

Neutral Citation Number: [2026] UKUT 401 (AAC)
Appeal No. UA-2025-001127-HS

RULE 14 Order: It is prohibited to publish or disclose the identities of the appellants, or their child, or information that is likely to identify them. This order does not prevent the use of any information or documents by any court or tribunal within subsequent proceedings in this case. ***Breach of this order may be a contempt of court, punishable by fine, imprisonment or other sanction.***

IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Between:

Z and Z

Appellants

- v -

NORFOLK COUNTY COUNCIL

Respondent

Before: Upper Tribunal Judge Stout
Hearing date: 28 September 2026
Mode of hearing: By video

Representation:
Appellants: Courtney Step-Marsden (counsel)
Respondent: David Lawson (counsel)

On appeal from:
Tribunal: First-Tier Tribunal (Health Education and Social Care) (Special Educational Needs and Disability)
Judge/Panel: Tribunal Judge O'Neill
Tribunal Case No: PA25-070 (Pre-Registration Decision)
Tribunal Venue: On the papers
Decision Date: 14 April 2025

SUMMARY OF DECISION

SPECIAL EDUCATIONAL NEEDS (85)

The appellants in this case consider that their daughter does not require an EHC plan. They sought to appeal to the First-tier Tribunal against the local authority's refusal to cease maintaining her EHC plan. The First-tier Tribunal refused to register their appeal.

The Upper Tribunal decides that there is no freestanding right of appeal to the First-tier Tribunal against a local authority's decision to make or maintain an EHC plan, or its refusal to cease maintaining one. However, the First-tier Tribunal had erred in law in failing to register the appeal as a 'standard' appeal under section 51(2)(e) of the Children and Families Act 2014 against the contents of Sections B and F of the EHC plan.

Further, the First-tier Tribunal should not have taken a decision refusing to register the appeal on the papers without a hearing. The First-tier Tribunal's practice of registering claims and appeals is not one expressly provided for in its rules of procedure and it should be operated only in accordance with the *Practice Direction: Special Educational Needs or Disability Discrimination in Schools Cases* (20 April 2021) (*UW v Cheam Academies Trust (SEN)* [2026] UKUT 53 (AAC) applied). The effect of that Practice Direction is to enable preliminary decisions on time points to be made on the papers at registration stage, subject to review at a hearing. However, if another ground for striking out part of a case exists, the First-tier Tribunal should notify the relevant party and make directions for determination of strike-out at a hearing.

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 registered and determined by the First-tier Tribunal as an appeal under section 51(2)(e) of the Children and Families Act 2014 against Sections B and F of C's Education Health and Care plan.

REASONS FOR DECISION

Introduction

1. The appellants in this case wish to challenge the decision of the respondent local authority (**the LA**) not to cease maintaining an Education, Health and Care plan (**EHC plan**) for their daughter (**C**) under the Children and Families Act 2014 (**CFA 2014**). Their position, in a nutshell, is that the LA has wrongly classified their daughter as having special educational needs (**SEN**) when in fact her only difficulty is that English is not her first language.

2. The appellants appeal against the decision of Judge O'Neill of 14 April 2025 refusing to admit the appeal on the ground that it was outside the jurisdiction of the First-tier Tribunal under section 51 of the CFA 2014. Following an oral permission hearing on 13 November 2025, I granted permission to appeal on two grounds:

(1) The First-tier Tribunal erred in law in concluding that it did not have jurisdiction to hear an appeal against a decision not to cease maintaining an EHC plan; and,
(2) The First-tier Tribunal erred in law in failing to consider admitting and/or failing to admit the appeal on the basis that the appellants were, in addition or alternatively, seeking to mount a 'standard' appeal under section 51(2)(e) of the CFA 2014 against Sections B and F of the EHC plan.

3. There has unfortunately been a significant delay in this matter reaching a final hearing. This was in part because the timetable was extended to enable the appellants to secure, if they could, legal representation to assist them with the first ground of appeal, which raises a novel legal point. However, a further delay was occasioned because the first listed hearing date was postponed as a result of my being indisposed. I apologise to the parties for my part in the delay.

4. The structure of this decision is as follows:

Introduction **2**
The legislative framework **3**
Factual background **5**
The proceedings before the Upper Tribunal **7**
Ground (2): Whether the First-tier Tribunal erred in law in failing to consider admitting and/or failing to admit the appeal as a 'standard' appeal under section 51(2)(e) of the CFA 2014 against Sections B and F of the EHC plan **8**
Ground (1): Whether the First-tier Tribunal erred in law in concluding that it did not have jurisdiction to hear an appeal against a decision not to cease maintaining an EHC plan **10**
The right of appeal question 11
(i) Purposive interpretation? *11*
(ii) Access to justice *16*
(iii) Human rights arguments *16*
The Tribunal powers question *22*
Conclusion **24**

The legislative framework

5. The First-tier Tribunal's jurisdiction to hear appeals under the CFA 2014 is set out in section 51 as follows:

> **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—
> (a) a decision of a local authority not to secure an EHC needs assessment for the child or young person;
> (b) a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan;

(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;

(d) a decision of a local authority not to secure a re-assessment of the needs of the child or young person under section 44 following a request to do so;

(e) a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44;

(f) a decision of a local authority under section 45 to cease to maintain an EHC plan for the child or young person.

(3) A child's parent or a young person may appeal to the First-tier Tribunal under subsection (2)(c)—

(a) when an EHC plan is first finalised for the child or young person, and

(b) following an amendment or replacement of the plan.

(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.

(5) Regulations under subsection (4)(c) may include provision conferring power on the First-tier Tribunal, on determining an appeal against a matter, to make recommendations in respect of other matters (including matters against which no appeal may be brought).

6. The regulations made under section 51(4) and (5) are The Special Educational Needs and Disability Regulations 2014 (SI 2014/1530) (**the SEND Regulations**). Regulation 43 sets out the powers of the First-tier Tribunal on appeal:

Powers of the First-tier Tribunal

43.—(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;

> (b) order the local authority to arrange an assessment of the child or young person under section 36 or a reassessment under section 44(2) where the local authority has refused to do so, where the appeal [is] made under section 51(2)(a) or (d);
> (c) order the local authority to make and maintain an EHC plan where the local authority has refused to do so, where the appeal is made under section 51(2)(b);
> (d) refer the case back to the local authority for them to reconsider whether, having regard to any observations made by the First-tier Tribunal, it is necessary for the local authority to determine the special educational provision for the child or young person, where the appeal is made under section 51(2)(b);
> (e) order the local authority to continue to maintain the EHC plan in its existing form where the local authority has refused to do so, where the appeal is made under section 51(2)(f);
> (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.

Factual background

7. C was born in autumn 2016. The LA first made an EHC plan for C on 6 December 2023. The EHC plan captures in Section A the appellants' views as being that C has good communication skills, learns easily, and out of school is happy and independent. It also records that the appellants express disagreement with professional views that C may have autism and attribute her difficulties with interactions in school to being unhappy in that environment. It records that the appellants accept that C does need support with her English language skills. C was attending a mainstream maintained primary school until June 2023 when she was removed from school by her parents.

8. Section B of C's EHC plan describes C as having difficulties with aspects of social communication and interaction, and also use of expressive language in English. It acknowledges that it is difficult to gauge her level of difficulty because English is not her first language. However, it records C as working two years behind her

chronological age in all areas of the curriculum. Section F sets out a range of support to be made available to C in school, including significant levels of teaching assistant (**TA**) support.

9. An annual review of the EHC plan was held on 12 November 2024, following which on 13 November 2024, the LA issued a letter confirming that C's EHC plan remained appropriate at this time and the LA did not intend to make amendments to the EHC plan.

10. By email of 9 January 2025, the LA confirmed that it would be maintaining the EHC plan and informed the appellants that if they wished to challenge the decision to maintain the EHC plan, they could seek mediation and then appeal to the First-tier Tribunal.

11. After mediation, the appellants duly appealed to the First-tier Tribunal. The appeal form included the following (the first, second and fourth paragraphs of text are selected from dropdown menus, the third paragraph is the appellants' own text):

> I disagree with something written in Section B, F or I of the EHC Plan
>
> I disagree with what the EHC plan says about the child or young person's special educational needs (Section B of the plan); I disagree with what the EHC plan says about the educational help or provision the child or young person requires (Section F of the plan)
>
> I am appealing against the Local Authority's decision to maintain my child's EHCP as it is no longer necessary. My child initially received an EHCP solely due to English as an Additional Language (EAL) needs Independent reports confirm my child does not have special educational needs (SEN), and the EHCP is now being misused by the school Maintaining the EHCP is unjustified and is actively harming my child's education by keeping them at a Reception level in Year 3. Despite providing medical and professional reports, the Local Authority continues to insist on keeping the EHCP. The Children and Families Act 2014 states that an EHCP should only be maintained where special educational provision is necessary. In my child's case, it is not. Therefore, I request the Tribunal to instruct the Local Authority to cease the EHCP.
>
> I prefer a hearing I can attend by video or in person

12. By decision dated 14 April 2025, Judge O'Neill refused to admit the appeal because: (i) he considered it to be out of time on the basis that it was an appeal against the 13 November 2024 outcome letter following the Annual Review; and (ii) he considered the First-tier Tribunal had no jurisdiction to hear it. On the second point, he reasoned as follows:

> Whilst the application form notes that the Proposed Appellant wishes to challenge the contents of the EHCP, it is clear from the form that the real subject of the appeal is the LA's decision to maintain the EHCP. The Proposed Appellant does not agree that [C] should have an EHCP.
>
> … the Tribunal has no jurisdiction to consider an appeal, where the subject of the appeal is the LA's decision to issue and maintain an EHCP.

13. The appellants sought permission to appeal. Judge McConnell refused permission in a decision dated 24 July 2025. Judge McConnell took the view that the appeal had been brought in time on the basis that the email of 9 January 2025 was a decision refusing to cease to maintain the EHC plan against which the appeal had been brought. However, she refused to set aside Judge O'Neill's decision as she agreed that the First-tier Tribunal did not have jurisdiction to hear the appeal. She reasoned as follows:

> 6. … Parents have provided a copy of a very short email/ message from a Tina Price at the LA dated the 09/01/2025 which confirmed that the LA had decided to maintain the EHC plan. It states that parent have a right to go to "mediation/ appeal to have the plan ceased".
>
> 7. … As set out by Judge O'Neill in refusing the application to appeal, the Tribunal does not have jurisdiction to consider, decide and order a LA to cease to maintain an EHC plan. The message from the LA to parents on the 09/01/2025 was incorrect. Under the Children and Families Act 2014 s. 51(2)(f) the only right of appeal to the Tribunal is where the LA have decided to cease to maintain an EHC plan of a child or young person. There is no right of appeal where the LA have decided not to cease to maintain an EHC plan where parents have requested that this happens.
>
> 8. I conclude that this ground is not arguable and the refusal to register an appeal does not demonstrate an error of law on the part of the tribunal. The situation presented by the parents in this case is rare. They need to take legal advice as to how the LA's decision can be challenged.

The proceedings before the Upper Tribunal

14. As already noted above, following an oral permission hearing on 13 November 2025, I granted the appellants permission to appeal on two grounds:

    (1) The First-tier Tribunal erred in law in concluding that it did not have jurisdiction to hear an appeal against a decision not to cease maintaining an EHC plan; and,
    (2) The First-tier Tribunal erred in law in failing to consider admitting and/or failing to admit the appeal on the basis that the appellants were, in addition or alternatively, seeking to mount a 'standard' appeal under section 51(2)(e) of the CFA 2014 against Sections B and F of the EHC plan.

15. It is convenient to note here that my grant of permission referred to the appellants seeking to mount a 'standard' appeal under section 51(2)(c), but in fact I have noted on writing up this decision that this should have been a reference to section 51(2)(e) because the decision by the local authority in this case was a decision not to secure the amendment or replacement of C's EHC plan, and thus section 51(2)(e) applies rather than section 51(2)(c): see section 51(3). Nothing of substance turns on this distinction for the purposes of this appeal.

16. I need also to mention that, in his skeleton argument for the Upper Tribunal hearing, Mr Lawson for the LA had sought to resurrect the time point, which was the primary basis on which Judge O'Neill initially refused to register the appeal, but at the hearing, Mr Lawson confirmed that the LA would not pursue this point. The two grounds of appeal on which permission was granted therefore remained the two issues for determination. It is convenient to take the second ground of appeal first.

17. Before doing so, I should add that, in the course of these proceedings before the Upper Tribunal, the parties have confirmed that the local authority conducted another annual review in November 2025, and again decided to maintain the EHC plan. The parties confirmed that the issues raised in this appeal therefore remain 'live' issues between the parties that need to be resolved. If the outcome of this appeal were to be that the case was remitted for redetermination, the First-tier Tribunal would be required to consider C's needs as at the date of the remitted hearing and any decision by this First-tier Tribunal would have the effect of superseding the decisions of the local authority at the annual reviews that have taken place since these proceedings commenced in the First-tier Tribunal.

Ground (2): Whether the First-tier Tribunal erred in law in failing to consider admitting and/or failing to admit the appeal as a 'standard' appeal under section 51(2)(e) of the CFA 2014 against Sections B and F of the EHC plan

18. I can deal with this ground relatively briefly. Mr Lawson's submission in opposition to it is that an appeal to the Upper Tribunal under sections 11 and 12 of the Tribunals, Courts and Enforcement Act 2007 (**TCEA 2007**) is an appeal on a point of law. It is for the First-tier Tribunal judge to read and construe a notice of appeal, and the judge's decision as to how an appeal should be characterised is essentially a question of fact or case management discretion. If the judge has properly directed themselves as to the law and the facts, their decision is only challengeable on appeal if it is perverse. He submits that is the position in this case.

19. Mr Lawson is right that it is apparent from Judge O'Neill's reasons that he had not overlooked that the appellants had selected from the drop-down boxes on the appeal form the sentences indicating that they wished to appeal against Sections B and F of the EHC plan. Mr Lawson is also right that the 'free text' that the appellants inserted setting out their reasons for appeal made it plain that they wished to appeal against the decision to maintain the EHC plan itself, and that they sought an order from the First-tier Tribunal requiring the local authority to cease to maintain the EHC plan.

20. Judge O'Neill cannot be faulted for identifying the thrust and primary purpose of the appellants' appeal as being the cessation of the EHC plan. Subject to the outcome of Ground (1) (see below), there was nothing wrong in principle with a decision refusing to admit that aspect of the appeal.

21. However, it is plain in my judgment that Judge O'Neill nonetheless erred in law in failing to register the appeal as an appeal under section 51(2)(c)(i) and (ii) and (e) of the CFA 2014 against the contents of Sections B and F of the EHC plan.

22. The appellants had selected the drop-down boxes indicating that they wished to appeal against the content of Sections B and F of the EHC plan, and they had set out in the reasons that they did not consider C had special educational needs or that she needs special educational provision to meet those needs. Although these are unusual reasons for seeking to appeal the contents of an EHC plan, they are matters falling squarely within the scope of an appeal under section 51(2)(c)(i) and (ii) and (e) of the CFA 2014. On a straightforward objective reading of the notice of appeal it accordingly contained an appeal against Sections B and F of the EHC plan and it was not open to the judge to refuse to register those parts of the appeal.

23. Given the content of the notice of appeal, it is unnecessary in this case to pray in aid the inquisitorial nature of the First-tier Tribunal's jurisdiction or the overriding objective in order to deal with this ground of appeal. However, for completeness, I record that I accept the submission made in the Further Submissions supplied on the appellants' behalf by Alexander Line of counsel (UT Bundle, page 72) that the inquisitorial nature of the First-tier Tribunal's role is also relevant here. As Upper Tribunal Judge Jacobs put it in *DH and GH v Staffordshire County Council* [2018] UKUT 49 (AAC) (***DH and GH***) at [21], the First-tier Tribunal's jurisdiction in an EHC plan case is "enabling". There is a "positive obligation to ensure that the facts have been properly found and the law correctly applied". The overriding objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (SI 2008/2699) (**the FtT Rules**) also applies. The First-tier Tribunal must avoid unnecessary formality and ensure, so far as practicable, that the parties are able to participate fully in the proceedings.

24. Judge O'Neill's decision failed to take that approach. Even if he took the view (contrary to my own) that there was no clearly articulated appeal under section 51(2)(e) in the notice of appeal, then the notice was at least ambiguous, as his reasons implicitly acknowledge. In those circumstances, it was not reasonably open to Judge O'Neill to refuse to register the appeal on the papers, without at least holding a hearing to give the appellants a chance to discuss their case with a judge, and a judge the opportunity to explain what matters could be dealt with by the First-tier Tribunal. Given the choice between refusing to register the whole appeal as being out of jurisdiction, and exploring with the appellants whether some part of the appeal could properly proceed, in my judgment only the latter course was reasonably open to a judge in the circumstances of this case.

25. There is also a further important point that needs to be noted in connection with this ground of appeal. As I observed in *UW v Cheam Academies Trust (SEN)*

[2026] UKUT 53 (AAC) (***Cheam Academies***) at [3] and [46]-[51], the FtT Rules make no provision for the registration of claims or appeals. There is no express power to refuse to register a claim for jurisdictional reasons, such as Judge O'Neill purported to do here. The case law, as discussed in *Cheam Academies*, has established, however, that the First-tier Tribunal may lawfully operate a practice of registering claims if it does so in accordance with its published *Practice Direction: Special Educational Needs or Disability Discrimination in Schools Cases (20 April 2021)* (**the Practice Direction**). The effect of that Practice Direction is to enable preliminary decisions on time points to be made on the papers at registration stage, subject to review at a hearing. If a ground for strike-out of all or part of a case exists, the First-tier Tribunal should notify the relevant party and then make directions for determination of strike-out at a preliminary or final hearing. That was accordingly the procedure that should have been followed in this case if Judge O'Neill considered a ground for strike-out existed.

Ground (1): Whether the First-tier Tribunal erred in law in concluding that it did not have jurisdiction to hear an appeal against a decision not to cease maintaining an EHC plan

26. This ground raises a point of law that is, in my experience, and that of counsel, entirely novel. None of us have previously encountered a case in which a parent of a child or a young person with an EHC plan has objected on principle to the maintenance of that EHC plan, rather than its contents. Counsel for the parties have provided me with over 1,000 pages of authorities in their efforts to address the issue. I am grateful to them both, and to counsel previously instructed for the parties (Alexander Line for the appellants, and Catherine Rowlands for the LA) who provided written submissions. Their diligent research has been very helpful, but it has ultimately not been necessary to refer to much of the case law in order to determine this appeal.

27. During the course of oral argument, it became clear that this ground encompasses two separate, but overlapping, issues:

    a. Whether the First-tier Tribunal has jurisdiction to hear what I shall term a 'freestanding' appeal against a decision to make or maintain an EHC plan or not to cease maintaining one, by which I mean an appeal that stands independently of any appeal against the contents of any particular section of the EHC plan; and,
    b. Whether the First-tier Tribunal has power, on an appeal under section 51(2)(c) and/or (e) of the CFA 2014, to order the local authority to cease to maintain an EHC plan if it is satisfied that the child or young person either does not have special educational needs or, if they do, that any special educational provision required to meet those needs can be made by maintained mainstream schools from within their own resources.

28. The answer to the first of those questions requires consideration of the CFA 2014, and I will call it the **right of appeal question**; the answer to the second focuses on regulation 43 of the SEND Regulations and I will call it the **Tribunal powers question**. It is the right of appeal question that is the central concern of the appellants in this case.

The right of appeal question

29. The parties agree that there is no express right of appeal under the CFA 2014 against a decision to make or maintain or not to cease an EHC plan. It is not a right provided for on the face of section 51.

30. Ms Step-Marsden for the appellants argues that a right of appeal must be implied or read into the Act and that this must be done:

    (i) applying a purposive interpretation of the Act; and/or
    (ii) in order to protect the appellants' access to justice; and/or
    (iii) applying the interpretative obligation in section 3 of the Human Rights Act 1998 (**HRA 1998**) in order to comply with the appellants' rights under Article 2 of Protocol 1 (**A2/P1**) and/or Article 6, either alone or read together with Article 14, of the European Convention on Human Rights (**ECHR**).

31. Mr Lawson for the LA submits that none of these approaches require the Upper Tribunal to create the right of appeal contended for by the appellants. He submits this would be legislation, not interpretation. For the following reasons, I agree with Mr Lawson.

(i) Purposive interpretation?

32. The principles of statutory interpretation are most conveniently drawn together in the oft-cited passage from Lord Hodge DPSC's judgment in the Supreme Court in *R (O) v Home Secretary* [2022] UKSC 3, [2023] AC 255 at [29]-[33]) (***O v SSHD***). In short, the role of the court is always to seek to identify the meaning of the words used in the particular statutory context. That exercise may be informed by considerations of the purpose of the legislation, insofar as that can be ascertained from the legislation itself or secondary materials, but, as Lord Reed JSC emphasised at [20] of *Shahid v Scottish Ministers* [2016] AC 429 (***Shahid***), "No amount of purposive interpretation can however entitle the court to disregard the plain and unambiguous terms of the legislation."

33. Further, given that the argument for the appellants in this case includes a submission to the effect that it is absurd that the CFA 2014 does not contain the right of appeal that the appellants wish to exercise in this case, it is also helpful to remember the observations of Lord Sales about such arguments, giving the judgment of the majority of the Supreme Court in *R (PACCAR Inc) v Competition Appeal Tribunal* [2023] 1 WLR 2594 (***PACCAR***) at [43]:

> 43 The courts will not interpret a statute so as to produce an absurd result, unless clearly constrained to do so by the words Parliament has used: see *R v McCool* [2018] 1 WLR 2431, paras 23-25 (Lord Kerr of Tonaghmore JSC), citing a passage in *Bennion on Statutory Interpretation*, 6th ed (2013), p 1753. See now *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020), section 13.1(1): "The court seeks to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the legislature." As the authors

> of *Bennion*, Bailey and Norbury say, the courts give a wide meaning to absurdity in this context, "using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief". The width of the concept is acceptable, since the presumption against absurdity does not apply mechanistically but rather, as they point out in section 13.1(2), "The strength of the presumption ... depends on the degree to which a particular construction produces an unreasonable result". I would add that the courts have to be careful to ensure that they do not rely on the presumption against absurdity in order to substitute their view of what is reasonable for the policy chosen by the legislature, which may be reasonable in its own estimation. The constitutional position that legislative choice is for Parliament cannot be undermined under the guise of the presumption against absurdity.

34. In the case of the CFA 2014, the terms of section 51 are clear. Section 51(1) enables a child's parent or young person to appeal to the First-tier Tribunal against the matters set out in subsection (2). The matters set out in subsection (2) are on their face an exhaustive list. This is a statutory provision creating jurisdiction for a tribunal. It is not creating a general right of appeal against all decisions and actions that may be taken under the Act. It creates a specific set of appeal rights. There are many provisions in the Act that are not the subject of a right of appeal to the First-tier Tribunal, including: the local authority's duty under section 42 to secure the special educational provision in accordance with the EHC plan; the Secretary of State's decision to approve special schools and post-16 institutions under section 41; compliance with the duties under section 47 in relation to transferring an EHC plan; decisions in relation to personal budgets by a local authority under section 49; a local authority's decision under section 61(1) to make special educational provision for a child or young person otherwise than in a school or post-16 institution; the duty on schools and other institutions under section 66 to use best endeavours to secure the special educational provision called for by a pupil's or student's special educational needs. Challenges may be made to decision-making under these sections, but only by way of judicial review in the High Court.

35. Questions under these provisions may come up in the course of appeals under section 51 and thus come within the First-tier Tribunal's jurisdiction by that route, as frequently happens in appeals under section 51(2)(c) where, for example, the question of whether a child should be provided with education otherwise than at school may need to be determined applying section 61, or the question of who is the proper respondent to the claim may need to be determined by reference to section 47: see *London Borough of Enfield v (1) Teegan Edwards and (2) London Borough of Haringey (SEN)* [2026] UKUT 268 (AAC) (***Edwards***). There are strong policy arguments, as well as statutory construction arguments, as to why such questions should be resolved by the First-tier Tribunal, where they properly arise for determination on an appeal within the First-tier Tribunal's jurisdiction, rather than such issues being reserved for consideration only by the High Court on judicial review: see [98] of *Edwards*, applying *Hampshire County Council v GC and anor* [2026] EWCA Civ 20 (***Hampshire***). However, it does not follow that

there is a freestanding right of appeal to the First-tier Tribunal in respect of those matters.

36. It cannot therefore be said that it was Parliament's intention that every issue arising for determination by a local authority under Part 3 of the CFA 2014 should be the subject of a right of appeal to the First-tier Tribunal. It follows that it cannot be said that it is obviously a mistake or oversight that no provision is made for an appeal against a refusal to cease to maintain an EHC plan.

37. Nor, in my judgment, can it be said that the absence of a right of appeal against such a decision produces an absurd result. On the contrary, when one considers the scheme of Part 3 of the CFA 2014 as a whole, it becomes apparent that there is some logic to the omission of such a right of appeal from the Act.

38. The first point to make in this respect is that the rights of appeal for which provision is made in section 51 for the most part correspond to rights of request that are granted to parents or young persons under the Act. Thus:

    a. Section 51(2)(a) provides a right of appeal for a parent or young person against a decision of a local authority not to secure an EHC needs assessment for the child or young person under section 36. That right corresponds to the parent's right to request an assessment under section 36(1);
    b. Section 51(2)(b) provides a right of appeal for a parent or young person against a decision of a local authority, following an EHC needs assessment, that it is not necessary for special educational provision to be made for the child or young person in accordance with an EHC plan. That right corresponds to the local authority's duty under section 37(1) to make an EHC plan if it is necessary in the light of a needs assessment, which assessment may have been triggered by the parent's right to request the same under section 36(1);
    c. Section 51(2)(c) provides a right of appeal for a parent or young person against Sections B, F and I of the EHC plan, corresponding to the right that the parent or young person has under section 38(2)(b) and section 39 to make representations about the content of a draft plan and to request a particular school or other institution be named in the EHC plan;
    d. Section 51(2)(d) provides a right of appeal for a parent or young person against a decision of a local authority not to secure a re-assessment of the needs of the child or young person following a request to do so, which right corresponds to the parent or young person's right under section 44(2)(a) to make a request for re-assessment;
    e. Section 51(2)(e) provides a right of appeal for the parent or young person against a decision of a local authority not to secure the amendment or replacement of an EHC plan it maintains for the child or young person following a review or re-assessment under section 44, which review or re-assessment may have been triggered by the parent's right of request under section 44(2)(a); and,
    f. Section 51(2)(f) provides a right of appeal against a decision of a local authority under section 45 to cease to maintain an EHC plan. Although under regulation 31 of the SEND Regulations a parent or young person

> only has a right to be consulted before such a decision is taken, given that a parent has rights to request assessment and in respect of choice of school or other institution, the provision of a right of appeal against a decision to cease to maintain an EHC plan is consistent with the scheme of rights for parents and young people under the Act. It is a right of appeal enabling a parent or young person to keep in place an EHC plan that they may have requested in the first place, by way of a request for assessment. The Act also makes provision to ensure the effectiveness of the right of appeal against a decision to cease to maintain by providing at section 45(4) that the EHC plan must be maintained until the time for appealing has expired.

39. The rights of appeal for which provision is made in section 51 thus seem to me all to relate coherently to the rights that the Act gives elsewhere to parents and young persons to trigger an assessment, and therefore the making of the EHC plan, and to request that a particular school or other institution be named in the EHC plan. To make that latter right effective, there needs also to be a right of appeal in relation to the contents of Sections B and F of the EHC Plan.

40. The second point is that, behind this scheme of rights for parents and young persons, the Act creates what might be described as a secondary scheme or safety net by which, even in the absence of active involvement by the parent or young person (or in the face of active resistance), the educational needs of a child or young person must be assessed and met by their school and local authority.

41. In relation to this secondary scheme, the statute is consistent in providing only a right for parents and young people to be consulted – and not a right for them to veto or appeal. Thus, under section 36(3) a school or post-16 institution may make a request to a local authority to carry out an assessment, and (if it considers it necessary to do so) the local authority must carry out an assessment. Sub-section (4) requires the parent or young person to be consulted, but does not give them a right of veto or appeal. Likewise, under section 36(6), the local authority may act of its own motion to carry out an assessment if it considers it necessary. Again, under sub-section (7), the parent or young person must be notified or consulted, but there is no right of veto or appeal. From an assessment under section 36, there may follow the making of an EHC plan under section 37, in respect of which (as set out above), the parent or young person has a right to make representations about the contents of Sections B and F, and to request a particular school or institution be named in Section I, but no right to veto, or appeal against, the making of the EHC plan itself.

42. There is a logic to parents and young persons not being given a right of veto or appeal against these decisions. Ms Step-Marsden is right to point out that, by virtue of section 19 of the CFA 2014, in exercising its functions under Part 3, the local authority is required to have regard to the views, wishes and feelings of the child and his or her parent, or the young person, and to be mindful of the importance of them participating as fully as possible in decisions (sections 19(a) and (b)). However, the local authority is also required (by sub-section (d)) to have regard to "the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him

or her achieve the best possible educational and other outcomes". By section 22, the local authority is required to exercise its functions under the Act with a view to identifying all children and young people in its area who may have SEN or a disability, and by section 24 the local authority is made responsible for children and young people in its area who have or may have SEN or a disability. By section 66, the bodies responsible for the schools and other educational institutions listed in that section are under a duty to secure a child or young person receives the special educational provision called for by their SEN. And, by section 29(3), the local authority is under a duty to co-operate with those schools and other institutions in relation to the exercise of their functions. These are general duties that the local authority owes to children within its area for whom it is responsible. An EHC plan is the mechanism by which an enforceable duty (under section 42) is imposed on the local authority to secure the special educational provision required for a particular child or young person. The EHC plan has the effect of transferring the primary obligation of securing (and funding) the provision to meet a particular child or young person's SEN from the school or institution under section 66 to the local authority under section 42.

43. In other words, the scheme of the Act is such that the EHC plan is not a document intended only to reflect the views, wishes and feelings of the child or young person who is the subject of the EHC plan, or their parent(s). Nor is the EHC plan dispensable if the child, young person or parent(s) do not want it or do not agree with it. Rather, it is the mechanism by which schools, other educational institutions and local authorities fulfil their duties under the statutory scheme to assess special educational needs and make provision for those needs (taking account of, but not dictated by, the views of the parent or young person).

44. Once an EHC plan is in place, the local authority is only relieved of its duty to secure the provision specified in it if the parent or young person has made suitable alternative arrangements (section 42(5)). The assessment of what is suitable in that respect is a matter for the local authority in the first instance, subject only to challenge by way of judicial review in the High Court, in the same way as other challenges to the local authority's exercise of its functions under that section – see paragraph 33 above.

45. Standing back, therefore, and viewing the Act as a whole, it seems to me that the absence of a right of appeal to the First-tier Tribunal against a decision to maintain or refuse to cease an EHC plan is not an inexplicable omission, but consistent with the general scheme of the Act. Reading such a right of appeal into the Act would, it seems to me, constitute legislation rather than interpretation. Unlike the other rights of appeal in the Act, it would mean creating a right of appeal for a parent or young person that does not correspond to any right to request provided for in the Act, and which would potentially cut across the Act's secondary scheme by which schools, other educational institutions and local authorities are required to meet the needs of children and young persons with special educational needs, even in the face of apathy or opposition by parent(s) or the young person.

46. It would also create a right of appeal to the First-tier Tribunal in respect of an aspect of the Act that Parliament has determined should not be the responsibility

of the First-tier Tribunal, specifically the operation of the local authority's duty under section 42. A parent or young person who disagrees with the content of the EHC plan has the right to appeal to the First-tier Tribunal, but a parent or young person who disagrees with its use *per se* must make suitable alternative private arrangements so as to relieve the local authority of its obligation under section 42. All challenges to the local authority's exercise of its duty under that section must go to the High Court on judicial review, and not to the First-tier Tribunal.

(ii) Access to justice

47. Moreover, the appellants' arguments about access to justice are in my judgment misconceived. The appellants see the EHC plan as being used as a means to provide their daughter with an education that is different to that of her peers and with which they disagree. They wish to challenge that. However, the mechanism for bringing a challenge to the tribunal about both the identification of C's needs and the provision required to meet them is the EHC plan, and an appeal under section 51(2)(c)/(e) of the CFA 2014 against Sections B, F and I. If C did not have an EHC plan, the school she attends would still be under a duty by virtue of section 66 of the CFA 2014 to use reasonable endeavours to provide C with the special educational provision called for by her special educational needs, and could (if it had the funds) remove C from class to follow an essentially individual, isolated curriculum if it considered that was necessary. In common with the majority of children and young people with special educational needs who do not have EHC plans, the appellants would have no right to appeal to the First-tier Tribunal to challenge that provision: any challenge would, under the present statutory scheme, have to be brought by way of judicial review in the High Court. The EHC plan, and the existing right of appeal against its contents under section 51(2)(c)/(e), is therefore the way in which access to justice is secured for the appellants.

(iii) Human rights arguments

48. Nor do I consider there is any merit in the appellants' human rights arguments insofar as they concerns this right of appeal, for a number of reasons.

49. *First,* the appellants' arguments are undermined as a matter of fact for the reasons I have already set out above, i.e. because the matters that the appellants wish to challenge, in terms of the identification of any special educational needs that C has, and the provision required to meet those needs, can be challenged through an appeal to the First-tier Tribunal against the contents of Sections B, F and I of the EHC plan. There is therefore no arguable breach of C's right to education under A2/P1, whether that right is characterised narrowly as a right of access (see the *Belgian Linguistics Case* (1968) 1 EHRR 252) or extends to the nature and quality of that education, as the appellants submit was held by the European Court of Human Rights in *Oršuš v Croatia* (15766/03) (***Oršuš***). Further, if, on an appeal under section 51(2)(c)/(e), the appellants persuade the First-tier Tribunal that C either does not have special educational needs, or does not require special educational provision going beyond that normally available in maintained schools, in practice that is likely to lead to a decision by the local

authority to cease maintaining the EHC plan. The only lacuna in the statutory scheme, so far as the appellants are concerned, is that, in the unlikely event that the local authority in those circumstances still decided to maintain the EHC plan, they could not bring an appeal to the First-tier Tribunal against such a decision, but would have to challenge the decision by way of judicial review in the High Court.

50. *Secondly,* to address the appellants' arguments under Article 6: the delineation between what is and is not a "civil right" for the purposes of Article 6 of the ECHR in relation to social welfare provision of the sort made through an EHC plan is generally marked by the scope of the rights conferred by the state and in respect of which the state creates a judicial remedy: see [105] of *Orsus* and [54] of *Ali v UK* (40378/10) (2016) 63 EHRR 20 (***Ali***). As Lord Walker of Gestingthorpe put it in *Matthews v Ministry of Defence* [2003] ICR 247 at [142] (cited and applied in *Steer v Stormsure Limited* [2021] EWCA Civ 887, [2021] ICR 1671 (***Steer v Stormsure***) at [31]), "Article 6 is in principle concerned with the procedural fairness and integrity of a state's judicial system, not with the substantive content of its national law". The Court of Appeal in that case accordingly determined that a complaint that there was no right to seek interim relief in an employment tribunal in a claim of sex discrimination (when there is such a right in whistleblowing cases) was not a complaint that fell within the ambit of Article 6. Applying those principles to the present context, Article 6 applies to the rights of appeal created by the CFA 2014, but does not require additional rights of appeal to be created. In my judgment, that is the beginning and end of the Article 6 argument in this case.

51. However, even if I am wrong about that, *thirdly*, it is well established that the availability of judicial review is sufficient to comply with Article 6 in many types of case: see *Bryan v UK* (1995) 21 EHRR 342 (***Bryan***) and *Ali* at [74]-[87]. Judicial review will normally be sufficient in cases where a public body is exercising expertise, and making determinations about use of resources, rather than determinations about entitlement to a specific benefit. The European of Court of Human Rights explained the principles as follows in *Tsfayo v UK* (60860/00) (***Tsfayo***) at [42]-[48]:

> 42. The Court recalls that even where an adjudicatory body determining disputes over "civil rights and obligations" does not comply with Article 6§1 in some respect, no violation of the Convention can be found if the proceedings before that body are "subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6§1" (*Albert and Le Compte v. Belgium*, judgment of 10 February 1983, Series A no. 58, § 29).
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> 43. In *Bryan v. the United Kingdom*, judgment of 22 November 1995, Series A no. 335-A, §§44-47, the Court held that in order to determine whether the Article 6-compliant second-tier tribunal had "full jurisdiction", or provided "sufficiency of review" to remedy a lack of independence at first instance, it was necessary to have regard to such factors as the subject-matter of the decision appealed against, the manner in which that decision was arrived at and the content of the dispute, including the

desired and actual grounds of appeal. In *Bryan*, the inspector's decision that there had been a breach of planning controls involved some fact-finding, namely that the buildings which Mr Bryan had erected had the appearance of residential houses rather than agricultural barns. However, the inspector was also called upon to exercise his discretion on a wide range of policy matters involving development in a green belt and conservation area, and it was these policy judgments, rather than the findings of primary fact, which Mr Bryan challenged in the High Court. The inspector lacked the requisite appearance of independence from the executive, since the Secretary of State had the power, albeit applied only in exceptional circumstances, to withdraw a case from him. The inspector followed a quasi-judicial procedure, and was under a duty to exercise independent judgment. Any alleged shortcoming in relation to these safeguards could have been subject to review by the High Court, which also had the power to satisfy itself that the inspector's findings of fact or the inferences based on them were neither perverse nor irrational. The Court concluded that there had been no violation of Article 6§1 and added that:

> "Such an approach by an appeal tribunal on questions of fact can reasonably be expected in specialised areas of the law such as the one at issue, particularly where the facts have already been established in the course of a quasi-judicial procedure governed by many of the safeguards required by Article 6§1. It is also frequently a feature in the systems of judicial control of administrative decisions found throughout the Council of Europe member States. Indeed, in the instant case, the subject-matter of the contested decision by the inspector was a typical example of the exercise of discretionary judgment in the regulation of citizens' conduct in the sphere of town and country planning."

44. The Convention organs followed the approach set out in *Bryan* to find that there had been "sufficiency of review" in a number of cases against the United Kingdom (see, for example, *X. v. the United Kingdom*, no. 28530/95, Commission decision of 19 January 1998, concerning a determination by the Secretary of State that the applicant was not a fit and proper person to be chief executive of an insurance company; *Stefan v. the United Kingdom*, no. 29419/95, Commission decision of 9 December 1997, concerning proceedings before the General Medical Council ("GMC") to establish whether or not the applicant was mentally ill and thus unfit to practise as a doctor; *Wickramsinghe v. the United Kingdom* (dec.), no. 31503/96, 9 December 1997, concerning disciplinary proceedings before the GMC; and see also *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 32, ECHR 2002-IV).

45. The domestic courts have also applied the principles in *Bryan*, notably the House of Lords in *Alconbury* and *Runa Begum* (see paragraphs 27-31 above). In the latter case, the House of Lords found that judicial review of a housing officer's decision that the claimant had been unreasonable in rejecting the accommodation offered to her

provided "sufficiency of review" for the purposes of Article 6§1. The House of Lords stressed that although the housing officer had been called upon to resolve some disputed factual issues, these findings of fact were, to use the words of Lord Bingham in that case, "only staging posts on the way to the much broader judgments" concerning local conditions and the availability of alternative accommodation, which the housing officer had the specialist knowledge and experience to make. Although the housing officer could not be regarded as independent, since she was employed by the local authority which had made the offer of accommodation which *Runa Begum* had rejected, statutory regulations provided substantial safeguards to ensure that the review would be independently and fairly conducted, free from improper external influences. Any significant departure from the procedural rules would have afforded a ground of appeal.

46. The Court considers that the decision-making process in the present case was significantly different. In *Bryan*, *Runa Begum* and the other cases cited in paragraph 43 above, the issues to be determined required a measure of professional knowledge or experience and the exercise of administrative discretion pursuant to wider policy aims. In contrast, in the instant case, the HBRB was deciding a simple question of fact, namely whether there was "good cause" for the applicant's delay in making a claim. On this question, the applicant had given evidence to the HBRB that the first that she knew that anything was amiss with her claim for housing benefit was the receipt of a notice from her landlord – the housing association – seeking to repossess her flat because her rent was in arrears. The HBRB found her explanation to be unconvincing and rejected her claim for back-payment of benefit essentially on the basis of their assessment of her credibility. No specialist expertise was required to determine this issue, which is, under the new system, determined by a non-specialist tribunal (see paragraph 22 above). Nor, unlike the cases referred to, can the factual findings in the present case be said to be merely incidental to the reaching of broader judgments of policy or expediency which it was for the democratically accountable authority to take.

47. Secondly, in contrast to the previous domestic and Strasbourg cases referred to above, the HBRB was not merely lacking in independence from the executive, but was directly connected to one of the parties to the dispute, since it included five councillors from the local authority which would be required to pay the benefit if awarded. As Mr Justice Moses observed in *Bewry* (paragraph 33 above), this connection of the councillors to the party resisting entitlement to housing benefit might infect the independence of judgment in relation to the finding of primary fact in a manner which could not be adequately scrutinised or rectified by judicial review. The safeguards built into the HBRB procedure (paragraphs 23-24 above) were not adequate to overcome this fundamental lack of objective impartiality.

> 48. The applicant had her claim refused because the HBRB did not find her a credible witness. Whilst the High Court had the power to quash the decision if it considered, inter alia, that no there was no evidence to support the HBRB's factual findings, or that its findings were plainly untenable, or that the HBRB had misunderstood or been ignorant of an established and relevant fact (see paragraphs 25-26 above), it did not have jurisdiction to rehear the evidence or substitute its own views as to the applicant's credibility. Thus, in this case, there was never the possibility that the central issue would be determined by a tribunal that was independent of one of the parties to the dispute.
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> 49. It follows that there has been a violation of Article 6§1.

52. Applying the principles from *Tsfayo*, I can see that it is likely that, if Parliament had not created specific rights of appeal to the First-tier Tribunal in respect of refusals to assess, refusals to make or maintain an EHC plan, and about the contents of an EHC plan, Article 6 may have required such rights of appeal to be created, because those rights all relate to entitlement to the specific benefit of an EHC plan. However, as discussed above, the appellants in this case can utilise those existing rights of appeal to establish (if they can) that C either does not have special educational needs, or does not require special educational provision going beyond that normally available in maintained schools. What they cannot do under the current statutory regime is bring an appeal to the First-tier Tribunal against a decision by the local authority refusing to cease to maintain an EHC plan in the light of any determination the First-tier Tribunal may have made in an appeal against the contents of Sections B, F and I. However, in the unlikely event of a local authority deciding to maintain an EHC plan where it was arguably unnecessary to do so, this would likely be for reasons connected with specific local resource issues or other inherently discretionary reasons in respect of which availability of judicial review is likely to be sufficient to comply with Article 6. This sort of decision has more in keeping with other decisions that are subject only to judicial review under the CFA 2014 rather than rights of appeal (such as decisions about the way in which provision is made for children and young people who have, or may have, special educational needs, but who do not have EHC plans, or decisions about the way that a local authority discharges its duty under section 42, or the local authority's assessment of whether a parent or young person has made suitable alternative arrangements for the purposes of that section).

53. *Fourthly*, as regards the appellants' Article 14 argument, I do not consider that there is any breach of Article 14, read together with Article 6 and/or A2/P1. For this purpose, I am prepared to assume, without deciding, that the matter falls within the ambit of A2/P1 and/or that I am wrong in my conclusion that the case is not within the ambit of Article 6. However, I do not accept that, as regards the right of appeal to the First-tier Tribunal, there is any discrimination between the appellants and others in analogous circumstances. For the reasons already explained, the appellants have a right of appeal to the First-tier Tribunal in respect of the contents of the EHC plan. The potential lacuna in the legislation identified above is that, in the event of the appellants appealing to the First-tier Tribunal and the tribunal determining that C's needs or the provision required to meet them are such that an EHC plan may not be necessary, the appellants would not be

able to challenge a decision by the local authority nonetheless to maintain the EHC plan. However: (a) the appellants are not yet a "victim" of that (unlikely) situation so the point is at present academic; and (b) the nature of the LA's decision in that eventuality would, as I have explained, be one that is more like the decisions under Part 3 of the CFA 2014 in respect of which only judicial review is available rather than a right of appeal to the First-tier Tribunal. In other words, there would be no less favourable treatment of persons in analogous circumstances.

54. In any event, the Article 14 argument is also flawed in my judgment because the appellants have not identified a valid "other status" on which to found an Article 14 claim. As it was put at [66] of the judgment of the Supreme Court in *R (A) v Criminal Injuries Compensation Authority and anor* [2021] UKSC 27, [2021] 1 WLR 3746 (***R (A) v CICA***): "There must be a ground for the difference of treatment in terms of a characteristic which is something more than a mere description of the difference in treatment."

55. In Ms Step-Marsden's skeleton argument for the hearing, she identified the group affected and the comparator group (Groups A and B in her skeleton argument) as being, A, those who have a right of appeal to the First-tier Tribunal against a decision to cease maintaining an EHC plan, and, B, those who do not have a right of appeal to the First-tier Tribunal against a decision not to cease maintaining an EHC plan. In further written submissions on this issue that I directed following the hearing, Ms Step-Marsden adjusted her argument somewhat. Referring to *R (SC, CB and 8 children) v Secretary of State for Work and Pensions* [2021] UKSC 26, [2022] AC 223 (***SC, CB and 8 children***) at [69]-[71], she submitted that, although the characteristic relied on as "other status" must be more than just a way of restating the complaint, it does not need to be a status that has "social or legal importance for other purposes or in other contexts". She submits that the difference in status here is founded on the decision of the local authority: Group A is the group of people in respect of whom the local authority has decided to cease an EHC plan, whereas Group B is the group of people in respect of whom the local authority has decided not to cease an EHC plan.

56. I accept that the Supreme Court has emphasised that the concept of "other status" must be interpreted generously (*R(A) v CICA* at [57]) and is rarely determinative in cases before the European Court of Human Rights (see *SC, CB and 8 children* at [69]-[71]). However, those cases were quite different from this case. The differential treatment in *R (A) v CICA* was based on being a victim of trafficking and/or having an unspent conviction, while that in *SC, CB and 8 children* was based on the number of children in the household. While those statuses may not have had much importance independent of the complaints in those particular cases, they were nonetheless characteristics that were separable from the allegedly discriminatory treatment about which complaint was made. In contrast, despite Ms Step-Marsden's valiant attempt to recast her argument in response to my direction for further submissions, it seems to me that the alleged status claimed in this case really is nothing more than the "status" of being a person without a right of appeal against a decision with which they disagree – in other words, it is indissociable from the matter about which complaint is made. I accept the submission of Mr Lawson that the appellants' complaint fails on this

basis for the same reason that the complaint in *Steer v Stormsure* failed. As the Court of Appeal put it in that case at [42]:

> The reason why a claimant in a discrimination case cannot claim interim relief is because she has not brought one of the small and select group of substantive claims in which Parliament has conferred jurisdiction on the employment tribunal to grant interim relief. The fact that a particular remedy is available in litigation of type A but not of type B does not constitute discrimination against the claimant in a type B case on the ground of her status as a type B claimant.

57. Finally, Ms Step-Marsden argued that there is indirect discrimination because the absence of a right of appeal will have a disproportionate impact on children with English as an Additional Language (**EAL**) whose language needs are more likely to be mis-identified as SEN. However, no statistical data has been advanced to make good this argument, and I am not prepared to assume this to be the case. In any event, the argument that this group is disadvantaged is misconceived for the reasons already explained, specifically that there is a right of appeal in respect of the contents of Section B and Section F of the EHC plan, under which arguments about the nature and extent of the child's needs can be resolved.

58. For all these reasons, therefore, I am satisfied that not only is there no right of appeal to the First-tier Tribunal under the CFA 2014 against a local authority's decision to make and maintain an EHC plan, but that there is no need or basis on which to read one into that Act.

The Tribunal powers question

59. The powers of the First-tier Tribunal on an appeal under section 51 are set out in regulation 43 of the SEND Regulations (set out above at paragraph 6 above). The parties are in agreement that, on the face of those regulations, they do not include a power to order the local authority to cease to maintain the EHC plan. It was, however, submitted by Mr Line in the written submissions advanced on the appellants' behalf in advance of the hearing that, as regulation 43 sets out an apparently non-exclusive list of the First-tier Tribunal's powers on appeal, it would be possible to "read in" to the Regulations a power to order the local authority to cease to maintain an EHC plan in an appropriate case, whether by way of purposive interpretation or by application of the interpretative obligation in section 3 of the HRA 1998.

60. At the hearing of this appeal, I noted that there was such a power in section 326(3)(c) of the Education Act 1996 (**EA 1996**), which is the Act that contained the scheme for statements of special educational needs that was the predecessor to the current scheme for EHC plans under the CFA 2014. I directed the parties to provide written submissions following the hearing dealing with the reasons for this change, if they were able to identify any relevant parliamentary or other policy materials, and to make any other submissions that they wished about the First-tier Tribunal's powers on an appeal under section 51 of the CFA 2014.

61. Mr Lawson for the respondent in response to my directions reviewed the explanatory notes for the CFA 2014, the materials documenting the passage of the Bill for that Act through Parliament, and the Green Paper that preceded the CFA 2014. He has found nothing that answers my question. The only passage from the Parliamentary debates that he has located that bears on the issue at all is the following from a speech of Lord Nash (proposing the Bill) on 6 November 2013:

> The Delegated Powers and Regulatory Reform Committee recommended that the tribunal's powers when deciding appeals should be in the Bill rather than in secondary legislation and asked for an explanation of why this approach is being taken. Alternatively, it suggested that the regulations should be subject to the affirmative procedure, as Amendment 272 seeks. We have put the tribunal's powers in regulations to make them simpler for the reader of this legislation. Instead of having the tribunal's powers to determine appeals scattered over the legislation, as they are in the Education Act 1996, we want to bring them together in one place, along with the mechanics for how we expect an appeal to proceed. Given that this is what we are seeking to achieve by these regulations, I believe that the negative resolution procedure is proportionate.

62. Ms Step-Marsden for her part was unable to find any additional materials, but tentatively submitted, by reference to previous case law, that the power may have been removed because it might have acted as a deterrent to appellants who would not wish to risk the child or young person ending up worse off as a result of an appeal if the First-tier Tribunal decided that an EHC plan was not required after all. That suggestion is speculative. It also seems to me to run counter to the appellants' primary case, as it was advanced by Mr Line, because it provides a potential policy reason for <u>not</u> implying the power into regulation 43 of the SEND Regulations.

63. In the circumstances, it seems to me to be clear that the First-tier Tribunal has no power to order a local authority to cease to maintain an EHC plan. Given that I have already rejected the appellants' purposive interpretation and human rights arguments above when considering the scope of the rights of appeal under section 51 of the CFA 2014, those arguments cannot assist the appellants in relation to the First-tier Tribunal's powers under regulation 43 of the SEND Regulations either. Moreover, the legislative history does not explain the omission. It does, however, show that Parliament intended the tribunal's powers to be collected in the regulations. In that context, the omission of a power expressly conferred by the predecessor legislation is a strong indication that regulation 43 should not be construed as silently retaining it. That is particularly so given that, as I have set out above, the absence of a right of appeal against a refusal to cease to maintain an EHC plan appears to me to be consistent with the overall statutory scheme.

64. It does not follow, however, that there is anything preventing a First-tier Tribunal from indicating as part of its decision that cessation of an EHC plan may need to be considered in the light of its decision. The decision, though, would be a matter

for the local authority, appealable to the First-tier Tribunal under section 51(2)(f) only if the local authority decides to cease to maintain the EHC plan. A decision to continue maintaining it could be challenged only by judicial review.

Conclusion

65. For all these reasons, the appeal is dismissed on Ground (1), but allowed on Ground (2). I set aside the decision of the First-tier Tribunal and remit the case to the First-tier Tribunal to register and determine the appellants' appeal against Sections B and F of the EHC plan.

Holly Stout
Judge of the Upper Tribunal

Authorised by the Judge for issue on 19 October 2026