



Neutral Citation Number: [2026] EWHC 203 (Admin)

Case No: AC-2023-LON-001646

IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice Strand, London, WC2A 2LL

Date: 3 February 2026

Before:

Paul Bowen KC (sitting as a Deputy Judge of the High Court)

Between:

KXO and OYW (by their mother and litigation friend, SZO) Claimant

- and -

Devon County Council Defendant

The Claimant's Litigation Friend is a litigant in person, was unrepresented and did not appear
Paul Greateorex (instructed by **Legal & Democratic Services, Devon County Council**) for
the **Defendant**

Hearing dates: 3 February 2026

-JUDGMENT

There is a reporting restriction order in force in respect of this case protecting the anonymity of the Claimants and the Litigation Friend. Permission to publish this version of the judgment is given expressly on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the Claimants and the Litigation Friend must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court

Paul Bowen KC (sitting as a Deputy Judge of the High Court):

Introduction

1. This is my judgment on three matters before the Court today:
 - i) Whether permission or approval is required and, if so, whether to permit or approve the discontinuance of claims for judicial review brought by the Claimants, KXO (aged 16 but 14 when proceedings commenced) and OYW (now aged 19, but 16 at the time proceedings commenced) by their mother and litigation friend, SZO ('the Litigation Friend'), pursuant to a Notice of Discontinuance filed and served by the Litigation Friend dated 5 January 2026. This involves consideration of whether the Court's permission or approval is required for discontinuance of the claim under CPR 38 or, given the claim is brought by a child or protected party, CPR 21.10.
 - ii) If the matter is not discontinued, the Claimants' application for permission to apply for judicial review.
 - iii) Costs.
2. At the end of the oral hearing on 3 February 2026, I handed down my ruling in relation to these matters, namely: (i) the Court's permission or approval is not required either under CPR 38 or CPR 21.10 and the Notice of Discontinuance brought proceedings to an end with effect from 5 January 2026, save in relation to costs; (ii) the Court has no jurisdiction to determine the application for permission to apply for judicial review, but permission would have been refused and the claim dismissed as totally without merit had the claim not been discontinued; (iii) the Claimant's Litigation Friend shall pay the Defendant's costs of the proceedings under CPR 38.6, to be assessed if not agreed, not to be enforced without leave of the Court. I indicated that my written reasons would follow. This judgment contains those reasons.
3. The Defendant is Devon County Council. The Interested Party is the First-tier Tribunal (Special Educational Needs and Disability) ('SENDisT'). The claim was originally given the case reference CO/1947/2023 but was allocated the current reference ACLON-001646 following the migration of Administrative Court cases to the new numbering system in 2024.

Summary of claims and the parties' positions

4. The Claimants are children for whom the Defendant local authority maintains Education, Health and Care Plans ("EHCPs") under Part 3 of the Children and Families Act 2014. On 25 May 2023 the Defendant issued notices proposing amendments to aspects of the Claimants' EHCPs relying on regulation 28 of the Special Educational Needs and Disability Regulations 2014/1530 ('the 2014 Regulations'). The claim challenges the lawfulness of those decisions. The Claimants contend that the Defendant acted unlawfully by seeking to amend the EHCPs outside a lawful annual review or reassessment process, with the consequence that statutory educational and social care provision was withdrawn or reduced. The Defendant disputes that characterisation and contends that the decisions were lawful, provisional in nature, and subject to an adequate alternative statutory remedy by way of statutory appeal to the SENDisT under s 51 Children and Families Act 2014 ('2014 Act'). The SENDisT adopts a neutral stance.

Procedural history

5. The Litigation Friend is a disabled litigant in person and is the mother of six children all of whom are disabled, two of whom (including KO) are under 18. The Litigation Friend has been diagnosed with Autism, ADHD, Agoraphobia and partial deafness, for which she wears a hearing aid. She has, on behalf of her children, brought numerous legal proceedings against the Defendant, comprising both judicial review claims in the High Court and claims for damages in the county court, almost all of which she subsequently withdrew or discontinued or were dismissed, some of which are summarised in the next section. The present litigation has had an unusually prolonged and complex procedural history, involving multiple interlocutory applications, repeated periods of inactivity, and recurrent uncertainty as to whether the claim was being pursued or withdrawn.
6. The present Claim was issued on 30 May 2023 with an application for urgency and interim relief. There was no pre-action letter before claim, in breach of the Pre-Action Protocol for Judicial Review.
7. On 31 May 2023, Constable J gave directions listing the Claimants' application for interim relief for hearing.
8. On 8 June 2023, following an oral hearing before DHCJ Mathew Gullick KC, the Claimants' application for interim relief was refused. The Litigation Friend appeared by video link and adjustments were made to enable her participation allowing her to be supported by her non-legal advocate and allowing regular breaks.
9. On 21 June 2023 the Defendant filed Acknowledgment of Service ('AOS') and summary grounds of defence ('SGD') opposing the Claims.
10. On 22 June 2023 the Litigation Friend filed a reply.
11. On 3 October 2023 the Litigation Friend filed an application asking to withdraw the Claims but this was withdrawn on 5 October 2023.
12. On 9 February 2024 the Litigation Friend wrote to the Court requesting to withdraw all her outstanding claims and made a number of complaints about a failure to make reasonable adjustments to allow her to pursue the claim.
13. On 27 February and 22 April 2024 the Litigation Friend filed complaints with the Administrative Court Office ('ACO') concerning this claim.
14. On 7 May 2024, Lang J considered the application for permission to apply for judicial review and ordered that it be adjourned to a rolled-up hearing. The Court made anonymity orders in respect of the Claimants and their Litigation Friend and directed a number of special measures to facilitate the litigation friend's effective participation, including permission to attend remotely, permission to be accompanied by a non-legal supporter, the provision of regular breaks, and the Defendant's responsibility for preparing the hearing bundle.
15. On 8 May 2024 the Litigation Friend filed an application to vary the terms of the order made by Lang J including (a) separate hearings for permission and substantive applications (b) additional special measures by way of reasonable adjustments.

16. On 9 May 2024 the Litigation Friend made a complaint of judicial misconduct against Constable J to the Judicial Conduct Investigations Office.
17. On 22 May 2024, the Litigation Friend's husband wrote to the Court to say that the claim was academic and was withdrawn. On 25 June 2024 the Litigation Friend wrote to the Court saying that it was not withdrawn and was not academic and requesting that the application be considered by a judge with reasonable adjustments made as per her previous applications.
18. On 4 November 2024, 6 November 2024 and 6 January 2025 the Court contacted the Claimant's Litigation Friend requesting an update. No response was received to those letters.
19. On 3 February 2025, Heather Williams J considered the papers and made an order that unless confirmation that the claim was being pursued and an update given as to its status by 24 February 2025 the matter would be struck out (the unless order).
20. On 24 February 2025 the Litigation Friend filed a response to the unless order. This comprised a 41-page document labelled 'Response to court order dated 24 February', 38 pages of which were an extract from a self-published book, without any factual update other than to aver that the claim was not academic.
21. On 7 March 2025, HHJ Antony Dunne, sitting as a Deputy High Court Judge, considered an application by the Claimant to vary Lang J's order. He ordered that the permission and substantive stages be separated and directed that the application for permission be listed for an oral hearing. Further special measures were directed, including continued permission for remote attendance, permission to be accompanied by a supporter, regular breaks, and the use of clear and accessible language.
22. On 11 March 2025, the Claimant made an application to vary the order of HHJ Dunne DHCJ.
23. On 13 March 2025 the Litigation Friend made an application to amend the claim to add a third Claimant, her younger son TAO, to the proceedings.
24. On 24 April 2025 the Defendant filed a position statement asserting that the Claimant's conduct of this claim, and others, had been unreasonable and an abuse of process and requesting that the claim be dismissed with costs.
25. On 30 April 2025 the Litigation Friend filed a further witness statement.
26. On 20 May 2025, Ritchie J considered further interlocutory applications made by the Litigation Friend, including applications to vary the order of HHJ Dunne and to join TAO as a party. Those applications were dismissed and certified as totally without merit. The application for permission to apply for judicial review was directed to be listed for hearing.
27. On 8 June 2025 the Litigation Friend emailed the ACO indicating her intention to seek permission to appeal Ritchie J's order. No application for permission to appeal appears to have been filed or served.

28. On 9 December 2025 the ACO notified the parties that the permission hearing was listed for an oral hearing on 3 February 2026.
29. On 13 December 2025 the Litigation Friend filed a further complaint with the ACO. She wrote: *"I wish to formally complain about the attached letters dated 9 December 2025, which appear to list a permission hearing in person in London on the 3rd February 2025 without any reasonable adjustments. The court appears to have completely disregarded my application to appeal the order of Judge Ritchie made on 22 May 2025 due to procedural unfairness. I would like to complain about that refusal to process the appeal and also notify the court that we will not be at this hearing in person due to the ongoing refusal/failure of MOJ and HMCT's to make reasonable adjustments which has had the ultimate effect of denying my family access to justice and ensuring the original claim is made academic by what has been a prejudiced refusal to process. The court is well aware that I am agoraphobic, housebound and live in Devon and cannot attend an in-person hearing in London. The court has left the matter to drag on into the long grass for so long that [OYW] is now an adult and children's social care doesn't even apply anymore and that is not of my doing or a situation of my making but the courts - by virtue of the that the court denied [OYW] justice by the backdoor which is an abuse of [OYW]'s human right to access justice and the rights of our whole family. I am aware that the Royal Courts are doing this to disabled people routinely and that ours is not the only case. Other complaints about failure to process applications for disabled people representing themselves are also underway. I intend to exhaust your complaints procedure and then take my case to the European court. This is the first stage in that process, but for the avoidance of any doubt, we will not be at this hearing, which is inaccessible to us and which the court already knows is inaccessible and is by virtue of that, extremely prejudiced with no hope of justice ever being served at such a hearing."*
30. On 5 January 2026 the Litigation Friend filed a Notice of Discontinuance accompanied by her witness statement of the same date. The Notice was not considered by the ACO until 21 January 2026. The question of whether permission was required or should be given to discontinue the proceedings was listed together with the application for permission to apply for judicial review to be heard at the oral hearing fixed for 3 February 2025.
31. The Defendants being concerned not to incur the expense of attending the hearing on 3 February 2026, their lawyers contacted the ACO on Thursday, 29 January 2026 requesting that the issue of discontinuance on the papers be put before me for consideration on the papers. I gave the following direction: *"Given (a) the complicated history to this matter; (b) the extremely short time in which I have been given to consider the application on the papers; (c) the fact the claimants are unrepresented and (d) the fact the claimants are children I am not prepared, on the papers, to consent to this matter being taken out of the list or to agree to the discontinuance of the claim on the papers on the strength of the Claimant's litigation friend's statement of 5/1/26 that she "cannot participate due to the ongoing and repeated failures to provide reasonable adjustments". On 7 May 2024 Lang J ordered that special measures be adopted at the rolled-up permission hearing. On 20 May 2025 Ritchie J observed that: "This court has power to make whatever reasonable adjustments will assist vulnerable parties and witnesses. CPR PD1A provides the framework. That framework does not grant this court the power to instruct experts to report on disabilities at the taxpayers' expense. Such evidence is for the party to obtain, file and serve. At the interim relief hearing in*

2023 C represented the Claimant and reasonable adjustments were made for her to do so. I infer C has represented herself and her children at two other hearings before High Court Judges. Her written documentation shows her communication skills. I do not consider that any of the additional adjustments requested are needed. Those already directed by Lang J are sufficient.”

32. Those are the circumstances in which the matters came before me today.

Related proceedings

33. The present claim forms part of a wider body of litigation brought by the Claimants’ litigation friend, either on her own behalf or on behalf of one or more of her children, principally against Devon County Council and, in some instances, other public bodies including the Legal Aid Agency and the NHS Devon Clinical Commissioning Group. Those proceedings provide relevant procedural context. I only have limited details of those claims brought in the Administrative Court but understand other claims have been brought elsewhere.
34. In CO/628/2023 (R (SO) v Devon County Council), issued on 15 February 2023, the claimant challenged decisions relating to the management of direct payments and social care funding. Interim relief was refused and, following a rolled-up hearing on 4 April 2023, the claim was dismissed by Linden J. Permission to appeal was subsequently refused by both Linden J (on 9 May 2023) and by the Court of Appeal on 2 November 2023, including a ground that the hearing had not been fair because of a lack of reasonable adjustments/ special measures. In refusing PTA Linden J observed that, by way of reasonable adjustments, he had granted the Claimant’s application for the hearing to be conducted by CVP and to be accompanied by her husband during the hearing. After some initial technical issues, which were resolved by the Claimant taking off her headphones, the hearing proceeded. The judge continued: *“the Claimant then addressed me without any sign of difficulty. Her arguments were clear, forceful and cogent. I do not recall any concerns being raised by her or her husband about her ability to participate in the hearing and she did nt indicate that she needed breaks/ a break”*.
35. In CO/652/2023 (R (SO) v NHS Devon Clinical Commissioning Group), issued on 16 February 2023, the claimant challenged the cessation of health-related payments. Following concessions by the defendant NHS body, the application for interim relief was not pursued and the claim was withdrawn by consent, with no substantive determination on the merits.
36. In CO/1733/2023 (R (MW) v Devon County Council), issued on 12 May 2023, the claim was dismissed following the claimant’s request to withdraw. An order to that effect was sealed on 12 October 2023.
37. In CO/151/2023 (R (SO) v Devon County Council), permission was refused on the papers by Kerr J on 4 April 2023. Following a renewal hearing before DH CJ Kate Grange KC on 10 October 2023, permission was granted in part. The judge ordered special measures by way of reasonable adjustments including that the Claimant be accompanied by a non-legal advocate and with breaks every hour. On 14 February 2024 the claimant sought permission to withdraw the claim on the basis the Court had refused to put reasonable adjustments in place for her, namely the appointment of an

intermediary. That application came before Lieven J on 26 February 2024 who granted permission to withdraw the claim. The judge concluded that the special measures that had been put in place had been adequate and that this was not a case where an intermediary was necessary or proportionate. In those circumstances it was a matter for the Claimant if she wished to withdraw her claim.

The hearing on 3 February 2025

38. As I have said, the matter was listed before me to determine the effect of the Notice of Discontinuance and, if the claim was not discontinued, the application for permission to apply for judicial review. On 29 January 2026 I had not agreed to the matter being taken out of the list given the history of the claims and the need to determine whether the Court should approve discontinuance under CPR 21.10. I also considered there to be a strong possibility that the Claimant would subsequently seek to withdraw the Notice of Discontinuance, as she has done previously, once the hearing had been vacated leaving the matter unresolved and incurring further cost and inconvenience. That risk was heightened if the Claimant did not know of the costs consequences of discontinuance and subsequently learned of these. I therefore prepared for the possibility that the Litigation Friend would appear and seek to withdraw the Notice of Discontinuance. In the event she did not do so, notwithstanding notice had been given of the hearing and of my decision on 29 January 2026 to defer consideration of the question of whether the Court's permission or approval was required before the matter could be discontinued. The Defendant attended by Counsel. The hearing took place in Court 45 which allows hearings to be conducted by way of CVP and the hearing link had been sent to the parties. I had caused a direction to be sent to the parties on 2 February 2026 that the special measures ordered by Lang J and HHJ Dunne DHCJ by way of reasonable adjustments would apply at the hearing. I am satisfied that the Litigation Friend had notice of the hearing and would have had the benefit of special measures had she attended that would have discharged the duty to provide her with reasonable adjustments and she would have had a fair hearing.
39. In reaching that conclusion I have considered: the special measures applied by Matthew Gullick KC DHCJ when conducting the oral application for interim relief; the orders made by Lang J and HHJ Dunne DHCJ; the order of Ritchie J refusing to vary the special measures made by the previous two judges; and the rulings of Linden J and the Court of Appeal when refusing PTA on the asserted ground that Litigation Friend did not have a fair trial by reason of the lack of reasonable adjustments in CO/628/2023. I have also had regard to the statements of the Litigation Friend, in particular her statement of 5 January 2025. In considering the scope of the duty to provide reasonable adjustments I have considered the Equal Treatment Bench Book (2024, updated in 2025), in particular Chapters 3 and 4.

Discussion and disposal

40. I therefore take the Notice of Discontinuance as having been properly filed and served on 5 January 2026 and the Litigation Friend has made no application to withdraw it. I

have to decide: (1) whether the Claimant requires permission or approval to discontinue

the claim under CPR 38 or CPR 21.10; (2), if so, whether such permission should be granted; and (3) if permission is required and I refuse that permission, whether to grant

or refuse permission to apply for judicial review, including whether to dismiss the claim as totally without merit (TWM) and any ancillary matters if I do reach that conclusion, including whether to make a civil restraint order under CPR 3.11 ('CRO').

(1) Whether the Court's permission is required to discontinue the claim

41. Discontinuance of a claim for judicial review is governed by the same civil procedure rules that apply to ordinary proceedings as set out in CPR 38: see Administrative Court Guide 2025, s. 24.3. The Court's permission to discontinue proceedings is not required unless the claimant has obtained an interim injunction or a party has given an undertaking to the Court (CPR 38.2) or, as here, the claim is brought on behalf of a protected party, in which case the Court may need to give its approval: see para 45, below. Discontinuance is effected by the claimant filing and serving a notice of discontinuance in Form N279. In those cases that do not require the Court's permission, discontinuance takes effect and the claim is brought to an end on the date of service upon the defendant: CPR 38.5. Unless the Defendant brings an application to set aside the notice of discontinuance within 28 days under CPR 38.4 the proceedings are at an end, save in relation to the issue of costs which I consider at para 52, below.
42. Where the court's permission to discontinue is required the relevant factors for the Court to take into account were considered by the Court of Appeal in *Stati v. Republic of Kazakhstan (No. 2)* (CA) [2019] 1 WLR 897, [29]. These include (a) a claimant's desire to bring proceedings to an end should be respected, not least because a claimant cannot be compelled to prosecute a claim; (b) the court's substantive and procedural objective is to achieve a just result according to law and to limit costs to those proportionate to the case; (c) that the court had to consider all the circumstances, not merely those concerning only one party; (d) that conduct was relevant, particularly that aimed at abusing or frustrating the court's process or securing an unjust tactical advantage, although such conduct is by no means exclusive. There may be good reason for the proceedings to be dismissed rather than discontinued, for example because a judgment to that effect will bring finality to the proceedings that discontinuance may not or because it may be of indirect benefit for the defendant as regards third parties to show that the claims were dismissed and not merely discontinued: *Vale SA v Steinmetz* [2022] EWHC 343 (Comm), [6-8]. Other examples may be envisaged where it may be preferable to dismiss the claim rather than permit it to be discontinued: if the claimant has a history of purporting to discontinue the claim, only later to withdraw that discontinuance, an order dismissing the claim with reasons may insure against the claimant later seeking to reinstate the claim; or where the claim is so unarguable as to be totally without merit or where the claimant has brought or conducted a claim in such a way as to amount to an abuse of process, it is in the interests of justice that should be recorded so that consideration can be given to the making of a civil restraint order under CPR 3.11.
43. As I have explained, where the Court's permission is not required for discontinuance the option of dismissal instead of discontinuance is not available. That is the case however strong the reason there may be for dismissing rather than discontinuing the claim. The 'right to discontinue a claim' in CPR 38.1 is subject only to the express exceptions in CPR 38.2. In my judgment the Claimants do not require permission to discontinue the claim under CPR 38.2.

44. The Court does have the jurisdiction to set aside a Notice of Discontinuance, although only where the defendant has made an application under CPR 36.4. The relevant factors to be taken into account by the Court in deciding whether to permit such an application are the same as those to be applied in deciding whether to grant permission to discontinue where that is required: *Stati v. Republic of Kazakhstan (No. 2)*, *ibid*, [29]. No application to set aside has, however, been made by the Defendant.
45. That is not the end of the matter. The claim is brought by the Litigation Friend on behalf of the Claimants, her children, and is therefore governed by the rules for children and protected parties in CPR 21. CPR 21.10 provides that
- (1) Where a claim is made – (a) by or on behalf of a child or protected party; or (b) against a child or protected party, no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.
46. Where discontinuance of a claim constitutes the ‘settlement’ or ‘compromise’ of a claim then the Court’s approval will be required under CPR 21.10 even if it is not required under CPR 38.2. However, “*the mere discontinuance of a claim by*” a child or protected party under CPR does not require the approval of the Court; only if the discontinuance “*amounts to a settlement or a compromise of his claim*” is approval required under CPR 21.10(1). A distinction is to be drawn between “*those claimants who served notices of discontinuance pursuant to an agreement with the relevant defendant settling or compromising their claims, and those who served notices of discontinuance otherwise than on agreed terms*”. Only the former will require the Court’s approval: *Sayers v Smithkline Beecham PLC* [2005] PIQR P8, Keith J, [25-26], cited in *White Book 2025*, para 21.10.7.
47. In the present case the notice of discontinuance was issued unilaterally and not pursuant to any agreement between the parties to settle the matter. It follows that the Court’s approval for the discontinuance of the Claimant’s claim is not required under CPR 21.10.
48. In consequence, a valid Notice of Discontinuance having been filed and served, discontinuance took effect on the day the Notice was served on the Defendant, namely 5 January 2026. The Court has no further jurisdiction in the matter other than in relation to the issue of costs.
- (2) Permission to discontinue the claim/ permission to apply for judicial review/ ancillary matters
49. I reach that conclusion with some regret because this is a case where, if permission or approval to discontinue the claim was required under CPR 38.2 or 21.10 or an application had been made to set aside the Notice of Discontinuance, there are good public interest reasons for dismissing the claim rather than permitting its discontinuance. The Litigation Friend’s conduct in this and the other claims to which I have referred, as set out above, has been unreasonable and has caused substantial costs to be incurred by the Defendant and significant expenditure of Court resources, both

judicial and administrative. The Litigation Friend has: (i) failed to comply with the Pre-Action Protocol for Judicial Review, the CPR and Court orders; (ii) brought applications that have been dismissed as totally without merit; (iii) purported to withdraw or discontinue the claim, only to then 'withdraw' the withdrawal or discontinuance; failed to respond to reasonable requests from the Court for updates on her case; (iv) persistently complained of failures by the Court to make 'reasonable adjustments', notwithstanding findings by both the High Court and the Court of Appeal that the special measures adopted have been quite adequate, both in principle and in practice, to provide the Litigation Friend with reasonable adjustments and to ensure a fair hearing of the claims which the Litigation Friend has then either ignored or sought to appeal, and those appeals have either been dismissed or have not been pursued; (v) and made unwarranted complaints against court staff and members of the judiciary. The Litigation Friend now seeks to discontinue the claim, not because of a recognition that it is without merit but because the Litigation Friend asserts the refusal of the Court to grant her additional 'reasonable adjustments' is a breach of her and her children's right to a fair trial, a position which flies in the face of the orders and rulings made in this case. There is clearly a significant risk that the Litigation Friend will bring further applications either to restore these proceedings or to raise the same or similar unfounded allegations in other proceedings.

50. Furthermore, I accept the Defendant's argument set out in their original Summary Grounds of Defence that the claims are without merit. An amendment to a EHCP is permitted by Regulation 28 of the 2014 Regulations and brings with it a fresh right of appeal under s 51(3) of the 2014 Act: see *Essex CC v FA* [2019] UKUT 38 (AAC), [15]. The Claimants therefore had an alternative remedy to judicial review which they should have pursued, a fact that would have been drawn to the Litigation Friend's attention by the Defendant had the Pre-Action Protocol been complied with. Permission to apply for judicial review would have been refused on that basis alone: I have not gone on to consider any of the other objections to the grant of permission. The alternative remedy point is so clear that the claim was bound to fail and was therefore totally without merit.
51. In those circumstances, to ensure finality of these claims and to guard against further unjustified applications and allegations I would have been strongly inclined to the view that the proceedings should be dismissed rather than discontinued. Had I then refused permission or allowed the Notice of Discontinuance to be set aside I would have dismissed the application for permission to apply for judicial review as totally without merit and would have referred the matter to a full-time judge of the Administrative Court for consideration as to whether a general civil restraint order should be made. Although by virtue of CPR 38.7 the Claimant will not be permitted to bring another claim arising out of the same or similar facts without the permission of the Court, the Claimant's case may well have called for a civil restraint order having wider effect than that. That course of action is not available to me. I can nevertheless record my concerns in this written judgment. I am satisfied that the Litigation Friend's conduct would be relevant if consideration is given to the making of a civil restraint order in future.

(3) Costs

52. The Court does retain jurisdiction in relation to costs. There are significant costs consequences of discontinuance. The Defendant has made no positive application for costs but observes that, by filing a notice of discontinuance, the Claimant is liable for

the Defendant's costs up until that date unless the Court orders otherwise: CPR 38.6(1). As the Administrative Court Guide 2025 makes clear at s. 24.3.6: 'The claimant may apply to reverse the general rule that he or she is liable for costs. Any such application must demonstrate a good reason for departing from the general rule. A good reason may exist if the defendant has behaved unreasonably. Any such application must be made in accordance with the interim applications procedure'.

53. The Claimants have made no application for the Court to make a different costs order. I have had regard to the fact the Litigation Friend is unrepresented, that she is disabled and the need to make reasonable adjustments to ensure fairness. However, the fact the Litigation Friend is a litigant in person does not exempt her from compliance with the CPR and Practice Directions: Administrative Court Guide, 4.2.1. The Administrative Court Guide is designed to be accessible to litigants in person and I must assume the Litigation Friend is aware of the costs consequences of discontinuing the claim under CPR 38.2.
54. The Litigation Friend must also be taken to be aware of her personal liability to pay a costs order made against the Claimants by virtue of CPR 21.12, not least as she signed a 'certificate of suitability of litigation friend' on 30 May 2023 which contains a statement as follows: 'I undertake to pay any costs which the above named claimant may be ordered to pay in these proceedings subject to any right I may have to be repaid from the assets of the claimant'. In her statement dated 5 January 2026 the Litigation Friend recognises that the costs of the Defendant are 'highly likely to be passed on to me by way of a costs order'.
55. In those circumstances the Claimant (and therefore the Litigation Friend) is ordered to pay all the Defendant's costs of the claim, not simply the cost of preparing the acknowledgment of service and summary grounds on a *Mount Cook* basis, to be assessed if not agreed. The Defendant accepts that, given the Litigation Friend's circumstances, that order should not be enforced without the Court's permission and I so order.