

DECISION OF THE TRIBUNAL

Reference:R/14/0041

Gender: Male

Aged: 12

Type of Reference: Placing Request

1. Reference:

The appellant ('the Appellant') made a Reference, R/14/0041, on 5th June 2014, under Section 18 (3)(da) of The Education (Additional Support for Learning)(Scotland) Act 2004, as amended by The Education (Additional Support for Learning)(Scotland) Act 2009 [hereinafter referred to as 'the 2004 Act'] against a Decision by The authority ('the Authority') confirmed in writing on 29th May 2014 to refuse a Placing Request made by the Appellant in respect of her son The child (The child), born in 2002. The original refusal Decision of 29th May 2014 was effectively updated by the Authority in light of the change of Authority school, from School A to School B.

2. Decision of the Tribunal:

The Tribunal hereby CONFIRMS the aforementioned Decision of the Authority, first intimated to the Appellant in writing on 29th May 2014 to refuse the Placing Request.

The Tribunal, in terms of Section 19(4A)(a) of the 2004 Act is

- (i) satisfied that one or more of the grounds specified in Paragraph 3(1) of Schedule 2 to the said 2004 Act exist or exists, and

(ii) in all the circumstances it is appropriate to do so.
The Decision of the Tribunal is unanimous.

3. Preliminary Issues:

There was a substantial amount of Late Evidence received in this Reference. The Tribunal sought the views of both parties throughout who both confirmed there was no objection to either party lodging Late Evidence.

In view of the nature of this evidence, representations from parties, their mutual consent and agreement to late lodging, and the said evidence being relevant to this Reference, the Tribunal was satisfied that, in all the circumstances, it would be fair and just to allow all Late Evidence pursuant to Rule 34 of the Rules of The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 as amended by The Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2010 [hereinafter referred to as 'the 2006 Rules'].

The Tribunal itself requested further productions and information during the seven days of evidence to assist their deliberations. We also requested additional witnesses to attend. We thank both Representatives for their very full cooperation in respect of these matters.

All additional Late Evidence was therefore lodged into their respective sections and numbered accordingly within the bundle.

It was agreed in this case that the Authority would lead evidence first.

There were several Case Management Calls leading up to the various hearing days. The Representatives assisted the Convener to manage, wherever possible, the attendance of the witnesses with a view to reducing any avoidable inconvenience to them.

The Tribunal issued a number of Directions/Decisions including the following:

- (a) Direction dated 21st October 2014 in respect of Advocacy Worker and how the Tribunal members would arrange to meet The child and capture his views;
- (b) Costing Direction dated 28th October 2014 inviting written submissions from the parties; and
- (c) Decision and Direction dated 24th December 2014 allowing the Authority to amend their Case Statement in light of the developing circumstances in respect of the breakdown of the placement at School A for The child.

4. Summary of Evidence:

The Tribunal considered a detailed bundle of evidence (including all the Late Evidence). The Tribunal also had careful regard to:

- (a) the Appellant's Case Statements, and
- (b) the Authority's Case Statements in respect of this Reference.

A number of written submissions were also lodged by both parties. We do not intend to list all the documentary productions lodged by both parties.

In addition to the above, the Tribunal heard oral evidence from The appellant and The child. We also noted evidence from:

- (i) Witness A (Quality Improvement Officer, The authority),
- (ii) Witness B (The child's previous Educational Psychologist),
- (iii) Witness C (DHT School A),
- (iv) Witness D (Children and Families Social Worker),
- (v) Witness E (Head of Inclusion and Head of Service East),
- (vi) Witness F (DHT School B),
- (vii) Witness G (Principal Teacher LCR School A),
- (viii) Witness H (The child's current Educational Psychologist),
- (ix) Witness I (Educational Psychologist),
- (x) Witness J (HT School C –now retired),
- (xi) Witness K (Acting HT School C), and

(xii) Witness L (HT School A).

The Tribunal also had the benefit of some additional written statements from the aforementioned witnesses (and others, including Statement A, Acting DHT School B, and Statement B, Inclusion Manager, The authority Education Services).

The Tribunal further considered a range of detailed written submissions from both parties. The Tribunal wish to record their appreciation to Appellant representative and Respondent representative for their written submissions.

After the seventh day of evidence the three members re-convened on 21st March 2015 to consider afresh all of the evidence and the complete sets of written submissions. The members liaised thereafter to finalise the written Decision.

It is not possible or indeed appropriate to record every aspect of our deliberations. The Tribunal spent a considerable amount of time in deliberations and thereafter agreeing the final write-up of this complex and challenging case.

Views of The child:

The Tribunal met with The child on two occasions. He appeared comfortable meeting the Tribunal members. He was a lively chatty boy who engaged throughout both meetings. Partners in Advocacy facilitated and supported both meetings.

The Tribunal arranged to digitally record both sessions. Copies were distributed immediately to both parties.

The child expressed a clear desire

- (i) to attend School C,
- (ii) not to return to School A and
- (iii) not to go to School B.

He explained his reasoning for these choices, together with his likes, anxieties and expectations. The Tribunal attempted to explore a wide range of issues

with The child. For the second session, The child had drawn pictures to represent his feelings and wishes. The Tribunal explored with him the pictures. The child was very communicative in both sessions and appeared to enjoy them. It was a great privilege for the members to meet The child.

The Tribunal also had regard to the Partners in Advocacy Statement at pages T22-T25 of the Bundle.

5. Findings in Fact:

[1] The child (hereinafter referred to as 'The child') is a twelve year old boy who resides with the Appellant, his mother, The appellant. The child is an only child. The child's great-grandmother and great aunt also reside within the family home. His grandmother resides nearby. The child comes from a very caring supportive family and enjoys a comfortable home life. The appellant is a University graduate and is currently attending Stirling University for her MBA, graduating this year. The child was diagnosed with Autistic Spectrum Disorder ('ASD') in 2012. It is not in dispute that The child has additional support needs arising from his ASD. The child and his mother do not see The child as having a disability. The appellant is aspirational for her son and wishes the best for him. She wishes for her son to attend university. The child is a child with academic potential. The appellant made a Placing Request for her son dated 12th May 2014 (submitted on 16th May 2014). This was refused by the Authority on 29th May 2014 in terms of Schedule 2, Paragraph 3(1) (f) of the 2004 Act. The Reference to the Tribunal is dated 5th June 2014.

[2] The Education Authority, The authority, is responsible for The child's school education. The child is currently registered as a pupil at School A High School ('School A'). The Tribunal heard evidence in respect of a number of school placements - primary and secondary provision. In respect of this Placing Request the Tribunal required to consider, due to developments during our live consideration of this Reference, three secondary schools namely School A, ('School C') and School B High School ('School B'). The Tribunal considered all the evidence presented to us. The child has thus far

experienced social, emotional and behavioural difficulties at all of his mainstream school placements.

[3] The child attended School D from 2007 and then School E ('School E') in 2010, when he was 8 yr old. He was diagnosed with Asperger's Syndrome in 2010. The aforesaid schools are Authority mainstream schools. The child moved in 2012 to School F House School ('School F') on a 95% scholarship and remained there for almost two years. This school is an independent mainstream school.

. The child was transported to School F daily. When in P6 The child was in a class of approximately 26 pupils. Transition planning to the senior school at School F was unsuccessful. Towards the end of P7, as a Transitus pupil at School F, The child returned to School E in June 2014 at a time when his peers would be engaging in transition, preparing them for their move to secondary school. It is accepted that The child had positive periods in both School E and School F. The child was placed at S1 at School A School for his secondary school by the Authority. He was placed in the Language Communication Resource (LCR') in August 2014. This is a secondary mainstream school local to The child's home.

Due to the recent transfer from School F to School E, the Authority's normal transition planning did not take place for The child for his secondary school placement. The normal period for transition is one year. Whilst at School A The child did not attend school for a full day. The child absconded from School A when he would return home and would be followed by staff to ensure his safety.

[4] School A is a large building and a large school with a total school roll in the region of 1400 pupils. The LCR actively work towards integration to mainstream. The child has high anxiety regarding large buildings and groups. Arrangements to escort The child through the main school to the LCR did not allay his anxieties. During the period of transition to School A The child was also being introduced to School C which The child understood would be his long term placement. The child expressed concern about seeing former peers from School D at School A as they might remember his outbursts whilst he

attended that primary school. The child does not like being reminded of past difficulties. School A is located in a busy corner of the larger High School.

[5] Whilst attending School A, and during the period the Reference was actively before the Tribunal, there were a number of incidents involving episodes of violence by The child resulting in periods of exclusion for The child. Some of the staff expressed concern about their personal safety during The child's time at School A. The appellant was firmly of the opinion that School A was unsuitable for her son. The child was aware of and shared his mother's view. The child understood his time at School A would be a temporary placement. The child therefore believed he would be attending School C permanently. The child anticipated another period of change moving from School A to School C for his school education.

[6] The child does not like being told what to do. He stated that teachers at School A disagreed with him and he did not like this. He said that everyone agreed with him at School C. The child enjoyed his time at School C. It is accepted that during the visits and taster sessions The child appeared to be happy there. No violent outbursts were reported whilst attending School C.

[6] At the end of November 2014 The child was excluded from School A for a second time. This was for a period of three days. The child did not return to School A thereafter. At a Post Placement Review on 5th December 2014 the professionals involved with The child considered that the placement at School A was proving to be challenging and that additional supports should be considered from within the authority in accordance with the Authority's Planning Pathway Guidelines.

[7] A Post Placement Review took place on 5th December 2014. The Review recommended additional supports and further consideration by a multi-agency group called the Joint Support Team ('JST'). A Joint Support Team Meeting took place on 10th December 2014. The outcome of this multi-agency meeting was that The child would be referred to the City Inclusion Group ('CIG') for consideration of extra support and specifically the extra supervision provided

within School B Language and Communication Resource ('School B'). The recommendation of the CIG was that further additional support was required for The child and that the appropriate support could be provided at School B. A letter offering The child a place at School B was sent by the Authority to the Appellant on 12th December 2014. Accordingly the Tribunal required to consider School B ('School B') as the Authority assessed provider for The child's additional support needs.

[8] Whilst attending School A the Education Authority prepared, reviewed and updated a risk assessment for The child to help support The child's anxieties and communication with a view to increasing his attendance at school. All information gathered about The child whilst attending School A has been passed onto School B. There is an appropriate peer group for The child at School B.

[9] School C is not a public school. It is the specified school. It is a small school. It is an independent special school. The school roll is small – approximately 26 pupils, aged 12-18. The child would have a consistent peer group at School C albeit quite a small one. Two thirds of the pupils there have ASD.

[10] Witness A is a Quality Improvement Officer. She gave evidence for the Authority. She has a strategic overview of the provision available within Glasgow to meet the additional support needs of children and young people, in particular those with language and communication difficulties and ASD. She prepared a report comparing School A with School C. She visited School C. She supported School A for The child. She stated that The child did not require a 24 hour setting for his additional support needs and his education. Whilst not disagreeing that both schools were similar in their approach, she was of the opinion that there were more opportunities at School A for The child. She was of the opinion that the links to peers and the community were better in the long term in School A. She expressed concern about the lack of transition planning for The child thus far. She stated that it would not be in The child's best interests to be away from home. Witness A accepted that

School C do have links in the community but expressed the view that outcomes would be better for The child if he attended provision within the local environment. At the time of giving evidence she stated there were positive signs at School A. The placement broke down after Witness A gave her evidence.

[11] Witness B is an Educational Psychologist who worked with The child within the Authority. He provided support to School A, a school he knew well from regular visits. He accompanied Witness A in June 2014 and visited School C. He became involved with The child at School E Primary School in June 2014 when he was tasked with considering appropriate secondary school provision. In gathering information about The child he spoke to the Head Teacher of School F, Witness B stated that The child did not manage transition well and become angry with teachers when challenged. At School A, when angry, The child ran home.

Witness B met The child on several occasions whilst he was a pupil at School A. On 10th September 2014 he met The child and formed the view that The child was 'feeling ok' about School A. However, by 10th October 2014, The child had visited School C and was refusing to go into the classroom at School A. Witness B formed the view that The child believed he would be attending School C. He stated that The child would not be able to 'move on' until his future schooling was resolved and confirmed. He was of the opinion that The child would take a long time to settle into School A. Notwithstanding the problems experienced at School A Witness B continued to recommend that school for The child. He expressed some reservations about School C. He highlighted the limited peer group for The child. He did not consider there were many links to the community and suggested that School C was limited in the way it could deliver the curriculum. Witness B highlighted The child's close family as a positive factor.

[12] Witness D has been a social worker with Children and Families for 14 years. She carried out an assessment in June 2014. Witness D stated that The child clearly came from a loving and supportive family. She concluded that The child did not require a residential placement. She stated that The

appellant was seeking residential to suit the needs of The appellant. She stated that The child was fixed in the belief that he was going to School C. She further stated that the The appellant would not engage with School A and was rigid in her desire for The child to attend School C. Witness D stated that various supports were offered to The appellant which over time she rejected.

[13] Witness C is the Deputy Head Teacher ('DHT') at School A. She developed a good relationship with The child. She would see The child most mornings and would walk him through the larger school to the location of the LCR. She indicated that walking with The child to the LCR seemed to calm him down. She stated that The child had a fear of failure and did not like to be challenged. Like many witnesses she described The child's good humour. The DHT stated that The child did not like other people seeing him when he was angry. She indicated that it was important for The child to build bonds and make friendships.

Witness C stated that School A first became aware of The child when he went to School E Primary School, in the last month of primary school. She was clearly of the view that lack of knowledge of The child was a major disadvantage for the staff. Transition is critically important and sadly was almost non-existent for The child as he entered his secondary provision within School A.

[14] Witness E is the Head of Inclusion for the Authority. She confirmed there is no cost to the Authority for the provision of The child's additional support needs at School A. She stated that there was nothing in The child's needs profile which suggested he required to be away from home within a residential placement. She confirmed that there is a place available for The child in School B. She confirmed that there would be no additional cost to the Authority in placing The child at School B and providing for his additional support needs. She has not met The child. She has not visited School C.

[15] Witness J gave evidence to the Tribunal. At the time of her evidence she was the Head Teacher of School C. The school is very small with approximately 26 pupils aged between 12 and 18. The majority of pupils are

residential. All pupils have additional support needs, two thirds of whom she stated has a diagnosis on the autistic spectrum. Witness J was of the opinion that The child did not require a 24 hour curriculum to meet his additional support needs. She provided many details about School C. She was of the opinion the school could meet The child's additional support needs. She stated that anxiety is a barrier to learning and that it is always important to develop social skills. She stated that underlying issues have to be addressed to enable any pupil to learn. She stated that The child's principal barriers to learning are his anxieties and the social difficulties he experiences.

Witness J stated that The child settled well into School C and the school can support his career and academic aspirations. The school are experienced working with pupils with ASD. She confirmed that The child did run off on one occasion. She stated that The child watched to ensure he was being followed by a staff member as he used to do when he attended School A.

[16] Witness F is the Depute Head Teacher ('DHT') of School B High School. This is the now the preferred school for The child within the Authority's provision. He runs the LCR unit therein. He offered The appellant the opportunity for The child to visit the unit but this was rejected. School B is described as a 'school within a school'. There are approximately 350 pupils in mainstream and up to approximately 40 in the LCR within School B – there are currently 37 pupils within the Unit. The child can obtain all his teaching lessons in the LCR. He can spend his entire school career within the LCR if required and be taught his whole curriculum by specialist subject teachers. Witness F has not met The child. Witness F appeared to be unaware of The child's exclusions from School A and the involvement of police and unions. School B is skilled at de-escalation and managing confrontation. The school have a Pastoral Team system where each teacher has 3-4 pupils and a link Support for Learning Worker. Witness F visited School A to better inform his understanding of The child's needs. He is fully aware of The child's Wellbeing Assessment Plan and Risk Assessment, the reports from Witness I and Witness B as well as the information within the transition meeting.

[17] Witness I is an Educational Psychologist. He stated that The child has educational, social and emotional needs. He described the provision at School A as exemplary and excellent (see A34). He described the staff at School B as impressive and committed. He described the staff/pupil ratio as 'fantastic'. Whilst describing the provision at School B as "excellent" he considered School C as more appropriate for The child. He described School C as a 'country house where learning takes place'.

For the purposes of any of his Reports or his evidence before the Tribunal Witness I visited School A and School B Schools. He did not specifically visit School C. He told the Tribunal that he had not visited School C for around 4 years apart from a recent social event. The further advised that he received Newsletters from School C and made it clear that he had a very high regard for School C. Witness I concluded that The child has a fear/phobia about mainstream schools. He was unable however to explain this. Witness I stated that he had not considered if any other factors might be contributing to, or causing, The child's fear/phobia other than, or in addition to, The child's autism. Witness I considered the curriculum at School C to be narrower than School B. Witness I described The child's thinking as inflexible. Witness I was unaware of the current peer group at School C for The child indicating that he assumed that it would be appropriate for him. Witness I was unaware that The child could access his full curriculum within School B and be taught therein by subject teachers. Notwithstanding the possible long term advantages of School B, Witness I was firmly of the view that The child is unable to cope with mainstream.

Witness I stated that he would not recommend residential placements for all children but would support residential for The child on the basis that previous placements have not worked. He stated that he spoke to pupils within School B during his visit who described positive experiences at School B. Witness I described meeting two pupils at School B who had such negative experiences at previous placements they were not willing to name the schools they previously attended. Witness I commended the quality of relationships which existed between staff and pupils at School B. As a 'school within a school' School B roll is around 40. School B School is a much smaller school than School A with a total school roll under 400 pupils. School B is a quieter

environment. Witness I formed the view that School B is more forbidding than School A. He also was of the view that School A was a more congenial atmosphere than School B but commented in his Report at A327 in relation to School B 'the atmosphere in the Unit seemed very relaxed and friendly'.

[18] Witness H is the Educational Psychologist who took over The child's case in December 2014. She stated that both School B and School C could meet The child's needs. She expressed a concern about School C in respect of its social networks and post-school transitions. She did not support a residential placement for The child.

[19] Witness G is the Principal Teacher in charge of School A. He confirmed that one union [NAS-UWT] voted in favour of taking part in industrial action in respect of being asked to teach The child. Ballots for two other Unions [EIS and UNISON] did not take place as The child did not return to School A. Witness G discussed with The child moving into mainstream classes. He stated that School B is different as they are less likely to proactively promote mainstream directly with The child. If The child wishes to remain in School B that would not be a problem. He considered this an important difference when comparing the Units at School A and School B. The child would be able to access and complete his whole school curriculum within the Unit at School B.

[20] Witness L is the Head Teacher at School A. The child was excluded for three days. He was still on the roll at School A. She confirmed the involvement of Unions in respect of continuing to teach of The child at School A.

[21] School B was described as a 'school within a school'. The Unit would allow The child to access the full school curriculum of a mainstream setting whilst remaining in the LCR to complete his education. School B has appropriately qualified subject teachers within the LCR. The child would be able to access mainstream if, and when, appropriate with support. School B do not put any pressure on pupils to move to mainstream. Unlike School A

The child could have his lunch within the Unit at School B. If The child attended School B he would initially travel from his home to school by taxi.

The journey time from The child's home to School B was estimated at around 40 minutes. This travel time is not dissimilar to the travel time The child had when he was attended School F for almost two years.

The child would be able to directly access the Unit at School B through its own dedicated entrance/exit and would not require to walk through the main school. School B is small and has small class sizes. There are 6 classrooms, a science lab and a home economics room within the Unit. There are currently 6 S1 pupils (all boys) at School B, providing a good potential peer group for The child. Staff at School B is trained in de-escalation procedures to defuse potential outbursts. The school has locked doors within the corridor areas but not in individual classrooms. The security measures are for the safety of the pupils. School C is planning to install an alarm system to improve the security and safety of their pupils.

[22] School B is able to make provision for the additional support needs of The child. School C is also able to make this provision. School B offers a safe and secure environment with good quality education provision for The child's needs. He does not require a residential placement for his school education. School B offers a number of young people of The child's age from which to form an appropriate peer group. They provide specialist teachers in all the subject areas with an individualised curriculum within small groups all within the quiet protective setting and the location of the LCR within School B.

[23] There is no identified additional cost to the Education Authority if The child attends School B. There is a place for him there. The cost of attending School C on a residential basis is currently £45,134 per annum. The transport costs for School C is approximately £256 per journey. This includes returning the parent home. The journey is estimated as a 150 mile round trip. The total cost for a Sunday/Monday drop off and Friday pick up is estimated at £20,480 per annum.

We understand the Authority will meet the cost of travel if The child attends School B. The cost of transportation by taxi for a placement at School B is estimated at £12,950.40 per annum.

[24] Witness K was recently appointed the acting Head Teacher of School C. He has met The child but indicated he felt he didn't know him well.

Previously Witness K was Head of Education at School C. His current role within the school is now primarily management. In terms of the current age profile of the school there is one 12 yr old and then three 14 yr olds. The majority of the pupils thereafter are 15 yr old and over. Witness K described The child as open and outgoing. He was not aware of any behavioural difficulties in respect of The child during any of his taster visits. Most of the leavers' destinations at School C were shown to be large supported College placements. Witness K indicated that The child was still at the assessment stage.

[25] The appellant sought a social work assessment. The social worker became aware of family stress. The appellant cancelled G, a community based support service, refused other support services and disengaged with CAMHS. The appellant wishes her son to be able to fully access a challenging curriculum. The appellant expressed the view that in her opinion if The child attended School B he would be likely to be encouraged to pursue practical and vocational subjects such as 'woodwork and hairdressing' rather than more academic subjects. School B pupils do progress to College and University. Many pupils within the Unit are able, in time, to join mainstream classes within the larger school setting. This type of transition could be helpful to The child especially as he hopes to access University.

The appellant drove The child passed School B High School in her car but he has never visited the school or the LCR. The appellant declined an invitation by Witness F for The child to visit School B. The appellant paid privately for The child's additional taster weeks at School C. These ended in March 2015. The appellant stated she has no further funding available to her. School C do not offer scholarships.

The appellant stated that regardless of the Tribunal's decision she would not send The child to School B. Prior to staying at School C The child had never been away from home alone. The child does not like travel but has successfully travelled on a number occasion to School C by car. He travelled to School F School for almost two years.

The appellant is well educated, talented, and a passionate advocate for her son.

[26] Parental support is crucial to the success of any placement. The Authority has offered a full-time place to The child at School B. Thus far The appellant has not accepted the offer. The child remains on the roll of School A.

[27] School and family working together is essential for a successful school placement.

[28] It is not reasonable, having regard to the respective suitability and the respective cost of provision for the additional support needs of The child at School C and School B, to place The child at School C.

[29] The Decision of the Authority is appropriate. The Tribunal therefore confirm the Decision of the Authority to refuse the Placing Request for The child to be placed in School C. We confirm the Decision of the Authority to place The child in School B within the LCR Unit.

6. Reasons for Decision:

The Tribunal considered all the evidence within the productions initially lodged, together with all the late evidence lodged, and the oral evidence of the parties and the witnesses who attended. The Tribunal had regard to the views of The child having considered the Advocacy Report lodged, the oral evidence of The child and his drawings. We also considered all submissions made on behalf of both parties.

It is not practical, appropriate or necessary to narrate every aspect of the evidence in this written decision. We note that many of the witnesses lodged written mini-CVs to assist the Tribunal. We also were provided with some written statements which were entered into evidence.

We thank everyone for their assistance.

The Statutory Provisions

The Authority moved the Tribunal to confirm the decision of the Authority in terms of Section 19(4A) of the 2004 Act.

Section 22 of the 2004 Act is the relevant section in so far as it states that 'Schedule 2 makes provision about placing requests in relation to children and young persons with additional support needs'.

Turning to Schedule 2 of the 2004 Act, this deals with the Authority's duties to comply with a placing request.

Paragraph 2 of Schedule 2 of the 2004 Act relates to the duty to comply with placing requests.

Paragraph 3 of Schedule 2 of the 2004 Act [headed 'Circumstances in which duty does not apply'] provides a list of grounds which the Authority could seek to argue in support of non-compliance with the duties in the aforementioned Paragraph 2.

Section 19(4A) of the 2004 Act states the power of the Tribunal and the two stage test which the Tribunal must apply.

In the **first stage**, the Tribunal requires to determine whether it is satisfied that the Authority has established that one or more grounds of refusal, as provided within Schedule 2, paragraph 3(1) of the 2004 Act, exist or exists.

The Authority relies on Paragraph 3(1) (f), namely:

(f) if all the following conditions apply, namely-

(i) the specified school is not a public school,

(ii) the Authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

(iii) It is reasonable, having regard both to the respective suitability and the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and

(iv) the Authority have offered to place the child in the school referred to in paragraph (ii).

If the Tribunal is thus satisfied that this ground exists then, and only then, the Tribunal moves to the second stage. Clearly in this case the Appellant argues that in all the circumstances The child should be placed at School C.

In the **second stage**, the Tribunal must exercise its discretion and determine whether, in all the circumstances, it is appropriate to confirm the Authority's decision.

In this case Respondent representative argued that in all the circumstances The child should be placed in School B. Appellant representative argues that The child should go to School C.

The onus is on the Authority to establish that one or more of the grounds exist or exists, and to satisfy the Tribunal that in all the circumstances it is appropriate to confirm the decision of the Authority.

The Tribunal considered all the evidence before it of the ability of the Authority to make provision for the additional support needs of The child.

The First Stage:

[Whilst the Tribunal had careful regard to all of the evidence presented to us we now explore some aspects of the evidence in further detail]

We have already highlighted above some of the evidence we considered.

The evidence presented to us from School A and School B's assisted us to better understand The child's additional support needs and the provision at School B and School C LCR Units.

In this case it is accepted that School C is not a public school. School C is the specified school.

The Tribunal accept that initially in the refusal letter from Witness E the Authority failed to name therein the proposed school which was able to make provision for The child. We note that initially the Authority proposed School A but thereafter amended this to School B. The Tribunal finds that the Authority is able to make provision for the additional support needs of The child in a school other than School C, namely School B and in particular the Unit within School B.

Having considered the suitability and costs provided in respect of a residential placement for The child at School C, the Tribunal finds that it is not reasonable, having regard both to the respective suitability and respective cost (including necessary incidental expenses) of the provision for the additional support needs of The child in School C and School B, to place The child in School C. The Authority continue to offer a place to The child at School B. The child remains officially on the school roll of School A.

The appellant has refused to send her son to School B. The Tribunal is satisfied that there are significant positive advantages to The child attending School B including the physical location of the LCR within a larger mainstream school but with its own access point, its relatively small size, quieter setting, and its ability to provide The child his full curriculum education within the LCR Unit without the need to ever leave the Unit. The additional cost of sending The child to School C would be out of proportion to any possible benefit to him.

Parties submissions have been considered in respect of respective costs. The Tribunal accepted the Authority's position. The Tribunal considered the correct approach to the interpretation of 'respective costs' is that outlined by Lord Glennie (see **SM Appellant [2006] CSOH 201**) and approved by the Inner House (see **JB-v-The authority [2013] CSIH 13**). The Tribunal do not accept the cost per-pupil submission. We are not minded to reject the opinion of Lord Glennie having carefully considered the Appellant's detailed submissions.

The Tribunal consider what is relevant is the additional cost to the Authority. The Tribunal was satisfied that there is effectively cost to the Authority providing the placement for The child at School B.

The Tribunal was satisfied that the cost to the Authority in respect of a placement at School C would be the annual fees of School C.

We elected however to invite the Authority to provide costings for the provision of transport to assist our wider understanding of the financial impact to the Authority of The child attending School C and School B.

The Tribunal followed and adopted the remarks within the Opinion of the Inner house in JB where the interpretation of paragraph 3(1) (f) (iii) was specifically addressed:

'We agree with the approach adopted by Lord Glennie in SM, Appellant which has the attraction of being readily understandable and relatively straight forward to apply. What the Tribunal should be considering, when applying the test of reasonableness to the question of respective cost, is a comparison of what it will cost the Education Authority to make provision for the additional support needs of the child in a school, referred to in Paragraph 3 (1) (f) (iii) of Schedule 2 to the Act, with the costs to the Education Authority of making provision for the additional support needs of the child in the specified school'. In this case we accept the position adopted by Lord Glennie when he stated that if a child is placed in a fee paying school [such as School C] 'the school fees (and other necessary incidental expenses) to be paid by the Education Authority will be the measure of the cost to the Education Authority of making

that provision'. Whereas Lord Glennie concluded that where a child is placed in a state school [such as School B] *'the cost to the local authority of making that provision will be measured only in terms of what further expenditure is necessary to enable it to meet [the child's] needs'*.

Furthermore the Tribunal endorse and adopt Lord Glennie's concluding comments that any other approach is 'highly artificial'.

The Tribunal rejected the legal submissions made by Appellant representative on behalf of the Appellant urging the Tribunal to adopt an alternative approach when approaching the matter of 'respective costs' of a placement at School C and School B. The Tribunal preferred the legal submissions made by Respondent representative on behalf of the Authority.

The Second Stage

If the Tribunal is not satisfied with the First stage there is no requirement to move onto the second stage of the test, namely the appropriateness of the decision.

In this appeal the Tribunal is satisfied that the First Stage has been established and is therefore satisfied that the Authority has established Schedule 2 Paragraph 3(i) (f) (i)-(iv) applies.

The Tribunal must thereafter consider the appropriateness of the decision to refuse the Placing Request, notwithstanding being satisfied that grounds of refusal do exist specified within paragraph 3(1) of schedule 2 of the 2004 Act.

At the second stage, the Tribunal is required to exercise its discretion and determine whether, in all the circumstances, it is still appropriate to confirm the decision of the Authority. This second stage is an additional, distinct safeguarding analysis of the Authority's by the Tribunal.

It follows that even if the Tribunal is satisfied that the Authority has established grounds for refusal of the Placing Request, the Tribunal must

effectively stand back, consider the whole facts and circumstances and then come to a considered view whether it is *still* remains appropriate to confirm the decision of the Authority.

The Tribunal careful conducted this two stage process in our deliberations.

Whilst the Tribunal is respectful of the wishes of the Appellant and The child too, having regard to the extensive amount of evidence presented to us, we consider School B to be the more appropriate placement for The child. The Tribunal is not satisfied that it is reasonable to incur the cost of a placement for The child at School C as the Tribunal is satisfied that School B can make provision for The child's additional support needs.

Having regard to the various strands of evidence, and taken cumulatively, the Tribunal is satisfied that The child's additional support needs can be met at School B. We consider this provision should be accessed before it is ruled out. School B should be given the opportunity to work with The child and his family. School B will provide a reasonably local provision for The child. He will be able to access all of his curriculum within the separate LCR with its own designated access. He need not travel through the mainstream school to access the LCR Unit. The child need not even access mainstream classes throughout his school career if that is his wish. We accept that within School B no pressure would be place upon The child to access mainstream provision. The child will be able to continue to reside at home. School B will be able to give The child an appropriate peer group and can move with his peers throughout all transition stages, including work experience opportunities and access to further education. Change may continue to be difficult for The child. Looking to the future familiarity with his peers may indeed assist him as he progresses further.

Throughout our deliberations the Tribunal never lost sight of the fact that The child had been attending School C thus far with no reported difficulties. He was still in the assessment stage. The child expressed a strong desire and preference to attend School C. His mother also supported this potential placement.

In refusing the Placing Request for School C the Tribunal recognise that having met and listened to The child on two occasions we are not granting his wish to attend School C. The Tribunal require to consider many issues in coming to their final decision. Listening to the views of The child and his mother, whilst of great importance, is part of the overall evidence the Tribunal must consider in their final deliberations.

The Tribunal had careful regard to the evidence of Witness I who supported the placement at School C. The Tribunal was concerned that Witness I did not visit School C in respect of his evidence. In his evidence he stated that he relied upon his existing knowledge of the school. He stated that he last visited School C approximately four years ago, with the exception of a recent social engagement. Witness I thought he was entirely up to date by reading the school's Newsletter and speaking to a Board Member. Witness I confirmed that he was not experienced in carrying out comparisons of schools. The Tribunal consider the comparison of school provision was not sufficiently robust. One matter which the Tribunal considered of significant importance is that The child could access all his school education within School B. Witness I was unaware of this and accepted that to be an important factor for consideration when giving his oral testimony to the Tribunal. From the evidence presented to the Tribunal it appeared that School C is evolving - for example we noted the range of academic course choices, the planned changes to the security system through the installation of an alarm system, the employment of sleep over staff and the range of young people attending. Witness I however gave the impression in his evidence that the school had not really changed much. Witness I was unaware of what the peer group might be for The child. Witness I described The child as having a fear/phobia of mainstream schooling but was unable to ascertain what this was actually based upon. Witness I had high regard for the provision within School B. He stated that School B can provide for The child's educational needs but was clearly of the opinion that The child would not settle there.

The Tribunal deliberated at length in respect of this Reference.

We considered the following issues of importance to support a placement at School B:

- (a) School B is small and has small class sizes. Witness I described the provision therein as “excellent” and “impressive”. It appears that overall School B is a quieter school than School A;
- (b) School B offer and operate an impressive facility. The staff/student ratio is “fantastic” according to Witness I. He commented about the high staffing levels which allowed them to have greater “flexibility to meet pupil needs”;
- (c) There is a separate dedicated entrance to School B. The child would not require to walk through or even enter or leave through the mainstream school;
- (d) There is no pressure within the School B for The child to become integrated into mainstream classes. This is a fundamental difference of approach to School A where they proactively encourage movement into mainstream. Even in The child’s short term at School A Witness G on a few occasions discussed with The child the possibility of him moving into mainstream classes. The Tribunal formed the view that The child may not be able to cope with a mainstream class at this stage in his education. We accept that even discussing this with The child could have been stressful for The child. We consider the different ethos at the core of School B - in terms of their approach to access mainstream classes - to be a fundamentally factor differentiating it from School A;
- (e) The child can access the full curriculum within the LCR. He would not require to leave the LCR or enter mainstream. Witness I was unaware of this critical factor notwithstanding he visited School B in order to carry out his comparison of the provision in the authority and School C;
- (f) Witness H further clarified that The child would not even require to leave the LCR at lunchtime. Arrangements could be made to bring lunch to The child within the Unit. The Tribunal accept the description of School B as operating effectively and practically as a ‘school within a school’;

- (g) Attending the LCR at School B will however provide the opportunity for The child, if he ever wishes, to access mainstream classes. This could in time provide a greater opportunity for social interaction. Considering the long term aspirational desires of The appellant for The child, the Tribunal note that The child may indeed enter a Further/Higher Education setting which will be significantly larger and noisier than School B or School C;
- (h) School B offer an appropriate peer group for The child;
- (i) At School B The child would be unlikely to meet any other pupil who had already witnessed his previous behaviour at earlier placements. We understand The child finds this embarrassing;
- (j) Witness I spoke to some of the pupils at School B who spoke positively of their time at School B even though their experience of other schools had not been positive to such an extent that they declined to name those schools;
- (k) The child's anxiety is a barrier to The child's learning needs both in the short and long terms. Staff at School B is well trained and experienced in dealing with children and young people with ASD and behavioural difficulties - people like The child. We accept the evidence of Witness F that staff within the LCR is trained in calming and behaviour management techniques including early alert and de-escalation procedures to assist in defusing incidents. The Tribunal considered the evidence presented in respect of the security operated within School B. The Tribunal formed the view that The child will be able to adapt to and understand how and why this is in operation. Clearly all the other pupils within School B are subjected to the same measures which are protective rather than punitive. We reflected on the positive views of some of the current pupils highlighted to us by Witness I. The Tribunal accept that Witness I described School B as 'foreboding' in comparison with School A. He did however comment that when he visited School B it was a cold wet day compared with the visit to School A which was a sunny day;
- (l) The child does not require residential schooling. He is well cared for and loved at home. He is happy there. The child is 12 yr old who is

very close to his mother, great-grandmother and great aunt with whom he resides. His grandmother lives close by too. Attending School B will allow The child to reside at home with his family around him and attend a school within a reasonable daily travelling distance from his home within Glasgow. The Tribunal accept that School B is not The child's local school. The child previously travelled to School F for almost two years when he was much younger. He has since shown he is also capable of travelling in a car the long journey to School C. The Tribunal consider The child will be able to travel to School B. We understand the Authority will meet the cost of his travel to and from School B from his home;

(m) The child's transition to secondary school has been uncertain for a long time. He is now not attending any school. His taster weeks at School C have come to an end. The Tribunal consider it is of great importance that The child resumes his education as soon as possible. The seven days of evidence together with all the documentary productions, the evidence from The appellant, Witness I (including all his Reports), together with The child's views, provide the Authority with vital information to assist them to make the placement for The child at School B a successful one. The Tribunal consider that if The child understands his placement at School B is to be permanent this will gradually help him to settle into School B;

(n) School B should be allowed the opportunity to make their excellent provision within their small protective LCR Unit available to The child. The information provided by each school indicating the numbers of pupils sitting different level of examinations is not in itself an accurate indicator of success or otherwise of either school. The Tribunal was unable to carry out a robust like-for-like comparative analysis of the information provided. It is clear that both School C and School B have classes with small numbers. The Tribunal is satisfied that the staff at School B is able to assess The child's needs and deliver an individualised bespoke education for The child to allow his placement to be a success and his future potential to be realised;

- (o) The Tribunal recognise the importance of the relationship between The child's family, especially The child's mother, and all the staff at School B. This partnership must work together to ensure everything is put in place to make the transition to School B a positive and successful one for The child;
- (p) The Tribunal formed the view that School B is able to meet The child's educational needs. The child has undoubtedly experienced significant change in his life, especially as he was leaving primary school and entering secondary school education. We regard School B as having a long term advantage for The child and note that Witness I accepted this;
- (q) The appellant stated that she did not see her son as disabled. She would like The child to attend University. School B would afford The child the opportunity to develop social and negotiating skills and to find ways to manage his anxieties around interacting with his peers. To attend University, in the longer term, The child must develop socially as well as gaining the required academic qualifications. The Tribunal is satisfied that School B can address The child's needs and enable him to follow his chosen path;
- (r) The child may be capable of accessing a mainstream curriculum in time according to Witness I. He highlights the importance of the 'appropriate context in which to learn'. Should the time come whereby The child is able and wishes to access any mainstream classes he would be able to seamlessly transfer over within School B. If The child was able to access all or some of his curriculum within a mainstream setting this would require him to leave School C and move to yet another school placement. We consider having the ability to access all or part of The child's curriculum within a mainstream setting within School B a highly positive thing for The child and his future education. Should he not wish to move to mainstream that would not be regarded as an issue for The child or indeed School B. The Tribunal formed the opinion that School B is a more secure and protected environment than School A for pupils with greater vulnerability. The child, if nurtured, could begin to feel a greater sense of security within School B which, in

time, could help to reduce his anxiety and allow him to fully access his education. Pupils at School B work to an individualised curriculum. It effectively operates as a 'school within a school'. School B is a smaller school with a roll fewer than 400. It is therefore a much smaller, quieter environment than School A;

(s) School A has prepared a Well-Being Assessment Plan and Risk Assessment. These have already been made available to School B;

(t) The Tribunal had regard to the written statement at R378 of Statement A (at the time Acting Depute HT within School B High School). She has intimate knowledge and experience of the LCR Unit at School B having worked there since 2005. The Unit at School B has seven Pupil Support Assistants and fifteen teaching staff. There are currently 37 pupils there but the Unit is capable to taking up to 40 pupils. She states that it is anticipated that The child would have at least one member of staff with him. She stated that the children in the LCR have '*individualised pathways*'. She described the proposed induction process for The child and the production of a Behaviour Management Plan prior to him arriving. She has spoken to Witness C and has read The child's Risk Assessment and his Wellbeing Plan. She confirmed that 30 out of the 37 pupils within School B are accessing mainstream school for one or more classes. Within in the LCR there is capability at School B to teach up to Higher level. Statement A confirmed that the LCR 'is very flexible about the children's pathways which very much depend on the individual pupil's needs and what they can access socially'. We note that many of the staff has been working within the unit for a long time. Within the Unit there are six S1 pupils. They are all boys. If The child arrived at the Unit they have already planned to split the class into two. Initially The child would probably be taught on a one-to-one basis or possibly with one or two other children.

Statement A stated that 'In School B we would have an expectation that the family will work with us'. She stressed the need to 'have the parent on board to move forward with us'. She concluded by saying that 'Trust is a key area in the relationship that we have with both parents and pupils'.

In this case the Tribunal is satisfied that the First Stage has been established and the Tribunal thereafter required to separately consider the appropriateness of the Authority's decision.

Whilst we are respectful of the wishes of the Appellant and The child to attend School C, the Tribunal, having regard to all of the evidence presented to us, consider it is appropriate to place The child at School B at this time.

Accordingly, the Tribunal is satisfied that the Decision to refuse the Placing Request is appropriate in all the circumstances as noted above.

Although the Tribunal upholds the Authority's decision, thus refusing the Placing Request by The appellant for School C, we consider it is of great importance that the Authority, School B and The appellant work proactively together and nurture a good working relationship in the best interests of The child, his additional support needs and his future education.

Observations:

We make the following observations, in good faith, to assist The authority, School B, The child and his mother in the future:

- (i) It may be of some assistance to consider the possibility of Mediation to enable The appellant, the Authority and School B to work well together;
- (ii) The Tribunal formed the view that future communications between the Authority, school and home will be of significant importance;
- (iii) The Tribunal consider it is vitally important for School B and The appellant to quickly engage with each other and build a constructive working relationship;
- (iv) We have already touched on the importance of transition for The child. This was acknowledged by many witnesses. The Tribunal would suggest that

all planning must involve appropriate consultation with The appellant and The child;

(v)The child has worked well with Advocacy. The Authority might wish to encourage this for The child. Indeed it may be helpful to retain the same Advocacy Worker if possible as The child had a good relationship with her; and

(vi)The Appellant may benefit from the individual support of an Advocacy Worker (if this is possible) to ensure her views are fully represented at the range of meetings for The child. The appellant may not be able to physically attend all meetings. Having someone on her side may assist everyone. That said the Tribunal recognise that The appellant is without question an excellent advocate for her son; and

(vii)If The child attends School B the Unit will require to quickly respond to his arrival. The Tribunal was impressed by Witness F in his account of how the Unit operates and what they could achieve for The child. The Tribunal was further reassured that Witness I lavished his professional praise upon the provision available within School B. We hope that everyone within the LCR Unit will work collaboratively to help The child settle into the Unit, feel safe and secure therein, and work together to make the placement for The child a successful one.

In refusing the Placing Request the Tribunal was aware that The appellant does not wish her son to go to School B and indeed she expressed a preference that The child return to School A if the Placing Request for School C is refused. We note at T63 MM's email stated that The child continues to be currently registered at School A. She further stated that The child is entitled to be there. It is noted that once a child is registered at a school the Education Authority cannot remove the child 'unilaterally'. Since The child was excluded only for three days (and not permanently) he remains registered at School A. Parental consent is therefore required to remove The child from the Register at School A to School B. The Education Authority has assessed that School B is the correct placement for The child. MM indicated therein that 'as The child is still registered at School A he is entitled to return and the Authority will continue to support The child there if the parent refuses to move

him to the school that has been assessed as being the most appropriate to meet his needs'. MM further stated 'Please be assured that the Authority is committed to teaching pupils and staff are contracted to deliver that service. In the event that The child returns to School A he will be supported there'. She concluded 'the more fundamental issue is that School B has been identified as the most appropriate resource to deliver the service to meet The child's needs and the Authority hope that they can work in partnership with The child and his family'.

At A325 Witness I, quoting The appellant verbatim her views of School B, she described the unit as a 'secure unit (locked in like a prison)'. Witness I addressed this concern directly at A327 where he stated 'the atmosphere in the Unit seemed very relaxed and friendly (the locked door regime is for child safety, rather than custodial in intention)'. Witness I described the staffing levels at School B as very high which reflects 'an impressively high level of commitment on the part of the authority to provide fully and appropriately for this group of children'. He stated that staff turnover is very low commenting that this was of significance. He concluded that 'this level of staff stability said a great deal about the quality of the facility'.

In his Conclusions and Recommendations at A327, Witness I confirmed that 'the provision at School B High School LCR is impressive, and the Education Authority is clearly fully committed to providing for and resourcing the needs of their ASD pupils'. Indeed he concluded that the 'provision at both LCRs, School A and School B, appears excellent'.

The Tribunal accept that notwithstanding the excellent provision offered at School B, Witness I did not consider the difficulties The child experienced at School A 'might be lessened at School B'. He concluded that 'there did not appear to be any *evident difference in the underlying nature of provision* offered by the Units in the two schools [referring to School A and School B] '. The Tribunal do not agree with Witness I in his assessment of the two LCRs as previously indicated. The two LCRs may indeed be similar but they are different. It is of great significance that School B operates effectively as a much smaller 'school within a school' with its own dedicated access, where The

child can receive all of the school curriculum from specialist teachers with the option, if it becomes appropriate, for possible transition to a mainstream class for any of his subjects.

The Education Authority has assessed The child and his needs and is fully aware of the difficulties experienced by The child during his relatively limited time at School A. Unfortunately there has effectively been no meaningful transition from primary to secondary school. School B staff has thus far been unable to meet The child but they have discussed his needs with staff at School A. A range of professionals involved with The child and his family are now better informed about The child and his needs. The Tribunal is satisfied that School B can provide a bespoke individualised school education for The child within the safe, secure and professionally-skilled setting of the LCR Unit. The Tribunal unanimously concluded that School B should be permitted the opportunity to show that they can indeed provide for the additional support needs of The child.

The Tribunal accept The appellant wishes the best for her son. We formed the view however that School B is the more appropriate school placement for The child, notwithstanding The child's wishes, the fact that he has never entered School B and has thus far enjoyed several successful taster sessions at School C. In refusing the Placing Request the Tribunal do not seek to make any criticism of School C.

The Tribunal thank The appellant for her attendance throughout every hearing and to The child for attending on two occasions. The Tribunal were greatly assisted by the advocacy project Partners in Advocacy. The Tribunal thank all of the witnesses who gave evidence in this complex case.

Finally we express our appreciation to both representative for their assistance throughout the case and for their professionalism which they demonstrated at all times.