



Additional Support Needs

List of witnesses

Witness A. Depute Head Teacher of School A

Witness B, Educational Psychologist

Witness C, privately employed support worker for the child

The appellant

1. Reference:

The appellant made a reference to the Tribunal in terms of Section 18(3)(b) of the Education (Additional Support for Learning) (Scotland) Act 2004 as amended (“the Act”). The Education Authority (“the Education Authority”) determined in June 2024 that child does not require a Co-ordinated Support Plan (CSP). The appellant appeals against this decision.

2. Decision:

The Tribunal confirms the decision of the respondent and refuses the Reference in terms of Section 19 (2) of the Act.

3. Management of the Process

The Reference to the Tribunal was dated August 2024. The reference was conjoined with case reference FTS/HEC/AR/23/0057, a placing request involving the same parties by way of direction dated September 2024.

Both parties lodged witness statements and there was an agreed joint minute of admissions.

4. Summary of Process

The tribunal had full regard to the bundle of papers lodged (T001-T059, A001-A030 and R001-R037).

Witness statements were provided of the appellant and witness C.

The respondent provided witness statements for witness A and witness B.

The Tribunal thereafter heard oral evidence from:-

1. Witness A, Depute Head Teacher of School A
2. Witness B, Educational Psychologist
3. Witness C, privately employed support worker for the child
4. The Appellant

Both parties thereafter provided written submissions. The tribunal thereafter reserved their decision.

5. Findings in Fact:

1. The appellant is the mother of the child.
2. The child is a 12 year old girl with a diagnosis of Autism Spectrum Disorder (“ASD”) with associated social, emotional and behavioural needs.
3. The child has Additional Support Needs (“ASN”) in terms of Section 1 of the Education (Additional Support For Learning) (Scotland) Act 2004 (“the 2004 Act”).
4. The appellant made a formal request for a Coordinated Support Plan (“CSP”) for the child to the respondent. This was refused in June 2024.
5. In terms of Section 2(a) of the 2004 Act, the respondent is responsible for the child’s education.
6. In terms of Section 2(b) of the 2004 Act, the child has additional support needs arising from complex factors, in particular, Autism Spectrum Condition and language difficulties.
7. In terms of Section 2(c) of the 2004 Act, the child’s additional support needs are the result of Autism Spectrum Condition. This has been ongoing for over a year and will be lifelong.
8. An educational psychologist, witness B, has been involved in the child’s case and in gathering evidence for the placing request for school B and carrying out investigations and assessments for the CSP request. Witness B also attends meetings about the support being provided to the child within school A.

9. Witness B also attends meeting about the supporting being provided to the child within school A.
10. The Additional Support for Learning Service (“ASLS”), which forms part of the respondent’s functions as an education authority, provides support to the child.
11. The appellant previously self-referred the child to occupational therapy. Occupational therapy provided strategies to school A, but there is no current involvement from them.
12. The child has been assessed by a private speech and language therapist. Document A005-A009 is a copy of the report produced following this assessment.
13. The child has been assessed as having significant difficulties in how she understands language and in relation to her expressive language. When assessed, her scores fell outside the average range.
14. The NHS Speech and Language Therapy (“SALT”) team provided advice to SFPS and school A around the child’s transition.
15. Neither NHS SALT nor private SALT provide ongoing support to the child. They are available to give advice on strategies to the school or the appellant, should that be required, on a consultative basis.
16. The child spends four hours per week during school time, and eight hours per week during school holiday periods, with a personal assistant (“PA”) (Witness C). Witness C is employed privately by the appellant.
17. The child’s support is funded using money provided by the child’s Self-Directed Support (“SDS”) budget. This budget is allocated to the appellant, for the appellant to decide how this should be spent.
18. The child does not have an allocated social worker. The respondent’s social work department’s only involvement with the child is an annual review which relates to her SDS payments. They have no involvement in the educational side of things for the child.

6. Reasons for Decision

The tribunal considered all the documentary and oral evidence and was satisfied that there was sufficient evidence available to the Tribunal to reach a decision on the Reference. The issue is whether or not the child satisfies the terms of Section 2 of the Act and requires a Co-ordinated Support Plan (CSP).

Section 2 of the Act narrates as follows:

2. Co-ordinated Support Plans

(1) for the purposes of this Act, a child or a Young Person requires a plan (referred to in this act as a “Co-ordinated Support Plan”) for the provision of additional support if –

- (a) an Education Authority are responsible for the school education of the child or Young Person,
- (b) the child or Young Person has additional support needs arising from –
 - (i) one or more complex factors, or
 - (ii) multiple factors,
- (c) those needs are likely to continue for more than a year and
- (d) those needs require significant additional support to be provided –
 - (i) by the Education Authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or
 - (ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

It was accepted by the respondents that sub-sections (a), (b) and (c) of section 2(1) of the Act are fulfilled. The matter of contention between the parties was whether or not sub-section (d) of section 2(1) of the Act is met.

7. Witness B

Evidence for the respondent was given by witness B, educational psychologist for the respondent.

Witness B, in his written statement, confirmed that the child had been discharged from CAMHS. Although a referral was made to occupational therapy for assistance for the child, no occupational therapist has been involved in anything to do with the child’s education. The social work department’s only involvement with the child is an annual review. Community paediatrics have not seen the child since a review when she was four years old and are not scheduled to have another one. NHS SALT confirmed there was no plan for any direct work to be carried out with the child.

Witness B was of the view that, in line with the guidance, no significant additional support from the education authority exercising any of their other functions, or from another appropriate agency, was required for the child to engage in education and, accordingly, a CSP was not required.

8. Witness A

Witness A is the depute head teacher at school A. He gave evidence both by way of written statement and orally. His evidence was that the only external supports were from witness B, the educational psychologist and the additional support for learning services. There was no input into the child's education from community paediatric or social work services. SALT were available but only on a consultative basis.

9. The Appellant

The appellant gave evidence in support of the CSP. She confirmed that Speech and Language were not involved but could be on a consultative basis. Additional support for learning services were involved. She self-referred the child to occupational therapy. They have no current involvement. She paid herself for a Speech and Language Therapist. She believes social work are still involved but do not want any involvement in the educational side at the moment.

In terms of evidence, the parties were very much agreed on the evidence and, indeed, much of it had been agreed in the joint minute. There were no issues of credibility or reliability and the evidence of parties on this subject was accepted.

10. Submissions for the Respondent

Both parties helpfully provided written submissions. Both parties also accepted and acknowledged the legislative background in making a decision.

The substance of the respondent's submissions was very much in terms of Section 2(1)(d) of the Act and surrounding reference to the requirement for "significant additional support."

In particular, the respondent made reference to the Code of Practice ("COP") being The Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004 (as amended) Code of Practice 2017. The COP set out that the purpose of a CSP is "to ensure that support is coordinated effectively when at least one service is required from outwith what the education authority provides as part of its educational

functions. It is not enough for the education authority alone to be providing a significant level of additional support for a CSP to be granted. There must be significant involvement from another department of the council to support the child to access education.”

The respondent also made reference to the case of *JT v Stirling Council* [2007] CSIH 52. Reference was made to paragraph 23 of the judgement where it was set out: “...by including this word [significant], the Scottish Parliament intended to add an emphasis to the provision which it would lack of the word were omitted. In our view, this emphasis is best recognised by construing ‘significant’ as importing more than ‘not insignificant’. The next point of which we take note is that ‘significant’ is an adjective which qualifies one or more words. In its immediate context, the words which it qualifies are ‘additional support’. Moreover, the additional support is ‘to be provided’. So the emphasis appears to us to be on the provision rather than on the needs which require is...”

The respondent’s position is that there is no significant involvement from another department in the local authority, nor from any external agencies. Reference was then made by the respondent to (a) the Additional Support for Learning Service (“ASLS”); (b) Speech and Language Therapy (“SALT”); (c) community paediatrics (d) occupational therapy; (e) Child and Adolescent Mental Health Services (“CAMHS”); and (f) social work.

In summary, it could not be said, based on the evidence before the tribunal, that significant additional supports were being provided.

11. Submissions for the Appellant

The appellant also made reference to the case of *JT v Stirling Council*. The appellant’s position was that significant additional support may be provided to a child or young person with additional support needs on an individual basis. It was submitted that, for the child to achieve her educational objectives, she would require additional support from Speech and Language Therapy, which will require coordination with the education authority.

The appellant made reference to the case of *Aberdeenshire Council v CD* [2023] UT 28. In that case, the CSP was refused. It was accepted that the child required significant additional support from the education authority in the exercise of their education functions, however, the additional support the child required from social work and health services was not significant.

The First-Tier Tribunal determined to order that a CSP be prepared. The Upper Tribunal determined the matter differently. As Lady Poole indicated: “My decision is that he FTS ought to have concluded that, in order to meet the criterion in s.2(1)(d) as well as the pupil requiring significant additional support from the education authority, the pupil also had to require significant additional support either from the local authority exercising functions other than education or from one or more agencies.”

This decision did not in any way seek to reverse the case of *JT v Stirling Council* [2007] CSIH 52 which, of course, dealt with the issue of “significant.”

Decision

There is no doubt in this case that the child requires significant additional support at school but it has to go beyond that. There requires to be, as was set out by Lady Poole, significant additional support either from the local authority exercising functions other than education or from one or more appropriate agencies.

That is not the case here. As has been identified by parties and agreed within the terms of the joint minute, there is no involvement from occupational therapy, speech and language therapy, or social work. There is no involvement from paediatric services. It cannot be concluded that there is “significant” involvement from the local authority exercising functions other than education or from one or more appropriate agencies.

As a result, this appeal must fail and the decision of the respondent confirmed.