Upper Tribunal for Scotland

2026UT74
Ref: UTS/AP/25/0108

DECISION OF

Lady Carmichael

ON AN APPEAL
IN THE CASE OF

RS
per Govan Law Centre

<u>Appellant</u>

- and -

South Lanarkshire Council

<u>Respondent</u>

FTS Case Reference: FTS/HEC/AR/25/0059

15 September 2026

Appellant: Mr Mike Dailly, Solicitor Advocate, Govan Law Centre
Respondent: Mr David Anderson, Advocate

<u>Decision</u>

The Upper Tribunal for Scotland refuses the appeal and upholds the decision of the First-tier Tribunal for Scotland.

Reasons

Introduction

1. The appellant is the mother of a four-year old boy ("the child"), who has additional support needs within the meaning of section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act").

2. The appellant made a reference to the First-tier Tribunal for Scotland ("FTS"). She contended that the respondent education authority had failed to comply with its "transition" duties under the 2004 Act. The context was one in which the child was in a nursery class at a primary school. He was said to be starting primary school in August 2025.

3. The complaint was that the education authority had failed to meet its duties regarding the transition of the child to primary school. The tribunal form that the appellant completed had a section relating to failures on the part of the education authority in relation to "post-school transitions". The appellant ticked a series of boxes indicating that the education authority had not

   (a) provided appropriate agencies with information about the child's additional support needs and leaving date at least 6 months beforehand;
   (b) considered what provision was needed for the child on ceasing school education other than provisions relating to school education;
   (c) taken account of information provided by the appellant or the child;
   (d) contacted the appropriate agencies for information regarding additional support needs for the child in relation to his intended destination at least 12 months before the child had left school.

   As is immediately apparent, the language of the form was tailored to complaints about failures to take particular steps in relation to transitions taking place when a child came to the end of school education. In a free text part of the form the appellant provided further specification. She wrote that she had made requests to the education authority for transition planning for the child to take place as he moved to primary school. She referred to the duties in section 13(2) of the 2004 Act. She described her complaint and the remedy she sought in the following way:

   > "[The child] is currently attending [named school] Primary School Nursery. He is due to transition to [same school] Primary School for his primary education. [The child] has a [co-ordinated support plan].

> The Local Authority have not determined which class at [named school] that [the child] will attend. Consequently, professionals have been unable to visit the class to advise on the supports and strategies required to support [the child's] attendance. No plan has been devised for [the child's] inclusion at unstructured times like break and lunch. The Appellant's views have not been considered as the discussions of transitions have not taken place. A Personal Care plan needs to be devised to allow for [the child] to use the toilet when at school.
>
> The remedy being sought is for the Tribunal to instruct the Local Authority to undertake their transitions duties. For a class to be identified for [the child], for them to consider the advice of professionals following their visit to the specified class, for a meeting to be held for parents to give their views, and for all relevant documents to be devised."

4. The FTS identified as a preliminary issue the question whether it had jurisdiction to determine a dispute over an alleged failure to comply with the duties in section s 12(5)-(6) and 13 of the 2004 Act where that alleged failure did not relate to the post-school transition of a child or young person. It answered that question in the negative and dismissed the reference.

5. The FTS granted permission to appeal on the two grounds now before this tribunal.

6. By the time of the appeal to this tribunal the child had started at primary school. Although there was no longer a live dispute between the parties in respect of which the appellant sought a remedy, I was satisfied that I ought to determine whether the FTS had been correct to determine that it had no jurisdiction. I was told that Mr Dailly was aware of other parents who had wished to bring references on a similar basis, but who had not done so, on the basis "received wisdom" that it was not possible to do so. It would be in the public interest for the point to be decided. Mr Anderson did not seek to dissuade me from determining the question of jurisdiction, but was concerned to avoid a remittal to the FTS. In the event that I allowed the appeal, I should remake the decision so as to find that the FTS had jurisdiction, and otherwise dismiss the reference. Mr Dailly agreed that that would be the appropriate disposal in the event that his appeal succeeded.

7. The appellant's submissions raised issues about the compatibility of provisions of the 2004 Act with the rights protected by the European Convention on Human Rights ("ECHR") and with the UNCRC requirements as defined in the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 ("the 2024 Act"). The appellant submitted that a particular reading of section 18(3)(g) of the 2004 Act was necessary in order to achieve compatibility with the Convention rights and the UNCRC requirements. It followed that in the event such a reading was not possible, the position of the appellant would be that an incompatibility arose. Intimation was provided to the Lord Advocate,

the Commissioner for Children and Young People in Scotland and the Scottish Commission for Human Rights. None wished to make submissions in the appeal.

Statutory provisions

8. Sections 12 and 13 of the 2004 Act provide, so far as material:

"12(5) Every education authority must–

(a) no later than 12 months before the date on which any child or young person–

(i) having additional support needs, and

(ii) for whose school education the authority are responsible, is expected to cease receiving school education, or

(b) where the education authority become aware that the child or young person is to cease receiving school education less than 12 months before that date, as soon as reasonably practicable after they become so aware, comply with the duty in subsection (6).

(6) That duty is a duty to–

(a) request from such appropriate agency or agencies as the authority think fit (if any) such information as the authority consider appropriate concerning any provision which the agency is or, as the case may be, the agencies are likely to make for the child or young person on ceasing to receive school education,

(b) where the authority make a request under paragraph (a), seek the views of–

(i) in the case of a child, that child (unless the authority are satisfied that the child lacks capacity in relation to a view) and the child's parent, or

(ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity to express a view, the young person's parent, and

(c) take account of–

(i) any information provided by any appropriate agency or agencies pursuant to a request under paragraph (a),

(ii) any views expressed by the child or young person or the child's or young person's parent pursuant to paragraph (b), and

(iii) any provision which the education authority themselves are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education, in considering the adequacy of the additional support to be provided for the child or young person during the period before the child or young person ceases to receive school education.

13(1) Every education authority must–

(a) no later than 6 months before the date on which any child or young person–

(i) having additional support needs, and

(ii) for whose school education the authority are responsible, is expected to cease receiving school education, or

(b) where the education authority become aware that the child or young person is to cease receiving school education less than 6 months before that date, as soon as reasonably practicable after they become so aware, comply with the duty in subsection (2).

(2) That duty is a duty–

(a) to provide such appropriate agency or agencies as the authority think fit (if any) with the information specified in subsection (3), and

(b) to–

(i) consider what (if any) provision the authority are, in the exercise of any of their functions other than their functions relating to education, likely to make for the child or young person on ceasing to receive school education, and

(ii) for that purpose, take into account any information specified in subsection (3).

(3) The information referred to in subsection (2) is–

(a) information as to the date on which the child or young person is expected to cease receiving school education, and

(b) such other information as the authority consider appropriate concerning the child or young person and the additional support needs of the child or young person.

(4) Every education authority must, when any such child or young person as is referred to in subsection (1) ceases to receive school education, inform such appropriate agency or agencies as the authority think fit of that fact as soon as reasonably practicable.

(4A) In relation to the provision of any information under subsection (2)(a) or (4) in the case of a child, the education authority must seek and take account of the views of the child (unless the authority are satisfied that the child lacks capacity in relation to such a view).

(5) Information is to be provided under subsection (2)(a) or (4) only with the consent of–

(za) in the case of a child who has attained the age of 12 years and who the authority is satisfied has capacity to give consent, the child,

(a) in the case of any other child, the child's parent,

(b) in the case of a young person–

(i) the young person, or

(ii) where the education authority are satisfied that the young person lacks capacity to give consent, the young person's parent.

(6) The Scottish Ministers may by regulations make provision for the taking by education authorities of specified action in connection with the occurrence or likely occurrence of specified changes in the school education of children and young persons–

(a) having additional support needs, and

(b) for whose school education the authorities are responsible.

(7) Regulations under subsection (6) may, in particular, make provision–

(a) for the disclosure by the authorities of specified information about such children or young persons–

(i) to specified persons or persons of specified descriptions,

(ii) subject to specified conditions,

(b) for such information to be disclosed, or any other action taken, by specified times.

(8) In subsections (6) and (7), "specified" means specified in regulations under subsection (6)."

9. Section 18 provides;

"18(1) Any of the persons specified in subsection (2) may refer to the First-tier Tribunal any decision, failure or information specified in subsection (3) relating to any child or young person for whose school education an education authority are responsible.

…

(3) The decisions, failures and information referred to in subsection (1) are –

(g) failure by the education authority to comply with their duties under section 12(6) and 13 in respect of the child or young person (except where consent for information to be provided under section 13(2)(a) or (4) has not been given under section 13(5).

19(1) This section specifies the powers of the First-tier Tribunal in relation to a reference made under section 18.

…

(3) Where the reference relates to a failure referred to in section …(g) of that section, the First-tier Tribunal may require the education authority to take such action to rectify the failure as the First-tier Tribunal considers appropriate by such time as the First-tier Tribunal may require."

Subsection 18(3)(g) was added by amendment introduced by section 19 of the Education (Additional Support for Learning) (Scotland) Act 2009 ("the 2009 Act").

10. The Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005 ("the 2005 regulations") were made in exercise of the powers conferred by section 13(6) and (7) of the 2004 Act. They provide, so far as material in this case,

"2. The following changes in the school education of children and young persons are specified changes for the purposes of section 13(6) of the Act:

…

(b) where a child begins to receive primary education;

…

3(1) Every education authority must–

(a) no later than twelve calendar months (or, in respect of a child under school age, as referred to in regulation 2(a), no later than six calendar months) before a child or young person is likely to have a change in school education, as specified in regulation 2; or

(b) where the education authority only become aware that there is likely to be such a change in school education less than twelve calendar months before the likely occurrence of that change (or, in respect of such a child under school age, less than six calendar months before the likely occurrence of that change), as soon as reasonably practicable after they become so aware, take the action specified in paragraph (2).

(2) That action is action to–

(a) seek relevant advice and information from such appropriate agencies and other persons as the authority think appropriate;

(b) subject to paragraph (4) below, where the authority seek advice and information under paragraph (a), seek and take account of the views of–

(i) in the case of a child, the child (unless the authority are satisfied that the child lacks capacity to express a view) and the child's parent; and

(ii) in the case of a young person, that young person or, if the authority are satisfied that the young person lacks capacity to express a view, the young person's parent; and

(c) take account of any relevant advice and information provided by any appropriate agency or other person pursuant to seeking it under paragraph (a) above, in making appropriate arrangements for each such child or young person before that change in school education takes place.

(3) Advice and information is relevant for the purposes of paragraph (2) above if it is likely to assist the education authority in–

(a) establishing the additional support needs of the child or young person;

(b) determining what provision to make for such additional support as is required by the child or young person; or

(c) considering the adequacy of the additional support provided for the child or young person.

(4) In making appropriate arrangements for each such child or young person before that change in school education takes place, the duty described in sub paragraph 2(b) above shall apply only in relation to such children and young persons as the authority consider appropriate.

(5) This regulation is without prejudice to section 4(1)(b) of the Act.

4(1) Every education authority must–

(a) no later than six calendar months (or, in respect of such a child under school age, no later than three calendar months) before a child or young person is likely to have such a change in school education; or

(b) where the education authority only become aware that there is likely to be such a change in school education less than six calendar months before the likely occurrence of that change (or, in respect of such a child under school age, less than three calendar months before the likely occurrence of that change), as soon as reasonably practicable after they become so aware,

consider what appropriate agencies may require the information referred to in paragraph (2) below to enable such agencies to make arrangements for the provision of additional support for that child or young person following that change in school education, and provide such agencies with such information.

(2) The information referred to in paragraph (1) above is–

(a) information as to the date on which the child or young person is likely to have such a change in school education;

(b) information on the additional support needs of the child or young person; and

(c) information on the additional support provided to the child or young person during the six months (or, in respect of such a child under school age, during the three months) immediately prior to the authority providing the information to the appropriate agency.

(3) Where an authority provide such information to an appropriate agency the authority shall at the same time send copies to–

(a) in the case of a child, the child's parent,

(b) in the case of a young person, the young person, or if the authority are satisfied that the young person lacks the capacity to understand the information provided, the young person's parent.

(4) Information is to be provided under paragraph (1) above only with the consent of–

(a) in the case of a child, the child's parent,

(b) in the case of a young person, the young person, or if the authority are satisfied that the young person lacks capacity to consent, the young person’s parent.”

Appellant’s submissions

11. The FTS ought to have read the word “and” in section 18(3)(g) of the 2004 Act as “and/or”. Such a reading was required by virtue of section 3 of the Human Rights Act 1998 in order to render the provision compatible with Article 6 of the ECHR, and Article 6 read with Article 14. That interpretative obligation was a powerful one: *Re A* [2001] UKHL 25, Lord Steyn, paragraph 44; *Ghaidan v Godin-Mendoza* [2004] UKHL 30, [2004] 2 AC 557.

12. The reading adopted by the FTS failed to provide the appellant with an accessible and effective remedy in the form of a reference to the FTS. The Scottish Ministers had made the 2005 regulations under section 13(6) of the 2004 Act. The FTS’s approach meant that the appellant could not have the rights conferred on her child by the 2005 regulations determined by an independent and impartial tribunal. It resulted in discrimination against

younger children; only children over the age of 16 had access to the FTS in relation to failures by education authorities to fulfil "transition" duties.

13. It was necessary to have practical and effective access to a tribunal. Access to judicial review in the ordinary courts was not a substitute for access to the FTS: *Kingsley v United Kingdom* (2009) 48 EHRR 18. In *Kingsley,* quashing a decision and remitting to the original decision maker would not have cured a lack of impartiality on the part of the original decision-making body.

14. The reading adopted by the FTS was also incompatible with the right of the child to be taught at a school in a manner which understood his disability: UNCRC Article 23, General Comment 27. This tribunal was obliged to construe section 18(3)(g) consistently with the UNCRC requirements: section 24, 2024 Act.

Respondent's submissions

15. The appeal was misconceived. The construction on which the FTS relied did not proceed on the basis that the FTS was without jurisdiction unless breaches of both sections 12(6) and 13 of the 2004 Act were present. What the appellant sought to establish was that the reference to the duties section 13 in section 18(3)(g) included a reference to duties imposed by regulations made under section 13.

16. Article 6 EHCR was not engaged. Where a wide measure of discretion was provided to a public authority, as it was to an education authority under the 2005 regulations, that did not give rise to a civil right: *Beggs v Scottish Ministers* 2022 SC 227, paragraphs 26 and 27, and authorities cited there. Judicial review was in any event an effective remedy in relation to the unlawful exercise of discretion by a public authority.

17. The arguments as to the need to construe section 18(3)(g) were not before the FTS, and a failure to consider those arguments was not, therefore an error of law: *Fox v Assessor for Lothian Valuation Joint Board* 2025 UT 102, Sheriff Craig, paragraph 30.

Decision

18. Dealing first with the argument to which I have just referred, I am satisfied that if the appellant were to succeed in the arguments she now makes, she would have established an error of law on the part of the FTS.

19. In *Fox* the appellant sought to introduce for the first time, in an application for permission to appeal to the Upper Tribunal for Scotland, the contention that he had not received a valuation notice. That raised an entirely new issue of fact not brought to the attention of the FTS. It is unsurprising that Sheriff Craig refused permission to appeal.

20. In the present case, the argument has always been one about construction of section 18(3)(g) of the 2004 Act. The appellant relies on statutory provisions about interpretation (section 3 of the 1998 Act and section 24 of the 2004 Act) to which she did not refer before the FTS. They require that statutory provisions of specified types be read in particular ways. The references to the 1998 Act and the 2024 Act are additional arguments said to support the construction for which the appellant contends.

21. It is in any event competent for appellate tribunals to entertain grounds of appeal not argued at first instance, but they should be slow to do so where additional findings of fact are required, and should not do so if unfairness results: *Advocate General for Scotland v Murray Group Holdings Ltd* 2016 SC 201, paragraph 39. The proper construction of section 13(3)(g) is a question of law. No additional findings of fact are required. The appellant provided notice of them in her grounds of appeal, in respect of which the FTS granted permission. Both parties were prepared to argue the points.

22. The plain meaning of section 18(3)(g) is it confers jurisdiction on the FTS only in relation to the duties imposed on education authorities by section 12(6) and 13 of the 2004 Act.
The appellant's complaint is that she has been unable to refer to the FTS a failure to carry out the duties imposed on the education authority by regulations 3 and 4 of the 2005 regulations. Such a reference would require the reference to section 13 in section 18(3)(g) to be read as including duties imposed by regulations made under section 13. The plain meaning of the words selected by the legislature excludes such a reading.

23. That construction is supported by the legislative history. Section 18(3)(g) post-dates the 2005 regulations, and if the Scottish Parliament had intended to confer a jurisdiction in relation to failures to carry out the duties imposed by that regulation, it would have done so by reference to those regulations. The construction is consistent with the terms of the Explanatory Notes to section 19 of the 2009 Act, which refers to "post-school transitions".

24. The appeal proceeds on the erroneous basis that the FTS reasoned that its jurisdiction was engaged only when there was a failure in the duty set out in section 12(6) and the duty set out in section 13. That was not the basis of the decision of the FTS. It considered whether the reference to section 13 in section 18(3) included a reference to duties arising under the 2005 regulations.

25. Nothing turns, or could turn, on any failure by the FTS to read the word "and" as "and/or". The provisions of sections 12(6) and 13 of the 2004 Act which impose duties on education authorities, whether the sections are read together or separately, are concerned with the point in time when a child or young person is expected to cease receiving school education. The duty in section 12(6) is to seek information and views, and take account of those. The duty discussed in section 13(1) to (5) is to provide other agencies with information. Reading

"and" as "and/or" would not give rise to a construction that would assist the appellant's case.

26. I have considered whether Article 6 of the Convention is engaged. The concept of civil rights and obligations is an autonomous one deriving from the Convention. The fact that a legal provision affords an element of discretion does not necessarily exclude the possibility that it creates a civil right. Article 6 does, however, presuppose a dispute that is directly decisive for a private right. A civil right need not be one arising in a dispute between private individuals. Provisions regulating the relationship between citizen and state may give rise to civil rights.

27. The appellant referred to *Mutu and Pechstein v Switzerland*. One of the issues in that case was whether Article 6 ECHR was applicable *ratione materiae* to disputes about (a) an arbitral award requiring one applicant to pay damages to a football club; and (b) the confirmation of the other applicant's suspension in the conduct of a disciplinary process before a professional body, affecting the right to carry out an occupation. The court considered also whether arbitral processes required to afford the safeguards required by Article 6, and distinctions between voluntary and compulsory arbitration processes. Article 6 rights may be waived by voluntary submission to arbitration. Mr Dailly referred to paragraphs 94-96, which relate to the use of arbitral tribunals dealing with specific issues of various types. The decision does not assist in the present case. The domestic law, in the form of the 2005 regulations, does not deal with rights of either of the types identified in *Mutu and Pechstein*. There is no question of waiver of Article 6 rights in the present case, if Article 6 were engaged.

28. The 2005 regulations do impose duties. The legislature has characterized as duties the steps that education authorities are enjoined to take under sections 12(6) and 13 of the 2004 Act: section 18(3)(g). There is no reason to regard the steps that they are enjoined to take under the 2005 regulations in any other way. The regulations are intended to ensure that education authorities gather and share information to inform decision-making about the education of children and young persons with additional support needs. When one examines the content of those duties further, however, they do not create clearly defined and obviously enforceable private rights. The duty under regulation 3(1)(a) is to "seek relevant advice and information from such appropriate agencies and other persons as the authority think appropriate". That under regulation 3(1)(c) is to "take account of any relevant advice and information provided by any appropriate agency or other person pursuant to seeking it under paragraph (a) above, in making appropriate arrangements for each such child or young person before that change in school education takes place".

29. *Masson and Van Zon v The Netherlands* (15346/89) (1996) 22 EHRR 491, cited in *Beggs* at paragraph 26 concerned a domestic law which provided that in given circumstances various specified expenses "shall" be refunded to a former suspect. A duty was thereby

imposed on the State to reimburse sums if the applicable conditions were met. In relation to damage not covered by those provisions, a further section provided that the competent court "may" award compensation if of the opinion that "reasons in equity" existed for doing so. The Strasbourg court held that the grant to a public authority of such a measure of discretion indicated that no actual right was recognized in domestic law: paragraph 51.

30. It is difficult to construct from regulations 3 and 4 of the 2005 regulations a private right belonging to a parent, child or young person. Rather, the education authority is directed to carry out a number of evaluative processes. They are to evaluate which agencies or other persons to ask for relevant advice and information. Advice and information are relevant if they are likely to assist the authority in relation to the matters set out in regulation 3(3). The authority is then to take into account any relevant advice and information in making "appropriate" arrangements for the child or young person before the change in school education takes place. So far as regulation 4 is concerned, the education must "consider what appropriate agencies" may require specified information about the child or young person, and provide such agencies with such information. The education authority is afforded a wide measure of discretion as to how to carry out the duties to gather and impart information. In order to decide what to do, they require to carry out evaluative exercises. Against that background, in my opinion, the provisions do not give rise to civil rights within the autonomous Convention, meaning of that expression. Article 6 is not engaged, and the issue raised by the appellant does not fall within the ambit of Article 6.

31. It follows that there is no need for me to consider whether the potential availability of judicial review for a failure to carry out a statutory duty would have complied with the requirements of Article 6. Similarly, I do not require to consider whether the provision of access to the FTS to those ceasing school education, and the lack of access to it for those at points of transition to primary or secondary education, constituted discrimination on the basis of age. I observe that in the absence of the Lord Advocate, there was no party in these proceedings in a position to offer any justification that there might have been for that distinction.

32. So far as the appellant's argument based on the UNCRC requirements is concerned, her submission did not engage in detail with any particular provision of Article 23, which provides:

> "23.1 States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.
>
> 2 States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is

made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

> 3 Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

> 4 States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries."

33. The appellant did not produce General Comment 27 in her authorities, or refer specifically to any of its content in submissions. I note that Draft General Comment 27, published on 31 January 2024, is on children's rights to access to justice and effective remedies for violations of children's rights. The call for submissions on the draft closed on 30 June 2025.

34. The 2005 regulations require education authorities to gather and share information to inform appropriate arrangements for the education of children with special needs, by reference to identified periods of transition in their education. They may be viewed as directed at supporting the provision of education in a manner conducive to the child's achieving the fullest possible social integration, and individual development, in accordance with article 23.3 UNCRC. There is nothing in article 23 which obviously requires the construction of section 18(3)(g) for which the appellant contends. According to the public website of the United Nations, the document is still in draft, and the process under rule 77 of the Rules of Procedure of the Committee on the Rights of the Child is not complete. It would therefore not be appropriate to use it to construe article 23: section 4(3), 2024 Act.

35. I am satisfied that the FTS was correct to find that it had no jurisdiction in relation to the reference, and refuse the appeal.

A party to this case who is aggrieved by this decision may seek permission to appeal to the Court of Session on a point of law only. A party who wishes to appeal must seek permission to do so from the Upper Tribunal within ***30 days*** *of the date on which this decision was sent to him or her. Any such request for permission must be in writing and must (a) identify the decision of the Upper Tribunal to which it relates, (b) identify the alleged error or errors of law in the decision and (c) state in terms of section 50(4) of the Tribunals (Scotland) Act 2014 what important point of principle or practice would be raised or what other compelling reason there is for allowing a further appeal to proceed.*

Lady Carmichael
Member of the Upper Tribunal for Scotland