. At [23]-[25] she decided that “remaining claim” should be struck out for the following reasons:

23. I was satisfied that the [respondent]’s practices for the delivery of education could amount to a PCP. I am also satisfied that the delivery of education without differentiation could put pupils with ADHD at a substantial disadvantage. However, I was not persuaded that [M] or his father had identified any steps that the [respondent] could or should have taken that would have been reasonable for a pupil with ADHD who had an attendance record of less than 6% and who’s own father believed he ceased to attend school in November 2023. Any steps the [respondent] might have taken would have been redundant for 94% of the academic year.

24. This is the only Claim that I am satisfied that [M] could pursue that is within the jurisdiction of this Tribunal and for the reasons given I am not satisfied that this Claim has a reasonable prospect of succeeding. The prospects of the one remaining Claim [M] has succeeding are so remote that I am satisfied that the overriding objective would not be served by requiring the [respondent] to respond to such a speculative and unsubstantiated Claim.

25. For these reasons I have concluded that this Claim in its entirety should be struck out and this Claim thereby concluded.

The parties’ submissions

26. The appellant refers to *Cox v Adecco and Ors* [2023] EAT 105 at [28(5)–(8)] and submits that, when considering whether or not to strike out a claim, the Tribunal must take reasonable care to identify claims disclosed by the pleadings and key documents, particularly where the claimant is a litigant in person. He submits that he did enough to raise before the First-tier Tribunal a claim of failure to make reasonable adjustments in relation to his GCSE examinations, and that Judge Lom erred in law in failing to recognise that and to deal with it. He submits that the claim was properly included in his claim form and therefore needed to be determined by the First-tier Tribunal: see *UW v Cheam Academies Network (SEN)* [2026] UKUT 53 (AAC) at [64]-[66]. He submits that the claim of failure to make reasonable adjustments in respect of examinations was in time or that, at least, the First-tier Tribunal could not properly have determined it was out of time without hearing evidence. He invites me to set aside Judge Lom’s decision and remit this part of his claim to the First-tier Tribunal for re-determination.
27. The respondent submits that there was no error of law in the judge’s decision. The appellant had been given multiple opportunities to clarify his case, but had not done so. There was no properly pleaded claim of failure to make reasonable adjustments in relation to examinations, and the claimant had never identified the dates of the examinations about which he was complaining. The judge’s reasons

for finding the claims stood no reasonable prospect of success were sufficient to explain why a claim of failure to make reasonable adjustments in relation to examinations stood no reasonable prospect of success. The First-tier Tribunal judge was not obliged to consider whether an amendment to the claim was necessary of her own motion. In any event, the claim in relation to examinations was inevitably out of time because, by paragraph 4 of Schedule 17 to the EA 2010, the time limit in a failure to make reasonable adjustments claim of this type runs from the date when the school ought reasonably to have taken the step, which must have been before the start of the examination period in May 2024.

Legal framework

28. Rule 8 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (**the FT Rules**) provides so far as relevant as follows:

“(4) The Tribunal may strike out the whole or a part of the proceedings if—

(a) the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or part of them;

(b) the applicant has failed to co-operate with the Tribunal to such an extent that the Tribunal cannot deal with the proceedings fairly and justly;

or

(c) the Tribunal considers there is no reasonable prospect of the applicant's case, or part of it, succeeding.

(5) The Tribunal may not strike out the whole or a part of the proceedings under paragraph (3) or (4)(b) or (c) without first giving the applicant an opportunity to make representations in relation to the proposed striking out”.

29. When granting permission to appeal, I referred the parties to HHJ Tayler's judgment in *Cox v Adecco and Ors* [2023] EAT 105, HHJ Taylor (**Cox v Adecco**). At [21]-[32] of his judgment, he reviewed the case law and the guidance in the Equal Treatment Bench Book (ETBB), before summarising the relevant principles at [28] as follows:

28. From these cases a number of general propositions emerge, some generally well understood, some not so much.

(1) No one gains by truly hopeless cases being pursued to a hearing.

(2) Strike out is not prohibited in discrimination ... cases; but especial care must be taken in such cases as it is very rarely appropriate.

(3) If the question of whether a claim has reasonable prospects of success turns on factual issues that are disputed, it is highly unlikely that strike out will be appropriate.

(4) The claimant's case must ordinarily be taken at its highest.

(5) It is necessary to consider, in reasonable detail, what the claims and issues are. Put bluntly, you can't decide whether a claim has reasonable prospects of success if you don't know what it is.

(6) This does not necessarily require the agreement of a formal list of issues, although that may assist greatly, but does require a fair assessment of the claims and issues on the basis of the pleadings and any other documents in which the claimant seeks to set out the claim.

(7) In the case of a litigant in person, the claim should not be ascertained only by requiring the claimant to explain it while under the stresses of a hearing; reasonable care must be taken to read the pleadings (including additional information) and any key documents in which the claimant sets out the case. When pushed by a judge to explain the claim, a litigant in person may become like a rabbit in the headlights and fail to explain the case they have set out in writing.

(8) Respondents, particularly if legally represented, in accordance with their duties to assist the tribunal to comply with the overriding objective and not to take procedural advantage of litigants in person, should assist the tribunal to identify the documents in which the claim is set out, even if it may not be explicitly pleaded in a manner that would be expected of a lawyer.

(9) If the claim would have reasonable prospects of success had it been properly pleaded, consideration should be given to the possibility of an amendment, subject to the usual test of balancing the justice of permitting or refusing the amendment, taking account of the relevant circumstances.

30. The respondent in its submissions has also referred to Judge Freer's decision in *OA v The Responsible Body for School F* (UA-2023-001562-HS) (**OA**). From that case, I take the following additional principles, relevant to cases where pleadings are defective, and to the approach that an appellate tribunal should take on appeal against a strike-out decision by a first instance judge:

30. In *Three Rivers District Council v Governor and Company of the Bank of England (No.3)* [2001] UKHL 16 where the issue of defective pleadings was considered, it was confirmed:

"Time and costs will, or may, be wasted if the defendant seeks to respond to a vague and incoherent case. It is also necessary for the Court to understand the case which is brought so that it may fairly and expeditiously decide the case and in a manner which saves unnecessary expense. For these reasons it is necessary that a party's pleaded case is a concise and clear statement of the facts on which he relies".

31. An appeal judge:

"should not interfere with case management decisions made by a judge who has applied the correct principles, and who has taken into account the matters which should be taken into account and

left out of account matters which are irrelevant, unless satisfied that the decision is so plainly wrong that it must be regarded as outside the generous ambit of the discretion entrusted to the judge” - *Royal & Sun Alliance Insurance Plc v T&N Ltd* [2002] EWCA Civ 1964 (QB).

32. In *Azam v University Hospital Birmingham NHS Foundation Trust* [2020] EWHC 3384 it was further confirmed that:

“What is clear is that the hurdle for an appellant is a high one whenever a challenge is made to the outcome of a discretionary balancing exercise. The appellate court’s role is to police a very wide perimeter and it will be rare that a judge who has exercised a discretion having regard to relevant considerations will have come to a conclusion outside that perimeter. . . It is also well-established that the weight to be given to specific factors is a matter for the trial judge and absent some wholly unjustifiable attribution of weight, an appellate court must defer to the trial judge”.

My decision in this case

31. In my judgment, the First-tier Tribunal erred in law by striking out the whole of the appellant’s case without specifically addressing the appellant’s claim that the respondent had failed to comply with the duty to make reasonable adjustments in relation to exams. This claim was set out in the original claim form under the same heading as the statement that he required adjustments by way of “Breaks during tasks to manage focus and reduced task lengths to accommodate his limited attention span” (see above paragraph 7). He did not in the claim form identify to which exams he was referring, and the claimed reasonable adjustment lacked specificity. The claim form thus raised a claim of failure to make reasonable adjustments in relation to examinations, albeit one in respect of which further particulars were required.
32. All this appears to have been recognised by Judge Brandon when registering the claim. He specifically identified (above, paragraph 9) a claim of failure to make adjustments in respect of examinations, and ordered further particulars to be provided of this and the other claims. The claimant also referred again to the claim in respect of examinations, when responding to Judge Lom’s subsequent order for further particulars (above, paragraph 14) (this time stating that the adjustment required was extra time for examinations). He apparently also made a specific submission about it at the telephone case management hearing before Judge Lom (above, paragraph 23).
33. The position at the time the Judge Lom made her decision striking out the whole of the appellant’s case was therefore that he had brought a claim of failure to make reasonable adjustments in relation to examinations. He had repeated it when asked to provide further particulars of his claims. He could not be said to have implicitly abandoned it. He had in the original claim identified a reasonable adjustment he said should have been made. He had not identified which

examinations he was referring to, or set out with precision the adjustment he contended should have been made in relation to examinations. Arguably, that precision was provided in his email of 3 February 2025 where he stated he should have been provided extra time in examinations. Formally speaking, however, his claim of failure to make reasonable adjustments in relation to examinations required amendment in order to be fully pleaded.

34. The appellant did not respond in a specific and organised manner to each of Judge Brandon's and Judge Lom's directions for further particulars. However, it seems to me that the claim that the appellant was seeking to make was clear enough by the time of the hearing before Judge Lom. He had made a claim of failure to make reasonable adjustments in relation to examinations; the adjustment sought had been specified as being the provision of extra time; and the examinations referred to were evidently the GCSE examinations he took in May and June 2024.
35. The First-tier Tribunal (SEND) is not a jurisdiction in which formal standards of pleading generally apply, and many litigants in person find it difficult to respond to directions of the sort made by Judge Brandon and Judge Lom. It is significant (and appropriate) that this was implicitly recognised by Judge Lom, who did not strike the appellant's case out for failure to comply with the directions, or for failure to co-operate with the First-tier Tribunal. She focused, in principle appropriately, on the substance of the appellant's claims.
36. However, in doing so, she seems to have lost sight of the appellant's claim in relation to examinations. At [22]-[25] of her decision (see above paragraph 25), she identified the appellant's "remaining claim" as being (only) a claim of failure to make reasonable adjustments in relation to the respondent's "practice of delivering education". This appears to be a compendious reference to the other reasonable adjustments claims identified by Judge Brandon in his directions. Judge Lom's reasons address the substance of those claims in general terms. The judge's reasons are adequate to explain why she considered that the claims of failure to make reasonable adjustments in terms of educational provision generally stood no reasonable prospect of success (in summary, because the appellant's attendance was so low that there was nothing more that could reasonably have been done by the respondent).
37. Judge Lom's reasons do not, however, deal with the question of reasonable adjustments for examinations. Poor attendance does not by itself explain why adjustments could not be made for examinations. As happened in the OA case, adjustments for examinations generally involve an application by the school to the examination authority. In that case, where the school had made an application and obtained an adjustment of extra time for the claimant, for the reasons set out by Judge Freer at [62]-[66] and [73]-[74], there was no error of law in the First-tier Tribunal's conclusion that the claim in relation to examinations stood no reasonable prospect of success. Unlike in the OA case, the respondent here does not appear to have taken any action to seek adjustments for the appellant from the examination board. The school entered the appellant for the examinations notwithstanding his poor attendance, so it is not readily apparent why it could not also have sought adjustments for him based on his known needs and history. In

these circumstances, it is hard to see why a claim of failure to make reasonable adjustments should be regarded as standing no reasonable prospect of success. At any rate, Judge Lom's reasons are not adequate to explain any such conclusion.

38. The respondent, through Ms de Coverley's submissions on this appeal, submits that Judge Lom was entitled to proceed on the basis that there was no properly pleaded claim of failure to make reasonable adjustments in relation to examinations, and that this was not a case in which the judge erred in failing to consider whether there was a need for an amendment, in line with HHJ Tayler's ninth bullet point (above, paragraph 29). However, as I have explained above, in my judgment there was a pleaded claim of failure to make reasonable adjustments in relation to examinations. If the respondent is right that it required formal amendment in order to succeed (as would be the case in a jurisdiction where formal pleading rules are enforced), then in my judgment the judge in this erred in law in failing to consider that of her own motion. Although a judge enjoys a broad discretion as to case management, where there is a pleaded claim (especially by an unrepresented party) that is so close to being properly pleaded as this one, the judge will err in law if they fail to clarify what that case is, and consider whether there is a need to amend. In short, enough of this claim was pleaded that the judge could not reasonably ignore it. As I explained in *UW v Cheam Academies Network (SEN)* [2026] UKUT 53 (AAC) at [62]-[65], once a claim has been made in a claim form, as in this case, the First-tier Tribunal is under a duty to determine it. It cannot be ignored or clarified out of existence.
39. Finally, the respondent submits that the appellant's claim of failure to make reasonable adjustments in relation to examinations was in any event doomed to failure because it was out of time. Since this was not an issue that was considered by the First-tier Tribunal, it could only assist the respondent on this appeal if the time limit point provides a clear 'knock-out' blow to the appellant's case. I do not consider the respondent's argument meets that high threshold.
40. The primary time limit for bringing a claim to the First-tier Tribunal (SEND) is six months "starting with the date when the conduct complained of occurred": see paragraph 4(1) of Schedule 27 to the EA 2010. The First-tier Tribunal has a discretion to extend time: see *The Governing Body of a School v M (on behalf of C)* [2026] UKUT 161 (AAC). For this reason alone, the respondent's argument cannot provide a 'knock-out' blow because, even if the respondent is right that the claim is outside the primary time limit, consideration would still have to be given (by the First-tier Tribunal) to whether time should be extended.
41. Further, the respondent is not in my judgment correct that the appellant's claim has been brought outside the primary time limit or, at least, no such conclusion could safely be reached on the facts as they are currently known to be.
42. The respondent refers to my decision in *KTS v Governing Body of a Community Primary School* [2024] UKUT 139 (AAC) at [43]-[46], where I explained that time limits in relation to claims of failure to make reasonable adjustments have to be considered by reference to the rules on failures to do something in paragraph 4(5)(c) and (6) of Schedule 27 to the EA 2010. The effect of those sub-paragraphs

is that, per sub-section (5)(c), “failure to do something is to be treated as occurring when the person in question decided on it” and, per sub-paragraph (6), “In the absence of evidence to the contrary, a person (P) is to be taken to decide on failure to do something: (a) when P acts inconsistently with doing it, or (b) if P does not act inconsistently, on the expiry of the period in which P might reasonably have been expected to do it.”

43. The respondent submits that in this case any failure to make reasonable adjustments in relation to examinations must have occurred prior to the examinations, and thus prior to 18 May 2024 (which is the date six months prior to the appellant’s submission of his claim to the First-tier Tribunal). However, there is no evidence before me as to when the respondent took a decision not to apply for adjustments for the appellant in relation to examinations. The respondent has not pleaded that there was any such decision. If the deeming provisions in sub-paragraph (6) need to be considered, then it might be said that the date on which the respondent acted inconsistently with making reasonable adjustments for the appellant’s examinations was when the appellant attended to take the examinations in May and June 2024 and no adjustments had been made. Alternatively, it could be said that these dates are also the latest dates by which the respondent might reasonably have been expected to take appropriate action.
44. In any event, it is plain that, on the basis of the limited evidence before me, I cannot safely determine whether the appellant’s claim in relation to examinations has been brought outside the primary time limit or, if so, whether time should be extended. This is a matter that will have to be considered by the First-tier Tribunal on remission.

Conclusion

45. For all these reasons, I am satisfied that the First-tier Tribunal’s decision of 7 May 2025 striking out all the appellant’s claims that had not previously been struck out on 27 January 2025 involved an error of law insofar as the judge (i) failed to identify that the appellant had brought a claim of failure to make reasonable adjustments in relation to GCSE examinations that he sat in May and June 2024 and (ii) failed to give reasons for why that claim did not stand a reasonable prospect of success.
46. I set the decision of the First-tier Tribunal aside (insofar as concerns the appellant’s claim of failure to make reasonable adjustments in relation to examinations only). I remit the case to the First-tier Tribunal to determine again. Depending on how the parties put their cases on remission, the First-tier Tribunal may need further to clarify their cases and to address the question of time limits in relation to this claim.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 7 September 2026