



Decision of the tribunal

1. The 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”). This is in respect that the Education Authority (“the Education Authority”) determined on 12 October 2017 that the Appellant’s son, (“The Young Person”), does not require a Co-ordinated Support Plan (CSP). The Appellant appeals against this Decision.

2. Decision of the Tribunal:

The Tribunal grants the Reference and accordingly in terms of power contained within Section 19(2) of the Act overturns the Decision of the Education Authority dated 12 October 2017 and requires the Education Authority to open a CSP within 4 weeks.

3. Management of the Reference:

The Reference was received on 4 December 2017. Following both parties Case Statements being received, an initial Case Management Telephone Conference Call was conducted by the convener with the parties on 9 February 2018. At that time the Oral Hearing was assigned to take place on 1 May 2018 and the parties were directed to negotiate the terms of a Joint Minute of Admissions regarding the major background facts. A detailed 48 paragraph Joint Minute of Admissions was subsequently produced (T42-T45 of the bundle).

A further Case Management Telephone Conference Call was assigned to take place on Thursday 19 April 2017 to discuss further specific arrangements for the Oral Hearing including ascertaining the identity of the parties witnesses.

4. Summary of Evidence:

The Tribunal had full regard to the bundle of papers (T1-T45, A1-A49 and R1-R92).

The Tribunal also heard oral evidence from:-

- (i) Witness A, Principal Teacher Pupil Support, School A,
- (ii) The Appellant

Both parties representatives made oral submissions. The Tribunal reserved their decision.

5. Findings in Fact:

1. The Appellant is mother of The Young Person.
2. The Respondent is the responsible for the young person's education.
3. The Young Person is 16 years old. He has a range of additional support needs. He resides in family with the Appellant who is his mother, his father and his younger brother. His brother is aged 12 and also has additional support needs.
4. The Young Person has Autism Spectrum Disorder (ASD) with associated sensory difficulties, severe dyspraxia and a life threatening peanut allergy, as well as other allergies. The Young Person was diagnosed with ASD when he was three years old.
5. The Young Person also has dyslexia, hyperacusis and anticipatory anxiety disorder.
6. The Young Person has difficulties with motor planning, visual motor integration, sensory processing and muscular imbalance.
7. The Young Person has additional support needs in accordance with s1 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act").
8. The Young Person is hypersensitive. He has hyperacusis which causes him to be very sensitive to loud, sudden noises and finds it difficult to tune out background noises.
9. The Young Person is very sensitive to smells and touch. The school environment is challenging to The Young Person due to the wide range of needs and behaviours of his peers. Areas such as the communal dining hall can be overwhelming for The Young Person. He therefore has his lunch in a quieter area with minimal distractions.
10. The Young Person has reduced spatial awareness therefore his ability to negotiate busy environments, such as mobilising between classes in the corridor are challenging for him. The Young Person finds classrooms and lessons and corridors too noisy and unpredictable.

11. The Young Person' ability to engage and participate in everyday activities and specific academic tasks is affected as a result of these difficulties.
12. The Young Person was diagnosed with dyspraxia when he was three years old. The Young Person has difficulties with fine and gross motor skills, organisation and sequencing.
13. The Young Person has hypermobility in his shoulders, elbows, wrists and fingers which impacts on his pencil and pen grasp and writing can be very painful for him.
14. The Young Person tip toe walks and he has hypermobile hips. Busier environments often result in further unsteadiness and this exacerbates his levels of anxiety.
15. The Young Person is severely dyslexic which impacts on his ability to read and learn.
16. The Young Person has dysgraphia which impacts on the legibility of his handwriting.
17. The Young Person wears glasses and he is short-sighted and has astigmatism.
18. The Young Person also suffers from sleep disturbance and is treated with Circadin at night. The Young Person' tiredness combined with other learning difficulties affects his ability to concentrate and focus on his learning. The Young Person' tiredness also impacts on his attendance at school.
19. The Young Person Main is resident within the Authority. Authority Council is his home authority, and, as such, it has responsibilities with regard to his education and meeting his educational needs.
20. The Young Person previously attended School B. The Young Person' levels of anxiety were high at School B due to his classmates being verbally abusive. The Young Person left School B and was subsequently home schooled.
21. The Young Person is a pupil at School A, a special school, which is managed by the Respondent.
22. The Young Person currently attends School A on a part-time basis. He currently attends 4 days a week with 'soft starts' to the day allowing for a degree of flexibility in start times. He remains at school until 12.45pm one day weekly, 2.45pm one day weekly and 3.10 pm two days weekly. He is about to commence attending school on a Friday also ensuring attendance 5 days weekly. The Young Person was and has not been able to access the whole curriculum at School A due to debilitating anxiety. He intends to leave school in Summer 2019.
23. The Young Person has an Individualised Education Plan (IEP). The educational objectives stated therein are minimal – stipulating that he will attend as many classes as possible and build up his attendance rate at school. He is working towards attaining National 2 level in numeracy and literacy.

24. The Young Person has additional support needs arising from complex and multiple factors.
25. The Young Person's additional support needs are the result of lifelong conditions and will continue for more than one year.
26. In late 2016 The Young Person was referred as an emergency to the Young Person and Adolescent Mental Health Service (CAMHS). He was seen by Dr K and a Mental Health Nurse, as he was suicidal at the end of 2016 due to the stress of school, where he was not coping in a larger class.
27. The CAMHS input has been crucial in assisting The Young Person deal with his anxieties. In turn this input has had a direct influence on The Young Person being able to successfully increase the time spent at school. This input has now been ongoing for 18 months. Dr H at CAMHS currently sees The Young Person frequently; once every week for an hour. Much of the time is spent on a 1:1 basis. There is no current indication that such input will be terminated. At least once every 6 weeks the Appellant reports to the school on the work being undertaken within her knowledge. Dr H attended a GIRFEC planning meeting at School A on 5 November 2017.
28. The Young Person's levels of anxiety is the single biggest barrier to his attendance at school and his academic progress.
29. R, Educational Psychologist, has provided direct input at School A to support the adaption of the classes to facilitate The Young Person's attendance and engagement. Her input resulted in The Young Person being educated in a small group led by an autism specialist. The Young Person benefitted greatly from this learning environment; however, school staff advised that there is no funding to sustain this for the next academic year.
30. The Young Person historically had input within school from Occupational Therapy and Physiotherapy, organised through Authority. Those supports have been discontinued for some time as he accesses such therapy at the School C. But for this input these therapies would require to be continue to be provided in school.
31. The Young Person attends an Access to Education Course at the School C. He attends 4 x 4 day placements annually and 10 Saturdays a year, covering direct physiotherapy and occupational therapy input, hydrotherapy, rebound therapy, tai chi, yoga and other exercises. The Young Person has exercises provided by the centre for practice at home and in school. The Young Person is currently supported by a Highly Specialist Physiotherapist and a Programme Co-Ordinator.
32. The Young Person's allergies, including an acute peanut allergy, are supported by the Respiratory Medicine Clinic by Professor J and S, Allergy Specialist Nurse. S has provided input to School A to enable The Young Person to be educated safely there. Advice has been tendered for staff training purposes and on specific issues which have arisen. The Young Person has a medical Care Plan which is accessible to all school staff which has been prepared with such input.

33. Dr L (GP) currently supports The Young Person every two to three weeks with his low mood and anxiety. These meetings are used to help monitor his mental health and suicidal ideation.
34. The Young Person' short-sight and stigmatism is supported by a optometrist. He has recently been diagnosed with retinal migraines which are brought on by anxiety. The school will require to seek additional advice regarding this condition from an external NHS resource.
35. The Young Person attends private chiropractic sessions to help with his scoliosis and hyper mobility. He also attends reflexology privately to help with his anxiety.
36. The Young Person receives fortnightly input from a life coaching organisation which is a charity, to help him to set positive goals to improve his mental health and social skills. This has been organised by the Appellant.
37. The Young Person meets with the School counsellor weekly to assist in managing his anxieties on a one to one basis. These sessions are positive.
38. The Young Person previously had an allocated social work assistant between 5 May 2017 and 18 December 2017. He participated in planning meetings at School A for The Young Person. He chaired a meeting there on 5 November 2017. He had 1:1 meetings with The Young Person. He carried out a s23 family assessment of needs. His assessments informed a self directed package of support which is now in place. Funding has been made available for a Personal Assistant 4 hours weekly. The Appellant has engaged a worker from P. The Social Work department will keep the need for such input under regular review.

6. Reasons for Decision:

The Tribunal considered all of the documentary and oral evidence and was satisfied that there was sufficient evidence available to the Tribunal to reach a fair decision on the Reference.

The issue is whether or not The Young Person satisfies the terms of Section 2 of the Act and requires a Co-ordinated Support Plan (a CSP).

Section 2(1) of the Act is in the following terms:-

2 Co-ordinated support plans

- (1) For the purposes of this Act, a Young Person or 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 Young Person or young person,
 - (b) the Young Person 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 one 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 Education Authority that subsections (a), (b) and (c) of Section 2(1) of the Act are fulfilled. Accordingly the only matter of contention between the parties was whether or not subsection (d) of Section 2(1) of the Act is met.

The Tribunal had regard to the Code of Practice (Third Edition) 2017 – Supporting Young Personren’s Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004 (as amended), published December 2017. The Tribunal has discharged its duty to do so in terms of Section 19(7) of the Act.

Furthermore in reaching its determination the Tribunal has had regard to the Decision of *JT -v- Stirling Council* 2007, CSIH 52 where consideration was given to the definition of “significant” where it appears in Section 2 of the Act.

The use the term “significant” signals that the scale of the support to be provided, whether it is in terms of approaches to learning and teaching (eg adaptation or elaboration of the curriculum) or personnel eg (provision of learning support assistant) or resources (eg specialist aids, communication), or a combination of these, stands out from the continuum of possible additional support.

The issue of significance refers to the extent of the provision. Judgements about significance have to be made taking into account the frequency, nature, intensity and duration of the support and the extent to which that support needs to be coordinated and is necessary for the achievement of the educational objectives of the Young Person or young person’s education plan.

Where a Young Person or a young person has several professionals involved from one appropriate agency, such as an NHS Board, then the cumulative effect of these professionals’ involvement may amount to significant additional support from the agency, even although the input from each professional individually is not significant.

The Tribunal in particular has had regard to the frequency, nature, intensity and duration of the additional support to be provided in addition to the identity of those providing the support. Reference is made to the Tribunal’s Findings in Fact upon which this decision is based.

The purpose of a Co-Ordinated Support Plan is designed to enable a Young Person or young person to work towards achieving their educational objectives within the meaning of the Act. School education, within the meaning of the Act, includes, in particular, education directed towards the development of the personality, talents and mental and physical abilities of the Young Person or young person, to their fullest potential. Educational objectives should be set out, to secure that the Young Person or young person benefits from the school education provided, or to be provided. The objectives will cover relevant experiences beyond the classroom, including those in the community. They should be viewed in the widest sense encompassing a holistic view of the Young Person or young

person. They should be specific to the Young Person or young person and his or her additional support needs.

The Tribunal was surprised by the lack of production to the Tribunal of The Young Person' IEP. This is highly unusual in a case of this nature. The Respondent's representative advised that the IEP did not form part of his submissions and that is why it was not produced. The Tribunal would expect the production of such an important document for the benefit of the Tribunal's consideration. The lack of production of the IEP hindered the Respondent's own witness, Witness A, when she was giving evidence. Perhaps also surprisingly the Appellant indicated that she has not been provided with The Young Person' IEP for some time and is not fully aware of its content. That is also regrettable and something which should be remedied.

The Tribunal found Witness A to be a credible witness but she appeared somewhat vague in her evidence at times. She was unclear as to who exactly had been consulted by her or who would be consulted by her in the future in certain scenarios. She was unclear as to the exact extent of the CAMHS provision despite the fact that weekly meetings are currently in operation. This is noteworthy.

The Tribunal finds that the provision of CAMHS is of itself significant for the purposes of the Act. The provision was brought about in the most acute of circumstances and to address some of the most serious concerns which could exist in respect of someone of The Young Person' age. He was suicidal. His anxieties had become out of control. The Tribunal was more than satisfied that the input from CAMHS in particular has been instrumental in enabling The Young Person to return to school on a meaningful basis and to cope and manage within the school environment. The CAMHS input goes to the heart of The Young Person' limited educational objectives.

Witness A agreed that the input from CAMHS (and previously Social Work) had mirrored the aims which the school has in relation to The Young Person' educational objectives. Addressing The Young Person' anxiety and assisting him in managing his stress levels in school are essential to enable The Young Person to attend school.

Witness A's understanding that the CAMHS input was to be time limited and her lack of understanding as to the current level of provision highlights the need for better co-ordination. The relevant input from CAMHS does not appear to have been sufficiently identified by the Respondent when the relevant decision not to open a CSP was made. Whilst, of course, it is true that the provision of any such input is time limited to the length of time which it is necessary, there is no indication that the CAMHS input is likely to be terminated any time soon. It has been in place for a period of 18 months now. The Tribunal finds that this is more than likely to continue for a further year. Whilst the intensity in terms of the frequency of meetings between The Young Person and CAMHS workers has varied, it has always been at a high level, predominantly fortnightly but is now weekly due to increased concerns about The Young Person' anxiety levels. Additionally these weekly sessions are intensive in themselves with The Young Person spending a full 50 minutes on his own with Dr H on a 1:1 basis with the Appellant having the opportunity of spending the last 10 minutes of the one hour session with both The Young Person and Dr H to understand the content of the week's work and to provide any further additional helpful information to Dr H.

The Appellant herself is currently contributing to School A knowledge by providing a summary approximately once every 6 weeks of the work which Dr H is undertaking. The Tribunal finds that that is insufficient. It is also clearly ineffective. The Appellant is not present throughout the entirety of the meetings between Dr H and The Young Person. She does not have the professional skills and knowledge to convey all necessary components to School A. The Tribunal has no hesitation in coming to the conclusion that the issuing of a Co-Ordinated Support Plan to ensure the free flow of information exchange between CAMHS and School A to ensure that The Young Person achieves his educational objectives is essential.

The Tribunal also finds that the input from other relevant agencies taken together and along with the significant CAMHS input qualifies The Young Person for a CSP.

The Department of Respiratory Medicine provides an essential input. This has, in part, informed the content of a medical care plan held by the school. This source provides staff training to relevant school members and provides specific advice on specific episodes. It is necessary for this input to be provided on an ongoing basis to ensure that The Young Person can safely access the curriculum at School A.

Witness A was in no doubt that The Young Person' optical issues, including his recent diagnosis of retinal migraines due to anxiety, is something which the school would require to seek external advice and support for. This will be ongoing. She could not identify what specific source that would be but the Tribunal is satisfied that it would be from the NHS Board.

The Tribunal also relies upon the element of Social Work intervention. Whilst The Young Person does not currently have an allocated worker and there is no ongoing 1:1 work it is clear that Social Work have been instrumental in confirming the planning for The Young Person' school education. Despite the termination of an allocated worker, the Social Work Department retain a role in The Young Person' life. Social Work have pursued, along with CAMHS, the same main aim of reducing The Young Person' anxieties with a view to assisting him in accessing School A for as much time as possible. Witness A confirmed that she had found the former involvement of Social Work helpful and again agreed that they were pursuing the same main aims as the school themselves.

The Tribunal was impressed with the Appellant herself. She gave her evidence in a calm and measured way. Her approach seems entirely reasonable. She made it clear that she was not setting out to obtain a CSP for the purposes of seeking any particular additional support. She has provided observations regarding the input of the school counsellor with particular reference to the approach taken by them. She was clear that she is not critical of the input. The Respondent's representative sought to suggest to the Appellant, given the terms of the witness statement previously prepared on her behalf that her concerns about the school counsellor was the only reason why she had wished a CSP to be prepared. It is clear that this is not the case. The Appellant clarified she seeks a CSP to ensure that her son The Young Person benefits from the remaining time which he has to spend in the educational setting at School A.

The Tribunal is satisfied that all components of Section 2(1) of the Act are fulfilled. Accordingly, the Tribunal being satisfied that The Young Person qualifies for a CSP is of the view that this should and can be put in place within a reasonably short timescale. It is appreciated that a professionals meeting will be required prior to the production of same

and the Tribunal accordingly is of the view that a period of 4 weeks is sufficient for all necessary work in this regard to be undertaken.