



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**Case No: UA-2022-000934-HS**

**NCN No. [2025] UKUT 010 (AAC)**

On appeal from the First-tier Tribunal (Health, Education and Social Care Chamber)

**Between:**

**AA**

Appellant

- v -

**Bristol City Council**

Respondent

**Before: Upper Tribunal Judge Mitchell**

Decided on consideration of the papers

**Representation:**

*Appellant:* SinclairsLaw Ltd

*Respondent:* unrepresented at date of Upper Tribunal's decision but previously represented by Bevan Brittan LLP

**DECISION**

**The decision of the Upper Tribunal is to allow the Appellant's appeal against the First-tier Tribunal's decision.**

**Decision:** Under section 12(1) of the Tribunals, Courts and Enforcement Act 2007, the Upper Tribunal finds that the making of the First-tier Tribunal's decision of 15 June 2022 (file ref. EH/801/21/00026), as subsequently reviewed and amended by

that tribunal, involved an error on a point of law. However, acting under section 12(2) (a) of the 2007 Act, the Upper Tribunal does not set aside the First-tier Tribunal's decision.

### **ORDER UNDER RULE 14 of the UPPER TRIBUNAL RULES**

Under rule 14(1) of the Upper Tribunal (Tribunal Procedure) Rules 2008 I hereby make an order **PROHIBITING** the disclosure or publication of any matter likely to lead to a member of the public identifying the child / young person whose Education, Health and Care Plan was under appeal to the First-tier Tribunal as a person connected with these proceedings. This order does not apply to (a) a parent of the child / young person acting in the due exercise of parental responsibility; (b) the disclosure of such a matter by any person exercising statutory (including judicial) functions in relation to the child / young person.

### **REASONS FOR DECISION**

1. Originally, there were joint Appellants in this case Mr and Mrs AA, the parents of the child whose education, Health and Care Plan (EHC Plan) was under appeal to the First-tier Tribunal. During these proceedings before the Upper Tribunal, Mr AA applied to be removed as a party. That application was granted leaving Mrs AA as the sole Appellant.

#### **Proceedings before the First-tier Tribunal**

##### *Background in brief*

2. This case concerns an EHC Plan) issued by the Respondent, Bristol City Council (the local authority), in respect of a boy whom I refer to in these reasons as D. I trust this causes no offence. D's parents appealed to the First-tier Tribunal against the contents of D's EHC Plan. I do not know why but it appears that, before the Tribunal, D's mother was legally represented but his father represented himself. Despite that, the arguments that mother and father put to the Tribunal were not inconsistent.

3. The First-tier Tribunal gave the following description of D, who was aged 13 when his EHC Plan was issued:

“[D] was diagnosed with Autism Spectrum Disorder (‘ASD’) when he was two years old. He is described in his EHCP as having a severe and complex learning disability. He also has significant communication difficulties.”

*Late agreement that D should be educated ‘otherwise than at school’*

4. As issued by the local authority, the EHC Plan provided for D to be educated at a school and his required special educational provision was framed accordingly.

5. On 30 March 2022, which was two working days before the date listed for a final hearing before the First-tier Tribunal, the local authority prepared an updated ‘position statement’. The statement explained why the authority now considered that D’s EHC Plan should provide for ‘EOTAS’ provision (education otherwise than at school), in this case at home, rather than a school placement at V Academy. The statement reported V Academy’s view that, while in principle they thought that they could meet D’s needs, “it would not be able to do so successfully without the full support of the parents who have expressed the clear view that the school is not suitable for their son”. That reflected the contents of a letter written by V Academy dated 23 March 2022. This was a fundamental re-orientation of the case but, surprisingly, was barely mentioned in the Tribunal’s subsequent statement of reasons for its decision.

*The hearing on 1 April 2022*

6. A hearing was held on 1 April 2022 but adjourned. The First-tier Tribunal’s adjournment notice was not before when I granted permission to appeal against the Tribunal’s decision. It has now been supplied by the local authority. The notice:

(a) did not explain why an adjournment was necessary save to state that, “The hearing was concluded but the parties are to update the working document and present written submissions. The Tribunal then will deliberate.”

(b) required the Appellants, by 4 p.m. on 4 April 2022, to provide the authority with an updated Working Document and their proposed health and social care recommendations;

(c) required both parties, by 4 p.m. on 11 April 2022, to inform each other, and the Tribunal, if they wished to present updated evidence about health and/or social care

matters. Any such evidence was to be presented to the other party and the Tribunal by 4 p.m. on 25 April 2022, a deadline which also applied to the authority's provision of a response to the Appellants' health and social care recommendations;

(d) required both parties, by 4 p.m. on 6 May 2022, to provide written closing submissions to each other and the Tribunal. This part of the notice went on to state:

"The LA also will provide to the Tribunal the final version of the working document, any additional evidence of the parties as referred to in the previous paragraph and the proposed recommendations regarding Health and Social Care matters."

*Community access and restraint: arguments*

7. Under the, by now, agreed proposal for D to be educated at home, an organisation called Skybound Therapies were to provide certain support services including support worker assistance to enable D to access the community as part of his education. On 29 April 2022, Skybound's Ms Dennison sent an email to Dr Gillard, the local authority's educational psychologist, which included the following words:

"...I haven't seen [the school risk assessment] but I would imagine that if there are 3 adults attending a community event, then if [D] attempted to run away more than 1 person would help and support. All physical intervention training that I am aware of would require 2 people to support someone who is eloping in the event that this occurs..."

The data collected during a baseline observation of the community with a family member indicated that he pulled away (and harness was used to restrain) 62 times during a 70 minute observation (see the October 21 skybound tribunal report for details). The risk assessment is based upon the reports that [D] has eloped from school, has eloped from home and has required restraint in the community (in the form of a harness and being physically supported away from roads etc) in order to keep him safe and walking with a caregiver. Additionally he has attempted to board buses and take items from shops and may cause damage to others and property in the community and there have been reports that he has run out in front of cars. This information regarding his behaviours has informed our decision that he would need 2:1 in the community to ensure his safety.

Given that this is the information we have regarding his behaviour in the community and given that these [*sic*] behaviour could result in death, serious life changing injuries to himself or others or that a vulnerable person could become lost or unattended among community members etc, we must based [*sic*] our risk assessment on this and therefore before our team would be permitted to enter the community with him they would need at least 2 staff present in order to support if needed to ensure safety. At present the staff member who delivers his 1:1 ABA sessions in the home is not permitted to take him into the community alone and as such sessions have not occurred in the community.

We are hoping that once we are able to enter the community and practice the safety skills he has learned at home then this ratio could be faded over time, however we wouldn't be able to begin practising these skills in the community without ensuring he is safe to practice and 2:1 would be essential to ensure he is safe to practice these skills in the community without ensuring he is safe to practice and 2:1 would be essential to ensure he is safe to practice these skills in the community. This ratio would be reviewed on a regular basis by reviewing the incident forms of how often 2 people were needed to support in each community location.

...a harness is used by the family as the safety measure, the Skybound team would not be able to use a harness as we are not trained in harness use and due to his age and size we would not be able to support our team in using a harness as this is likely to cause injury to staff members and himself.”

8. The First-tier Tribunal admitted Skybound's email of 29 April 2022 without objection from the local authority.

9. The Appellant's 'written closing submissions', dated 6 May 2022, stated that they were "drafted with reference to Working Document version 15" although they included submissions in support of parental amendments made in Working Document (WD) 16, which was the final WD.

10. The Appellant's closing written submissions, drafted by counsel:

(a) submitted that “the [29 April 2022 email] clarifies further the rationale for Skybound Therapies stating that [D] requires 2:1 support for 15 hours per week, in response to questions from Dr Gillard”;

(b) relied on evidence, including Ms Dennison’s email of 29 April 2022, to argue that “the rationale for 2:1 support while [D] is accessing the community is to ensure that if [D] does run away, two people are available to use fluid restraint and/or two-person escort techniques to keep him safe” and “he cannot be restrained or escorted safely by one person. Indeed, when his mother walks with [D] in the community, she is forced to use a Houdini harness. The use of ongoing physical restraint of this sort is undignified and unsafe...It is important that, moving forwards, [D] is able to access the community without physical restraints being used”.

11. WD16 specified, within the required special educational provision set out in section F, that D was to receive a full ABA (Applied Behaviour Analysis) programme delivered in the home setting for 30 hours each week. This provision was underlined which indicated that it was agreed by both parties. There was also an agreed amendment providing for D to receive 2:1 support in the community. However, the number of hours of weekly 2:1 support was not agreed. The parents amended WD 16 to provide for 15 hours, the authority amended it to provide for 5 hours. Alongside this, in a column headed “By whom”, was the following entry:

*“ABA tutor and additional Assistant (no requirement for this additional person to be ABA trained, they do require training in restraint) for 2:1”*

12. That wording showed that ‘ABA tutor’ was agreed but the rest of the wording, being italicised, was an unagreed local authority amendment to the EHC Plan.

#### *Ms Long’s reports*

13. Ms Long was an independent social worker whose reports, commissioned by the Appellant, were before the First-tier Tribunal. Ms Long’s principal report was dated 16 April 2021, but she also prepared an addendum report dated 22 April 2022 (that is, after the adjourned hearing on 1 April 2022).

*Nutrition and sleep*

14. The Appellants' case was that D's EHC Plan should include recommendations about his nutritional and sleep-related needs and related provision.

15. The First-tier Tribunal found, at paragraph 18 of its reasons, that nutritional advice "was properly recorded in section G [of the EHC Plan], as health provision, not educational, and we determined that it should be removed from section F". The Tribunal declined to include a section G recommendation for paediatric sleep and ADHD assessment.

*The First-tier Tribunal's decision*

16. The First-tier Tribunal gave its decision on 15 June 2022. The Tribunal's reasons:

(a) concluded that all documentary evidence submitted after the adjourned hearing on 1 April 2022 would be admitted and "contained material relevant to the matters before [the Tribunal]" (paragraph 5);

(b) stated as follows at paragraph 13:

"The parties agree to record in the EHCP that [D] has no traffic awareness or understanding of how to keep himself safe outdoors. The Tribunal had before it a risk assessment prepared by Skybound Therapy, dated 25 August 2021 supporting 2:1

*".....to ensure that if [D] does run away, two people are available to use fluid restraint and/or two-person escort techniques to keep him safe. [D] is almost 15 years' old and is overweight. He cannot be restrained or escorted safely by one person. Indeed, when his mother walks with [D] in the community, she is forced to use a Houdini harness. The use of ongoing physical restraint of this sort is undignified and unsafe, as per para 6 of the Skybound Therapy Report regarding 2:1. It is important that, moving forwards, [D] is able to access the community without physical restraints being used."* (Parent submissions);

(c) made the following findings about D's need to access the community, as part of his education, and related provision:

“14...We found that 2:1 adult support is needed when [D] is out in the community, but we also approved the LA’s wording for 6 weekly risk assessments to investigate if it remains appropriate so as to ensure the right level of protective support is in place. However, we determined that the number of hours – 15 – was excessive and should be limited to 5, as no persuasive evidence was provided that it should take place on every teaching day. The parties agreed that as a Key Stage 3 child it is right that [D] experiences the wider world, but we found that 5 hours used flexibly across a teaching week (notwithstanding additional social care time relevant to accessing outdoor experiences) is adequate to meet his needs, within the context of the teaching time each week. We determined 2:1 support is required for 5 hours per week to access the community safely and participate in education related outdoor activities.

15...We determined that the LA’s italicised wording [in WD 16] should be included, i.e. the second person does not need to be an ABA Tutor, but can be an Assistant with training in restraint. This determination is because the evidence on the point does not refer to need for a second ABA Tutor, just someone “.....trained in the same physical intervention skills and showing competence at application of the Behaviour Support plan.....” (Skybound Therapy Report of 4 April 2022)”;

(d) in relation to nutrition, stated:

“18. Page 26 [of the WD] – the deletion of content regarding nutritional advice is not shown as agreed. The Tribunal found this was properly recorded in section G, as health provision, not educational, and we determined it should be removed from section F.”;

(e) in relation to assessment for sleep difficulties and ADHD stated:

“22. Section G (page 28) [of the WD]  
- Assessments by a Paediatrician, regarding sleep difficulties and for ADHD are not, in the opinion of the Tribunal, health provision reasonably required for [D’s] learning difficulties or disabilities identified in section C and we make no recommendations regarding those proposed by the Parents...”;

(f) in relation to Ms Long’s documentary evidence, stated:



“23. Section D (page 10) [of the WD] – the Tribunal found the Child in Need (9 February 2021) and Family Assessments by the LA, thorough, whereas that from the independent Social Worker, Ms C Long (16 April 2021), to have context around anticipated school attendance, which now has been superseded. We found and determined in consequence that the LA’s italicised wording accurate from the evidence, which should be included, and the bold wording from the Parents to be of opinion and therefore inappropriate as content for this EHCP.”

17. On 14 July 2022, the First-tier Tribunal reviewed its decision and remitted “the decision to the same panel to correct the lack of specificity regarding the provision of occupational therapy”. The Tribunal judge remarked that the 15 June 2022 decision’s failure to specify whether occupational therapy provision was required for 38 or 52 weeks annually had caused ‘confusion’.

### **Grounds of appeal**

18. Following a hearing attended by the Appellant and D’s father, but at which the local authority was not represented, the Upper Tribunal granted permission to appeal against the First-tier Tribunal’s decision on six grounds described as follows in the Upper Tribunal’s permission determination (I have omitted parts of the determination which refused permission to appeal on certain other grounds):

*“Ground 1 – failure to consult before amending final version of Working Document*

29. Essentially, this ground argues procedural unfairness in proceedings before the FtT. The Appellants argue that they were taken completely surprise by significant post-hearing amendments made by the local authority to the Working Document, and subsequently adopted by the FtT. The first they knew of the amendments, argue the Appellants, was when they received the FtT’s final decision. I have already recounted how, on 30 March 2022, it was decided that D would be educated at home, not at school.

30. The SOR [*statement of reasons*], para. 1, records that “following the hearing [on 1 April 2022] the parties provided the attached working documents being version 16 identifying to the Tribunal the content at issue”. The FtT gave its decision on 15 June 2022. The FtT’s order was drafted by reference to version

16 of the Working Document. I have already noted that much additional written evidence was admitted by the FtT after the hearing on 1 April 2022.

31. My copy of version 16 includes local authority and parental amendments that are both dated 6 May 2022. Email correspondence indicates that the FtT set a “deliberation deadline” of 4 p.m. on 6 May 2022...

32. Pausing for a moment, I note that the final hearing of this appeal was atypical. Usually, the parties are required to settle their written case in advance of the hearing, oral submissions can then address the written material and, if further documentary material is allowed to be admitted after the hearing, it tends only to relate to one or two discrete points. No doubt, the course taken by these FtT proceedings was related to the late decision that D was to be educated at home.

33. The Appellants argue that the FtT adopted the following substantive local authority amendments to version 16 of the Working Document (underlined = agreed; **bold** = parental amendment; *italic* = local authority amendment):

(a) weekly 2:1 support for D to access the community of 5 rather than 15 hours. The related Working Document wording reads, “Full ABA programme...with 15 5 hours per week 2:1 to allow [D] to access the community safely”;

(b) provision for six-weekly risk assessments to monitor the need for 2:1 support when D was accessing the community. The related Working Document wording reads, “*Risk assessments to be carried out every 6 weeks to monitor need for 2:1 during community access for educational purposes*”;

(c) one of the workers providing 2:1 support in the community was not required to be ABA trained but did require restraint training. This wording was placed in the ‘by whom’ column of the section F Table alongside provision for a full ABA programme which included weekly 2:1 support for D to access the community the number of hours of support being unagreed. The wording itself read, “ABA tutor and additional Assistant (no requirement for this additional person to be ABA trained, they do require training in restraint) for 2:1”.

34. The Appellants also complain that the FtT adopted a meaningless version 16 amendment that PEAK, a type of curriculum, should attend meetings, which read as follows:

“Half termly multi-agency meetings with BCBA A combination of PEAK, supervisor/lead tutor attendance to ensure multi-disciplinary team working to support [D’s] needs”.

35. The only predecessor Working Document supplied to me is version 11 (dated 30 March 2022 and therefore drafted on the basis that S would attend school). It contains no obvious counterpart to the provision described in paragraph 33(a) above but did mention largely unagreed provision for daily supervised exercise as well as struck out provision for at least 1:1 adult ‘attention’ in the community. I have not identified any provision akin to the risk assessment provision described above in paragraph 33(b). Regarding the matter in paragraph 33(c) above, version 11 included a local authority amendment for daily supervised exercise to be performed by ‘ABA tutor’ and a parental amendment indicating that this was to be done by “Social Services”.

36. I recognise that I may not have the full history before me (due to the absence of Working Document versions 12 to 15, and any Tribunal direction or other instrument about the post-hearing management of the appeal). However, on the material that is available to me, I am persuaded that the Appellants have an arguable case. If the Appellants had no opportunity to make submissions on local authority proposals for the amount of weekly 2:1 community support, six-weekly risk assessments and the qualifications and expertise required by those providing 2:1 community support, arguably proceedings before the FtT were conducted unfairly. I grant permission to appeal on that ground, which henceforth is to be referred to as the **first ground of appeal**. It may be that the FtT was anxious to ensure that the recent fundamental change in D’s educational circumstances did not unduly delay the appeal proceedings. While delay is always to be avoided as much as possible, that cannot be at the expense of fairness

37. I also grant permission to appeal on the ground that the FtT arguably erred in law by ordering provision for multi-agency meetings that was so unclear as to be unenforceable (this is the Appellants’ PEAK argument). This is to be the **second ground of appeal**.

...

#### *Ground 6 – restraint / restraint-only training*

66. This ground concerns provision, within section E, that, of the two individuals providing D’s 2:1 community support, one could be “an Assistant with training in restraint” and need not be an ABA tutor (paragraph 23, SOR). This was justified by the FtT by reference to part of a Skybound report which stated that, alongside the ABA tutor, the second person should be “trained in the same physical intervention skills and showing competence at application of the Behaviour support plan”. No other FtT amendments to D’s EHC Plan mention

'restraint' but my provisional view is that the FtT must have anticipated that the need for 'restraint' might arise when D's was accessing the community. Otherwise, there would seem little point in specifying that a care worker should have restraint training.

67. While 'restraint' was not otherwise mentioned in the version 16 Working Document, section F did also include the following:

**~~"When I walk I will go outside without needing to wear a Houdini harness or running away and I will not run away from the person with me. I will be less reliant upon family members for my care and support."~~**

68. This suggests that the parties had agreed that D should not wear a Houdini harness when accessing the community. Assuming the harness-exclusion was retained (the SOR does not say otherwise), what sort of restraint was anticipated, and for which the additional support worker required restraint training? On the face of it, arguably the EHC Plan anticipated restraint in the form of laying hands on D to inhibit his movement. If a harness was out of the equation, how else could he be restrained in the community?

69. The FtT papers include an email sent by Skybound to the local authority dated 29 April 2022 (this is one of the unindexed and unpaginated documents). It refers to Skybound's observations of D when accessing the community with a family member. A harness was used to restrain D 62 times during a 70-minute observation, in response to him pulling away. Skybound were unwilling to arrange community access unless D had 2:1 support but would review that ratio regularly to monitor the frequency with which two support workers had been needed in practice. But the Skybound team were unable to use a harness due to both a lack of training and the risk of injury to staff and D given his age and size. This is consistent with Working Document 16 which, as just noted, excluded use of a Houdini harness.

70. Unless I have missed something, the Appellants are right that the FtT did not define what it meant by 'restraint'. I think it is unarguable that the everyday understanding is something like this: individual 1 uses physical force, with or without the assistance of some device or in conjunction with another individual/s, upon the person of individual 2 in circumstances in which individual 2 does not or cannot consent to the procedure. It is also clear that improper use of restraint has the potential for causing significant breaches of an individual's rights. Bearing that in mind, the argument that the FtT erred in law by failing to define 'restraint' or set out permitted types of restraint (other than the excluded harness), has a realistic prospect of success. This is the **third ground of**

**appeal.** I also observe that, arguably, the need for specificity is heightened in respect of restraint-related provision so that all professionals are left in no doubt as to what is, and is not, permitted, so that the risk of violating an individual's rights is correspondingly reduced.

71. I also grant permission to appeal on the ground that the FtT arguably gave inadequate reasons for its decision, by failing to explain why it ordered provision involving, or anticipating, 'restraint' despite parental submissions that D should be able to access the community without physical restraint being used (see para. 13 SOR). This is the **fourth ground of appeal**. The Appellants submit that their submission was supported by expert evidence, but the FtT's reasons arguably failed to engage with the parental case in any meaningful way. As matter of general principle, a fuller explanation than would suffice for other section F provision (provision which does not touch on fundamental rights in the same way as restraint-related provision) is required for reasons for restraint-related provision to be adequate.

...

*Ground 10 – SCP vs. SEP: section 21(5) of the 2014 Act and related arguments*

85. The FtT failed, according to the Appellants, to address the second report of a Ms Long, dated 22 April 2022, but focussed instead on her earlier report of 16 April 2021. I note that the second report, styled an addendum report, was dated 22 April 2022, that is after the date of the final hearing, but paragraph 5(c) of the SOR records that it was admitted. A number of other pieces of evidence were admitted and the FtT found that all, including therefore Ms Long's second / addendum report, contained relevant material.

86. Ms Long's reports were concerned with social care provision (para. 23 SOR). The FtT preferred the local authority's assessment evidence to Ms Long's first report on the ground that it was thorough and the reference point for Ms Long's report (D being educated at school) had been superseded. In oral argument before me, the Appellants acknowledged that Ms Long's report did not deal with D's needs if educated at home, but that was because, in April 2021, it was thought that D would be educated at school. This effectively innocent deficiency was remedied in the 22 April 2022 report, but the Tribunal failed to take this into account.

87. Despite the FtT's social care powers being limited to making recommendations, so that it might be said there is no relevant 'decision' for the purposes of an appeal to the Upper Tribunal under section 11 of the Tribunals,

Courts and Enforcement Act 2007, I am persuaded, for the reasons I am about to give, that the Appellants' criticisms of the FtT treatment of Ms Long's report meet the arguability threshold...

88. In admitting Ms Long's second report, the FtT found that it contained relevant material. The first report had obviously become out-of-date, to some extent, since it was written when the plan was for D to attend a school. That deficiency was remedied, say the Appellants, in Ms Long's second report, yet the FtT's reasons say nothing about this report. The Appellant's have established an arguable case that the Tribunal erred in law in its treatment of Ms Long's second report by failing to take it into account and/or by providing inadequate reasons for preferring the local authority's February 2021 assessment. This is the **fifth ground of appeal**. I should note that, if the extent of the Appellants' reliance on Ms Long's second report was limited to those parts referred to in the parental amendments to version 16 of the Working Document (see below), any error might be immaterial.

...

#### *Ground 11 – HCP vs. SEP*

92. The FtT found, at para. 18 of the SOR, that nutritional advice "was properly recorded in section G, as health provision, not educational, and we determined that it should be removed from section F". Regarding sleep difficulties, the FtT declined to include a section G recommendation for paediatric sleep and ADHD assessment.

93. In failing to consider D's related sleep and ADHD difficulties, except when refusing to make provision for assessment, the FtT failed, argue the Appellants, to address a fundamental part of the parental case. The fact that the cause of D's sleep difficulties might not have been diagnosed did not prevent it from being a 'need' for EHC Plan purposes (*SG v Denbighshire County Council and MB* [2018] UKUT 369 (AAC) 40.). I am satisfied that this argument meets the arguability threshold. I grant permission to appeal on the ground that the Tribunal arguably erred in law by failing to deal with an issue raised by the appeal. This is the **sixth ground of appeal.**"

### **Legislative framework**

#### *Part 3 of the Children and Families Act 2014 ("2014 Act")*

19. Section 21 of the 2014 Act contains the following definitions, which apply to Part 3 of the Act:

(a) “special educational provision”, for a child aged two or more, means “educational or training provision that is additional to, or different from, that made generally for others of the same age in – (a) mainstream schools in England...” (section 21(1));

(b) “health care provision” means “the provision of health care services as part of the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006” (section 21(3));

(c) “social care provision” means “the provision made by a local authority in the exercise of its social services functions” (section 21(4)).

20. A child’s EHC Plan is to specify (amongst other things):

(a) the child’s special educational needs (section 37(2)(a) of the 2014 Act). By virtue of reg. 12(1)(b) of the Special Educational Needs and Disability Regulations 2014 (2014 Regulations), special educational needs are to be specified in section B of the Plan;

(b) the special educational provision required by the child (section 37(2)(c)): section F of the EHC Plan (reg. 12(1)(f));

(c) “any health care provision reasonably required by the learning difficulties and disabilities which result in [the child] having special educational needs” (section 37(2)(d)): section G of the Plan (reg.12(1)(g));

(d) any social care provision which must be made for the child under section 2 of the Chronically Sick and Disabled Persons Act 1970 (section 37(2)(e)), and any other social care provision reasonably required by the learning difficulties and disabilities which result in the child having special educational needs (section 37(2)(f)). These types of provision are to be specified in section H of the EHC Plan (reg. 12(1)(h)).

21. The EHC Plan may also specify other health care and social care provision reasonably required by the child (section 37(3) of the 2014 Act).

22. Section 42(2) of the 2014 Act requires a local authority to secure the special educational provision specified in a child’s EHC Plan (unless the child’s parents have made suitable alternative arrangements: section 42(5)).

23. A parent has a right of appeal to the First-tier Tribunal against certain aspects of an EHC Plan (section 52(1)), which include:

(a) the child’s specified special educational needs (section 52(2)(c)(i));

(b) the special educational provision specified in the plan (section 52(2)(c)(ii)).

As mentioned above, those matters are dealt with in sections B and F of an EHC Plan respectively.

24. Section 52(4) of the 2014 Act authorises regulations to make provision about the powers of the First-tier Tribunal in determining an appeal. Section 52(5) provides that such provision may include provision conferring power on the Tribunal “to make recommendations in respect of other matters (including matters against which no appeal may be brought”.

### *Regulations*

25. Regulation 43(2)(f) of the 2014 Regulations provides that the First-tier Tribunal’s powers, when determining an appeal, include power to order an EHC Plan to continue to be maintained with amendments relating, amongst other things, to special educational provision.

26. The First-tier Tribunal’s power to make social care and healthcare recommendations is conferred by regulations 4 and 5 of the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017. Regulations 6 and 7 prescribe a procedure under which relevant local authorities and NHS bodies must respond to recommendations, and the response must include written reasons for not following any recommendation.

### **Events following the Upper Tribunal’s grant of permission to appeal**

27. The Appellant and Mr AA applied jointly for the Upper Tribunal’s refusal to grant permission to appeal against the First-tier Tribunal’s decision on certain grounds to be set aside. The application for set aside was made under rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008. The application for set aside paid no heed to the test for set aside under rule 43. The provisions of rule 43 had been supplied to the Appellants with the Upper Tribunal’s permission determination. For the most part, the application for set aside simply recounted, or reformulated, arguments that had been dealt with in the Upper Tribunal’s determination granting permission to appeal against the First-tier Tribunal’s decision. The application for set aside also advanced arguments by reference to D’s changed circumstances following the First-tier Tribunal’s decision.

28. Having granted an extension of time for making the set aside application, the application was refused. The set aside application was refused in April 2023 but, due to an administrative oversight, was not issued until September 2023.

29. The Upper Tribunal’s permission determination directed the local authority to provide a written response to the appeal within one month of the date on which determination was issued. The local authority complied with that requirement and its written response was received by the Upper Tribunal on 6 April 2023. The authority’s response was issued to the Appellants on 12 April 2023. Case management



directions required the Appellants' written reply to the authority's response to be received within one month of the date on which they were issued. No response having been received by August 2023, the Upper Tribunal gave directions requiring the written response to be received by a specified date in September 2023. Unfortunately, due to another administrative oversight, those directions were not issued until after the date for compliance had passed. Fresh directions requiring the Appellants were issued in November 2023 requiring the written response to be received within one month of the date of issue. These directions were complied with.

30. In July 2023, the Upper Tribunal received notice that Sinclairslaw, solicitors, were acting for D's mother (but not his father). As I have mentioned, D's father was subsequently removed as a party to this appeal.

### **Local authority's arguments**

#### *What happened before the First-tier Tribunal?*

31. The local authority's written submissions filled certain documentary gaps in the history of this case before the First-tier Tribunal. The local authority inform the Upper Tribunal that the First-tier Tribunal's decision of 15 June 2022 was reviewed on 14 July 2022 and remitted for supplementary determination by way of review resulting in an amended decision on 2 September 2022. I was unaware of this development when I granted permission to appeal against the Tribunal's decision, but the review amendments made to the EHC Plan do not relate to matters falling with the Appellants' grounds of appeal.

32. Regarding the hearing before the First-tier Tribunal on 1 April 2022, the authority submit that "it is critically important to explain the background as to why the hearing of 1 April 2022 was adjourned and why a direction was given by the FtT for further evidence to be submitted and the WD [Working Document] be updated". The authority go on to argue:

(a) during the hearing, the parents raised for the first time an issue about [D] requiring 2:1 supervision when accessing the community;

(b) it was not until the evening of 1 April 2022 that the parents' representative confirmed by email that an amendment would be sought to the Working Document to include 2:1 supervision, submissions would be made on that issue and further evidence provided by the parents;

(c) counsel for the local authority at the hearing on 1 April 2022 recalled that the Tribunal determined, without objection, that the issue of 2:1 supervision would be dealt with by further written submissions and evidence "if pursued". This was because the local authority had not been given notice of the issue;

(d) both parties filed additional documents “relevant to the newly raised issue of 2:1 supervision”. Under a case management ruling, the parents’ revised Working Document should have been received by 4 April 2022 but was not provided to the Tribunal until 12 April 2022 (this became WD 14).

*Ground 1*

33. The local authority accept that the Working Document was amended by themselves on 6 May 2022 to include the following within D’s required special educational provision:

“Risk assessments to be carried out every six weeks to monitor need for 2:1 during community access for educational purposes”; and

“...additional assistant (no requirement for this person to be ABA trained, they do require training in restraint) for 2:1.”

34. As a result of those amendments, the Working Document became version WD 16.

35. The local authority accept that no issue as to the required amount of 2:1 community supervision was raised at the final hearing on 1 April 2022 but for the very good reason, the authority submit that it only became a relevant issue after that hearing, once the Appellant “had confirmed its position on 2:1”.

36. On 6 May 2022, the local authority’s representative emailed D’s mother’s representative. The email attached WD16, associated written submissions, and stated, “the working document...has been briefly amended to reflect the proposals on behalf of the local authority”. The authority argue it was “incumbent” on the Appellant to read their submissions and WD16. It should have been obvious that the ‘proposals’ would relate to the ‘new 2:1 issue’. Had the Appellant read the authority’s email and attachment and taken issue with anything therein, she would or should have sought the Tribunal’s permission to reply or to adduce further evidence. The Appellant did neither despite the fact that, at this time, she had legal representation.

37. In the context of this case, the local authority argues there was no procedural unfairness in the First-tier Tribunal’s approach. The Appellant put the authority in the difficult position of having to provide views on a very late amendment, which led to adjournment of the hearing on 1 April 2022. The authority pragmatically decided not to object to the last-minute change in position, but the Appellant was aware that the authority needed to provide its views. The authority’s amendment to the Working Document should not have taken the Appellants by surprise and the authority in fact conceded 2:1 supervision in its WD 16 amendments leaving the only outstanding issue as the number of weekly hours of 2:1 supervision.

38. If the Upper Tribunal finds that the First-tier Tribunal's procedure for dealing with 'this additional evidence' was unfair, the local authority argue that it should exercise its discretion not to set aside the Tribunal's decision for the following reasons:

(a) the Appellant argues that she had no opportunity to make submissions on the authority's proposed six weekly risk assessments for the purpose of reviewing ongoing need for 2:1 supervision. However, the Appellant did provide detailed submissions on why 15 hours 2:1 supervision was required (see the Appellants' written submissions dated 6 May 2022). The Tribunal permissibly concluded that 15 hours was 'excessive'. Even if it is assumed that the Appellants were unaware of the authority's proposal for 5 hours weekly 2:1 supervision, had they been aware of that proposal it would not have changed the Tribunal's decision;

(b) the Tribunal accepted the need for six-weekly risk assessments because it was appropriate to 'investigate if it remains appropriate to ensure the right level of protective support is in place for D'. That was consistent with Skybound's evidence that it would regularly review the 2:1 support worker ratio by monitoring the frequency with which two support workers had been needed in practice. Again, the Appellant's claimed ignorance of the authority's risk assessment proposal could not have made a difference to the Tribunal's decision. It is very difficult to see what alternative the Appellant seeks. No alternative has been suggested nor any explanation provided for the objection to risk assessments either in principle or every six weeks. Such assessments have to be considered in the child's best interests and were consistent with the evidence before the Tribunal;

(c) the Appellant argues (which is not accepted) that she had no opportunity to make submissions on the qualifications and expertise of the additional supervising support worker. However, the Appellant provided detailed submissions on the need for D to have 2:1 provision from two ABA tutors. That was rejected by the Tribunal in reliance on the Appellant's *own* evidence (from Skybound). The email of 29 April 2022 from Ms Dennison, of Skybound, only referred to the need for "at least two staff present" but said nothing about the second person having to be an ABA tutor. The Tribunal's decision on this point was entirely permissible and the Appellant fails to explain why she would have challenged the absence of a requirement for the second person to be ABA trained, a requirement which was not supported by even her own evidence.

#### *Ground 2*

39. The local authority concede that WD16, in so far as it was accepted by the First-tier Tribunal, contained a typographical error but argue that such errors are not errors of law. The words, "A combination of PEAK" are illogical and should be removed. The correct, intended wording of this part of the EHC Plan should read as follows:

“Half-termly multi-agency meetings with BCBA and supervisor lead tutor attendance to ensure multi-disciplinary team working to support [the child’s] needs.”

*Ground 3 & Ground 4*

40. The local authority’s submissions address these grounds together.

41. The local authority respectfully disagree with the Upper Tribunal’s observation, in paragraph 66 of its permission determination, that “the FtT must have anticipated the need for D to be (physically) restrained during 2:1 supervision or otherwise”. The EHC Plan identifies no need for physical restraint. The EHC Plan provision that refers to restraint was simply the First-tier Tribunal’s attempt to summarise Skybound’s evidence that community supervisors should be “trained in the same physical intervention skills and showing competence at application of the Behaviour Support Plan” (see Skybound’s report). Furthermore, the reference to restraint is found in the ‘provider / by whom’ column of the EHC Plan rather than the provision column. The EHC Plan does not order restraint provision; the Plan, in this respect, only determines the training required of those who supervise D in the community. The authority submit that “restraint training would form part of the standard training provided [for] those who accompany in the community and is not reflective of D’s need”.

42. In conclusion, the local authority submit that the First-tier Tribunal was not required to set out, in the EHC Plan, permitted types of restraint because the Plan did not provide for restraint. Likewise, the Tribunal was not required to address restraint in its reasons.

*Ground 5*

43. Ms Long’s report of 22 April 2022 was admitted into evidence by the First-tier Tribunal. By admitting the report, the Tribunal accepted its relevance and is therefore likely, submit the local authority, to have considered it.

44. A tribunal is not required, in its reasons, to refer to each and every piece of evidence considered. The standard required was described by the Court of Appeal in *H v East Sussex CC* [2009] EWCA Civ 249, at [16-17], in which it said that:

“[the Tribunal’s reasons are] not required to be an elaborate formalistic product of refined legal draftsmanship, but...must contain an outline of the story which has given rise to the complaint and a summary of the Tribunal’s basic factual conclusions and a statement of the reasons which have led them to reach the conclusion which they do on those basic facts.”

45. The present Tribunal's reasons met that standard. In any event, the parental amendments to WD16 did not refer to Ms Long's report. If there was a procedural error, it was immaterial.

46. The authority also "denies that the Upper Tribunal has jurisdiction to determine an appeal in relation to FtT's recommendation power under the National Trial". The authority's written submissions do not explain why.

*Ground 6*

47. The local authority argue that, in declining to include a recommendation in section G of the EHC Plan for paediatric sleep and ADHD assessment, the First-tier Tribunal acted within its permissible discretion. In any event, matters have moved on. The authority's written submissions state:

"matters have moved on in respect of social care provision, with D being assessed by Dr Tamsin Woodbridge, Consultant Paediatrician Community Child Health on 01 August 2022 who diagnosed D as having (amongst other matters) a sleep disorder and challenging behaviour with inattention and impulsivity. A plan was made by Dr Woodbridge for a referral to SSCLS (Specialist Service for Children with Learning Disabilities) and for D to be reviewed in one year."

**Appellant's response to the authority's written submissions**

48. The Appellant's solicitor informs the Upper Tribunal that the Appellant is pursuing a further appeal to the First-tier Tribunal against a revised version of D's EHC Plan. The representative argues that the present proceedings are not, however, academic because the First-tier Tribunal, while it is able to make prospective amendments to the EHC Plan, cannot resolve issues raised by the decision under appeal to the Upper Tribunal. It is particularly important that the Upper Tribunal addresses the issue of restraint, a matter which calls for clarification.

*Ground 1*

49. The Appellant does not dispute the local authority's description of events, set out in its response to Ground 1. However, the Appellant asks the Upper Tribunal to note that the amendments that resulted in WD16 were not made until 6 May 2022 (a Friday) when the First-tier Tribunal planned to resume its deliberations on 10 May 2022. That gave the Appellant very little time to take the steps that the authority assert should have been taken.

50. The local authority's argument that, since the Appellant was able to submit to the First-tier Tribunal that D required 15 hours of weekly 2:1 support, the Appellant had an effective opportunity to make submissions on the number of hours of 2:1 support

required is not accepted. For instance, the Appellant had no opportunity to submit that the authority provided no evidence in support of their proposed number of hours.

*Ground 2*

51. The Appellant rejects the local authority's argument that the illogical 'PEAK' wording, being a typographical error, cannot amount to an error of law. The wording found its way into the EHC Plan, as ordered by the Tribunal, and there is no basis for concluding that its inclusion was not an error of law.

*Grounds 3 & 4*

52. The local authority's reliance on the format of Section F of the EHC Plan, in which restraint is mentioned, is unduly formalistic. The 'provider / by whom' column appears in Section F and is therefore part of the provision ordered by the First-tier Tribunal. The column headings within Section F are not a relevant consideration.

53. The local authority were required to ensure that educational provision was made by individuals who satisfied the description in the 'by whom' column of Section F of the EHC Plan. If the restraint wording was not considered 'reflective of D's needs', why was it included in section F? The logical conclusion that follows from a requirement for support staff to be trained in restraint is that the First-tier Tribunal anticipated that there would be a need to restrain D. At the very least the Tribunal was required to engage with the reason why the provision was necessary and identify what it meant by restraint.

*Grounds 5 & 6*

54. The Appellant informs the Upper Tribunal that she has no 'additional submissions' to make in relation to Grounds 5 and 6.

**Conclusions**

55. The local authority do not submit that this appeal has become academic, that issue having been raised by the Appellant. Despite the fact that the EHC Plan under consideration in this case has now been superseded, I shall nevertheless decide this appeal. The case has been fully argued by competent legal representatives and there are aspects of the grounds of appeal that might, depending on how they are resolved, be of wider interest.

56. Neither party asks the Upper Tribunal to hold a hearing before deciding this appeal. I have the benefit of fairly extensive written argument and in my view these allow me to decide this appeal fairly without holding a hearing.

*Ground 1*

57. This ground relates to the First-tier Tribunal's requirement for D's EHC Plan to include provision for him to receive 5 hours weekly 2:1 support in order to access the community, six weekly risk assessments to monitor the continued need for such support and the training required of the support worker who would accompany the ABA-trained community support worker. For the reasons given below, I do not accept that the Appellant was unfairly deprived of the opportunity to make submissions about these matters.

58. The Appellant made submissions to the First-tier Tribunal about the weekly 2:1 support required when D accessed the community. Fairness did not require the Appellant to be given the opportunity to make submissions on the local authority's proposal that 5 hours weekly support would be sufficient. The Appellant knew that the amount of weekly community 2:1 support was in issue, and she put their case on the point to the Tribunal. Fairness did not require the Tribunal to pause making its decision so that the Appellants could comment on the authority's specific proposal. This was a very specific point, and all fairness required was the opportunity to make submissions on the issue in dispute namely the weekly amount of 2:1 support. The Appellant was given that opportunity.

59. Regarding six-weekly risk assessments, the provision ordered by the First-tier Tribunal reflected that recommended in the Appellant's evidence. The 29 April 2022 email written by Ms Dennison of Skybound stated, "this ratio [2:1] would be reviewed on a regular basis by reviewing the incident forms of how often 2 people were needed to support in each community location". The provision ordered was no more than a reformulation of Ms Dennison's recommendation. A party cannot argue that a tribunal acted unfairly by accepting an argument made by that party.

60. Finally, the requirement for the additional support worker to have restraint training. Ms Dennison's email of 29 April 2022 said that D's behaviour when accessing the community meant that, if only one support worker accompanied him, there would be a risk of death or serious life-changing injuries to D or others. Ms Dennison also wrote, "all physical intervention training that I am aware of would require 2 people to support someone who is eloping". The only reasonable inference to be drawn from this statement is that Ms Dennison thought that whoever accompanied D in the community needed to have 'physical intervention training'. The First-tier Tribunal's requirement for the additional support worker to have restraint training was, as with six-weekly risk assessments, no more than a reformulation, without material alteration, of Ms Dennison's recommendation. Again, the Appellant cannot argue that the Tribunal acted unfairly by agreeing to a suggestion made within the evidence that she presented to the Tribunal.

61. For the above reasons, Ground 1 is not made out.

*Ground 2*

62. The local authority argue that a typographical error cannot amount to an error of law. In the context of EHC Plans, I doubt that is correct as a general proposition. If, however, the First-tier Tribunal's intended meaning is clear, despite the error, I would agree with the authority. In such cases, an authority's implementation of the EHC Plan would not be obstructed by a defect in the way that a Plan describes the required provision.

63. In this case, the provision ordered by the Tribunal included:

“Half termly multi-agency meetings with BCBA A combination of PEAK, supervisor/lead tutor attendance to ensure multi-disciplinary team working to support [D's] needs”.

64. That made no sense because PEAK is a type of curriculum, and it is obviously impossible for an abstract concept to attend a meeting. The local authority argue that the provision should be read so as to ignore the reference to attendance by PEAK at half-termly meetings. I agree that that is the only sensible way in which to read the provision ordered by the Tribunal. I therefore accept the authority's argument that the Tribunal's mistake in ordering attendance by 'PEAK' at half-termly meetings was not an error on a point of law.

*Grounds 3 and 4*

65. The third ground of appeal is that the First-tier Tribunal arguably erred in law by failing to identify what it meant by 'restraint'. My grant of permission to appeal on this ground was influenced by the issue addressed by the fourth ground of appeal, which was that the Tribunal arguably erred in law by failing to explain why it rejected the parental argument that D should be able to access the community without the need for physical restraint.

66. Taking the fourth ground first, on my analysis the Appellant's case before the First-tier Tribunal was not that she objected to any use of physical restraint. The Appellant's final written submissions to the Tribunal, which were not before me when I granted permission to appeal, argued that two people should be available to “use fluid restraint and/or two-person escort techniques to keep him safe”, that D “cannot be restrained or escorted safely by one person”, and “the use of ongoing physical restraint of this sort is undignified and unsafe” which was a reference to the Houdini harness referred to earlier in the submissions. Moreover, Ms Dennison's email of 29 April 2022 anticipated the need for some kind of 'physical intervention', from two people, to keep D safe when accessing the community. The Appellant's case was not



that D should be free of all physical restraint in the community. This undermines the basis on which permission to appeal was granted on Ground 4. The Tribunal did not reject the parental case put to it about restraint.

67. Part of the context to my grant of permission to appeal on Ground 3 was the parental argument that they were taken by surprise when they read the First-tier Tribunal's decision and discovered that it had ordered provision which mentioned 'restraint'. As I have just explained, that cannot have been the case. The fact is that the potential type/s of restraint anticipated was described in the Appellant's own evidence. In those circumstances, I am satisfied that the Tribunal did not err in law by failing to specify the type/s of restraint that it had in mind when making provision for the additional support worker to have restraint training. A counsel of perfection might have called for a more detailed description of the types of restraint techniques for which training was required. However, a Tribunal's reasons are not required to be perfect and, in a case where the Appellant's own case signalled the type of restraint techniques considered suitable, the requirement to provide sufficient reasons was discharged by the Tribunal's requirement for the additional support worker to have restraint training albeit of an unspecified type.

68. For the above reasons, Grounds 3 and 4 are not made out.

#### *Ground 5*

69. Section 11(1) of the Tribunals, Courts and Enforcement Act 2007 provides that "the reference to a right of appeal is to a right to appeal to the Upper Tribunal on any point of law arising from a decision made by the First-tier Tribunal". The local authority argue that the Upper Tribunal has no jurisdiction in relation to the First-tier Tribunal's exercise of its power to make health or social care recommendations but do not support that argument with any reasoning, and the Upper Tribunal has previously considered appeals against the Tribunal's exercise of its recommendation power (see, for example, *VS & RS v Hampshire County Council and National Autistic Society* [2021] UKUT 187 (AAC)). On the assumption that a recommendation given by the First-tier Tribunal in the exercise of its powers under the Special Educational Needs and Disability (First-tier Tribunal Recommendations Power) Regulations 2017 is a "decision" within section 11(1) of the 2007 Act, in my judgment the Tribunal erred in law in its treatment of Ms Long's evidence.

70. The Appellants' final closing written submissions to the First-tier Tribunal relied on Ms Long's addendum report of 22 April 2022 to argue, amongst other things, that the Tribunal should recommend flexible respite provision for 80 hours annually. The Tribunal refused to give that recommendation.

71. I am satisfied that the First-tier Tribunal erred in law by failing to consider Ms Long's addendum report. The local authority submits that the Tribunal's finding that the addendum report was relevant, and thus admitted, shows that it was considered, and that a Tribunal is not required to refer to every piece of evidence in its reasons. In the circumstances, neither argument is persuasive. If Ms Long's 2021 report merited specific consideration in the Tribunal's reasons, then so did the 2022 addendum to that report, all the more so because the addendum, unlike the 2021 report, related to D's newly altered educational circumstances. The Tribunal's rationale for rejecting the 2021 report included that it was drafted on the assumption that D would be educated at school. That did not apply to the addendum report and so could not have been relied on to reject it. The Tribunal's reasons say nothing about why Ms Long's 2022 addendum report was rejected and that rendered the reasons given for the Tribunal's insufficient.

#### *Ground 6*

72. The Respondent argues that Ground 6 is rendered academic because matters have 'moved on' because D has now been assessed by a consultant Paediatrician who has diagnosed D with a sleep disorder and challenging behaviour with inattention and impulsivity. The Appellant's reply does not dispute the Respondent's argument and instead relies on its earlier submissions. Those earlier submissions do not meet the authority's argument because, when those earlier submissions were drafted, it was not argued that Ground 6 had become academic. I therefore take the Appellant's decision not to make submissions in opposition to the argument that Ground 6 has become academic to be a concession that Ground 6 has in fact become academic. Ground 6 is not made out.

#### **Disposal**

73. This appeal succeeds on a single ground. The First-tier Tribunal's decision involved an error on a point of law because it did not give sufficient reasons for its decision. In the circumstances, the Tribunal was required to give some explanation for its rejection of Ms Long's April 2022 addendum report. Despite the Tribunal having erred in law, I have decided not to set aside its decision. The Tribunal's error related to its discretionary power to give a social care recommendation. Even if the Tribunal had not erred, and given the recommendation sought by the Appellant, the relevant local (social care) authority was not bound to accept the recommendation. By contrast, where a Tribunal orders special educational provision in Section F of an EHC Plan, the relevant local authority is required by section 42(2) of the 2007 Act to secure that the provision is made. In my judgment, this distinction is a relevant consideration for the Upper Tribunal in deciding how to dispose of an appeal after

finding that the First-tier Tribunal erred in law in the exercise of its recommendation power but whose decision, insofar as it relates to special educational matters, is free of legal error. It is also probable that matters have developed in D's life so that Ms Long's addendum report no longer speaks to D's current circumstances. If that is the case, how would the First-tier Tribunal be supposed to remedy the deficiency identified by the Upper Tribunal? It would be faced with an Upper Tribunal decision that finds it erred in law in its treatment of a report that is no longer relevant and, for that reason, could not properly be taken into account since the Tribunal is required to address current circumstances (see *Wilkin v Goldthorpe (Chair of the SEN Tribunal) CO/1251/97* and *Gloucestershire County Council v EH* (2017) UKUT 85 (AAC)). I also note that, according to the Appellant, a subsequent iteration of D's EHC Plan is under appeal to the First-tier Tribunal and would not wish to complicate those proceedings by remitting this matter to that tribunal without a good reason for doing so. For these reasons, I decide not to set aside the First-tier Tribunal's decision.

**Delay in deciding this appeal**

74. Finally, I must address the delay in deciding this appeal. The proceedings have, in part, been prolonged by the need to deal with the Appellant's case management applications, such as the very lengthy application for set aside of my decision granting permission to appeal insofar as it refused permission on certain grounds, and the Appellant's failure to comply with some case management time limits. There have also been some unfortunate administrative oversights, which I have described above in these reasons and for which I apologise on behalf of the Upper Tribunal. Latterly, the delay is a result of my prolonged absence from duties, and subsequent limited duties, while recovering from serious injuries sustained in an accident. I am sorry for the frustration likely to have been experienced by the Appellant while waiting for this decision.

E Mitchell,

**Judge of the Upper Tribunal.**

**Authorised for issue,  
on 12 December 2024.**