



Additional Support Needs
Tribunals for Scotland

ANONYMISED DECISION OF THE TRIBUNAL

Reference:	D_02_2010
Gender:	Male
Aged:	14
Type of Reference:	(A): Closure of CSP (B): Placing Request

1. REFERENCES HEARD AT CONSOLIDATED HEARING

Closure of CSP

- A. The Appellant made a Reference, [dated 9th May 2009, received 15th May 2009] under Section 18((1) and (3)(b)(ii) of The Education(Additional Support for Learning)(Scotland) Act 2004 (hereinafter referred to as 'the Act') against a decision by the Education Authority dated 21st April 2009 that a Co-ordinated Support Plan ('CSP') is no longer required for her son, aged 14 years; and

Placing Request

- B. The Appellant made a Reference (dated 7th October 2009, received 15th October 2009) under Section 18(1) and (3)(e) of the Act against a deemed decision by the Authority (confirmed by the Authority in writing on 4th November 2009) to refuse a Placing Request made by the Appellant in respect of her son.

2. DECISION OF THE TRIBUNAL

Closure of CSP

- A. **The Tribunal hereby overturns the decision of the Authority dated 21st April 2009 in terms of Section 19(2)(b) of the Act and finds in favour of the Appellant with the following directions.**

**The Tribunal requires the Respondent to take the following action:
'To prepare and deliver to the Appellant a copy of the completed CSP within eight weeks from 24th March 2010, said times scales being agreed by both parties'; and**

Refusal of Placing Request

- B. The Tribunal refuses the placing request and confirms the deemed decision of the Authority, in terms of Section 19(5)(a)(i) of the Act, since the grounds specified in Paragraph 3(1)(f) of Schedule 2 to the Act exists or exist, and furthermore in terms of Section 19(5)(a)(ii) in all the circumstances it is appropriate to do so.**

The decision of the Tribunal is unanimous.

3. PRELIMINARY MATTERS

The President issued a Decision and Direction dated 16th October 2009 on receipt of the Placing Request reference dealing with the deemed decision and the competence of the reference. The Authority did not seek to challenge the decision. Thereafter the Appellant's Representative requested the hearing of the two references be consolidated. There being no objection by the Authority the two hearings were consolidated in terms of Rule 20 of The Additional Support Needs Tribunals for Scotland (Practice and Procedure Rules) 2009 ('the Rules'). A Convener Decision and Direction dated 11th November 2009 confirmed the consolidation.

There was a substantial amount of late evidence received in the two references. The Tribunal note there was no objection to either party lodging late evidence. In view of the nature of this evidence, the representations from both parties, their mutual consent and agreement to late lodging, and the relevance of the evidence to these consolidated 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.

The Tribunal itself requested further productions and information during the five days of evidence.

There were also several case management conference calls leading up to the hearing. The hearing had been postponed in the past. Previous assigned hearings were postponed at the request of parties but the December 2009 hearing was regrettably postponed due to the illness of the Convener. The Representatives assisted the Convener to manage the attendance of the witnesses to reduce any avoidable inconvenience for them.

4. SUMMARY OF EVIDENCE

The Tribunal considered two substantial bundles of evidence (including all the Late Evidence). The Tribunal had careful regard to the (a) Appellant's Case Statement and (b) the Authority's Case Statement in respect of each reference.

In addition to the written evidence, the Tribunal heard oral evidence from both parents and witnesses, namely:

- (a) The Head Teacher, Current School,
- (b) The Speech and Language Therapy Locality Manager, NHS,
- (c) The Fieldwork Manager(Children & Young People), Social Work Department,
- (d) Social Worker,
- (e) The Director, Specified School, and
- (f) The Principal Educational Psychologist.

Detailed submissions from both Parties were also carefully considered. In respect of the closure of CSP reference whilst the Tribunal heard evidence from the parents and other witnesses (except the Fieldwork Manager (Children & Young People), Social Work Department and the Principal Educational Psychologist) when the Tribunal resumed on the fourth day the Tribunal were advised that the Authority now agreed that the child required a CSP especially in view of the social work input flowing from the child being a looked after and accommodated child. We do not therefore revisit in detail the evidence especially from the Authority's witnesses for that reference, as the Authority are now in agreement that a CSP should now be opened, which will in practical terms reverse their previous decision to close the CSP dated 21st April 2009.

The Tribunal note in passing that the Authority gave due consideration to Rule 20 which affords the opportunity to the Authority to withdraw their opposition to the reference. The Authority confirmed that they were not minded to invoke Rule 20 and that to do so would not be an appropriate course of action. The Authority invited the Tribunal to make a decision based upon the evidence before us including the Authority's updated position that a CSP is now required.

5. FINDINGS IN FACT

1. The child is a fourteen year old boy who resides with the Appellant, his mother. The child's father resides elsewhere. Whilst the child's parents are not living together the child has a brother who lives with him and his mother.
2. The child has significant additional support needs arising from Autistic Spectrum Disorder, restricted diet, learning difficulties, behaviour problems, and being looked after away from home.
3. The Authority intimated to the Appellant in a letter dated 21st April 2009 their decision that the CSP is no longer required and that the child's current CSP will be closed. The Authority confirmed that they accept that they are responsible for the school education of the child, that the child has additional support needs arising from one or more complex or multiple factors, and that these needs are likely to continue for more than a year. The Authority stated however that the needs did not require significant additional support to be provided by one or more appropriate agency as well as by the Education Authority. The Authority no longer accepted the child required significant additional support from Speech and Language Therapy. The Speech and Language Therapist confirmed this in her Request for Help dated 2nd April 2009 (see R27 in Closure of CSP bundle).
4. The Appellant made a reference dated 9th May 2009 to the Tribunal in respect of the decision to close the amended CSP dated 10th March 2008 received on 15th May 2009.
5. The child attends the Current School for his school education. He also attends the Respite Centre. The child has been attending the Respite Centre since he was six years old.
6. The child became a looked after and accommodated child on 16th October 2009 in terms of Section 25 of The Children (Scotland) Act 1995. He has been staying at the Respite Centre out with school time for extra respite and returning home at the weekends. Stress levels within the family home have noticeably reduced especially in recent weeks. The child appears to enjoy the Respite Centre. The staff care for him and have expressed affection for the child.
7. On the fourth day of evidence (24th March 2010) the Authority confirmed they had decided to reopen the CSP and that the child now required one. The Tribunal were also provided with a copy of the final draft of the CSP. This had recently been delivered to the Appellant and the Authority now wished to note her comments and opinions in respect of the content of the CSP. The Tribunal were advised that the Authority considered eight weeks from 24th March 2010 would be an appropriate time scale for the Authority to prepare and produce the final CSP. The Authority accept that the child now fits the criteria in that he requires significant additional support to be provided by one or more appropriate agency (within the meaning of Section 23(2) of the Act) as well as by the Education Authority.
8. The Placing Request reference is dated 7th October 2009 and was on 15th October 2009.

9. The Specified School is not a state school. It is an independent residential and day special school managed by the Scottish Society for Autism. The Specified School is a state of the art school specifically built and designed for children with complex and intensive educational needs who have a primary diagnosis of an Autism Spectrum Disorder. The school is within 4 acres of grounds. The school provides a specific 14-18 curriculum. It would provide a 39 week residential placement. The Authority agree that the Specified School offers an effective service to its population. A place is available for the child. The view of the Director of the Specified School is that the "vast majority are educated well" in Authority schools. The Director of the Specified School stated that he worked with the Current School in the past, and shared pupils too. He stated he had the "highest regard" for the Current School. The Director of the Specified School stated that structure is an important element for the child. Instability is critical. He further stated that "it is critical to not move for the sake of it". The Specified School last met with the child in August 2009. The Authority made arrangements for the Head Teacher of the Current School and the Principle Educational Psychologist to visit the Specified School following upon the Placing Request for the child. The Tribunal noted the residential staff work with the school staff. There has been a change in the working hours of the team leaders to allow them to mix more on an informal basis, providing an opportunity for "information to be transferred on a low level, checking diaries etc..." The Director of the Specified School confirmed that it was always important for there to be a clear physical split between school and the locus of the residence. It was important to create "real live situations e.g. ordinary houses in ordinary streets." The Director of the Specified School stated that the bottom line was to enable the child to live independently. His two main targets being weekends/holiday periods and what happens at aged 19. The Director of the Specified School accepted that a 'big flash point is disruption and change'. He accepted that moving the child will be a disruption and will have an impact for the child. He argued that the school would have to manage that impact and support that transition. If the child moved he would require to be assessed. The Tribunal had regard to the Information on the Specified School at A6-A32 of the Placing Request bundle.

10. The child has been offered a place at the Current School, a special school under the management of the Authority. It is a modern purpose built school consisting of nine classrooms, a nursery, a large hall area and a meeting room. The school provide a curriculum from 3-18. The child has been attending the Current School for approximately nine years. The Post 14 Curriculum forms part of a Curriculum for Excellence. National Qualifications are the basis for the delivery of the post 14 curriculum. Another major component of the Post 14 curriculum is participation in the Caledonian Award. This is a Scottish award for young people with special needs. The Tribunal had regard to the School Handbook at R17 of the Placing Request bundle.

11. The Authority have also offered 24 hr, 52 week provision for respite accommodation for the child within the Residential Centre, with an approximate cost of £52,000 (excluding transport costs). This is a 5 bedroomed house. The house, which opened in July 2001, is central to public transport and local shops. It is a purpose built house specifically designed and is one of 5 sites all of which are National Autistic Society accredited and as such Autism is part of all staff's mandatory training programme. The child would be supported in a person centred approach using an individualised care plan called a 'Personal Organiser'. The information to develop this organiser is collated from reports and information gathered by all of the relevant people who have an input in the child's life. This information includes a typical day and routine, how to successfully assist the child in all aspects of daily life, including behaviour support, Autism support, independence skills, risk assessments etc. The organiser is reviewed and shared with the child, families and social workers on a regular basis. Staffing ratios are the standard staffing ratios namely 1 staff member to 2 young persons. The Tribunal noted that if it is deemed necessary for additional support for the child then this will be assessed and costed. In her Report, dated 23rd March 2010 at R25 (of the Placing Request bundle) the Depute Head of Care stated that 'Staff also recognise that development and learning is a 24 hour experience and this is reflected in the Personal Learning Plans'. She also stated that 'Various Autism strategies are applied to meet the individually assessed needs of the young person.....continuity and consistency of approach is promoted and facilitated through planned and agreed approaches and strong links with the young person's school and SLT.' The Tribunal note that whilst there are no specific educational programmes

in place at night the care provision within the Residential Centre seeks to enhance learning through leisure and develop practical skills and interactive social skills through leisure. The aim is to maximise the young person's potential and supplement skills/targets set in school. In addition to specific Autism training as part of staff induction process staff also attend training provided by the Autism Resource Centre. The Residential Centre currently has four residents. The Tribunal note that two of the residents have Autism and one young person has Down's syndrome and Autism. The other two residents are 18 and 19 years respectively and arrangements for their moving on are well advanced with imminent moves planned. The remaining two residents are a 12 year old girl with Down's syndrome and Autism and a 12 year old boy with Down's syndrome. There are a number of other referrals of young people for residential care provision all of whom have Autism. The Residential Centre are confident that the child's needs can be well met within this setting.

12. On 4th November 2009, the Authority refused the Appellant's Placing Request on the basis that:

- (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 not reasonable, having regard to the respective suitability and 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 at which the Authority can make provision, to place the child in the Specified School,
- (iv) The Authority have offered a place to the child.

The Authority therefore sought to reply upon Paragraph 3(1)(f) of the Schedule 2 of the Act. Subsections (i) and (iv) are not disputed between the parties.

13. When considering the 'respective cost' of the child attending the Current School School, the only additional cost to the Authority is transport. The cost of a 39 week provision for the Specified School for 2010 is £93,605. There would be the additional cost of transport.

14. The cost to the Authority of a place at the Current School is £26,403.39. In addition to this there will be the transport costs (with escort) of the child travelling from his home. The total costs of sending the child to the Specified School, which are additional for the Authority, include both the aforementioned fees for said school and the transport costs.

15. The Current School is able to make adequate and efficient provision for the additional support needs of the child. The Specified School is also able to make adequate and efficient provision for the additional support needs of the child.

16. The provision of education at the Current School is suitable for the additional support needs of the child. The Specified School is also able to provide suitable education for the child. The continuation of his placement at the Current School will avoid significant disruption to the child's education and allow the child to continue to interact and further develop his engagement with the social group he has become part of within the Current School.

17. The conclusion summary from the Authority's Psychological Services dated 29th January 2009 (at R39/40 of Closure of CSP bundle) states 'The evidence from classroom observation, from discussion with class teacher, school Individual Support Plan, Co-ordinated Support Plan, school reports and records in case file, leads to conclusion that the Current School is an appropriate education placement for the child addressing and meeting his full range of needs.' The Principle Educational Psychologist of the Education Authority's Psychological Service concluded there is 'no evidence of emotional or academic needs not being understood or met.'

18. The child became a looked after and accommodated child on 16th October 2009. The arrangements in place for the child will therefore be subject to regular review by the Authority. The Respite Centre is unable to provide a long term option for respite accommodation. The cost of the Respite Centre for a 52 week placement is £105,919.

19. The child's parental wishes are to move the child to the Specified School. They feel that the Current School is not adequately meeting their son's needs. They feel that he is not being stretched. The parents are clearly very caring about their sons. They are dedicated parents who rightly wish the best for both the child and his brother.

20. It is not reasonable, having regard both to the respective suitability and to the respective cost (including incidental expenses) of both schools, to place the child in the Specified School.

21. In all of the circumstances, it is appropriate to confirm the decision of the Authority to refuse the decision to refuse the Placing Request for the child to be placed in the Specified School.

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 witnesses who attended over the five days. The Tribunal also considered the submissions made on behalf of both parties on the third day.

Closure of CSP

In respect of the first reference, the closure of the CSP, the Tribunal noted the detailed evidence from the Social Worker. He was clearly of the view that his input was significant and did amount to 'significant additional support' as required by Section 2(1)(d)(ii) of the Act. When the Tribunal resumed on the fourth day the Tribunal were advised that the Authority now accepted that a CSP is now required. The Tribunal were provided with the final draft of the CSP (at R68-R76 of Closure of CSP bundle).

The Tribunal having considered all the evidence before us, and the Authority's decision to reopen the CSP, the Tribunal is satisfied that it is therefore appropriate to overturn the decision to close the CSP.

The Tribunal explored with the Authority's Representative and the Appellant's Representative what action the Education Authority should take and timescales. Both parties agreed that an eight week period to prepare and produce the final CSP after discussing the draft with the parents and obtaining their views and comments. The period of eight weeks commenced on 24th March 2010, when the Tribunal issued their oral decision on the first reference to the parties.

Placing Request

The Statutory Provisions

The Authority moved the Tribunal to confirm the Authority's decision in terms of Section 19(5) of the Act which provides:

'(5) Where the reference relates to a decision referred to in subsection (3)(e) of that section, the Tribunal may-

(a) confirm the decision if satisfied that-

(i) one or more of the grounds of refusal in paragraph 3(1) or (3) of schedule 2 exists or exist, and

(ii) in all the circumstances it is appropriate to do so.'

The Authority's Representative argued that the Tribunal could not be satisfied in terms of Section 19(5)(a)(i) or (ii) of the Act, and that in those circumstances the Tribunal ought to overturn the Authority's decision and place the child in the Specified School in terms of Section 19(5)(b) of the Act which provides:

'(5) Where the reference relates to a decision referred to in subsection (3)(e) of that section, the Tribunal may:

(b) overturn the decision and require the authority to -

(i) place the child or young person in the school specified in the Placing Request to which the decision related, and

(ii) make such amendments to the co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require.'

Section 22 of the 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 people having additional support needs.

Turning to Schedule 2 of the Act this deals with firstly, the Education Authority's duty to comply with a Placing Request. Paragraphs 2 and 3 provide the basis on which the Tribunal must determine the reference.

Schedule 2, paragraph 2 of the Act (headed "*Duty to Comply with Placing Requests*") provides:

'(1) Where the parent of a child having additional support needs makes a request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly.'

(2) Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being-

- (a) a special school the managers of which are willing to admit the child,
- (b) a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young person) having additional support needs, or
- (c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,

it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the Specified School.

(3) A request made under subparagraph (1) or (2) is referred to in this Act as a "Placing Request" and the school specified in it is referred to in this Schedule as the "Specified School".

(4) Where a Placing Request relates to 2 or more schools being-

- (a) schools under the management of the education authority to whom it is made, or
- (b) schools mentioned in subparagraph 2(a),(b), or (c) the managers of which are willing to admit the child in respect of whom the request is made,

The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) applies in relation to the first mentioned such school, which is to be treated for the purposes of this schedule as the Specified School.'

Paragraph 3 of Schedule 2 of the Act (headed "*Circumstances in which duty does not apply*") provides:

'(1) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply-

- (a) if placing the child in the Specified School would-
 - (i) make it necessary for the authority to take an additional teacher into employment,
 - (ii) give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school,
 - (iii) be seriously detrimental to the continuity of the child's education,
 - (iv) be likely to be seriously detrimental to order and discipline in the school,
 - (v) be likely to be seriously detrimental to the educational well-being of pupils attending the school,
- (vi) assuming that pupil numbers remain constant, make it necessary, at the commencement of a future stage of the child's primary education, for the authority to elect either to create an additional class (or an additional composite class) in the Specified School or to take an additional teacher into employment at the school, or

- (vii) though neither of the tests set out in paragraphs (i) and (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers,
- (b) if the education normally provided at the Specified School is not suited to the age, ability or aptitude of the child,
- (c) if the education authority have already required the child to discontinue attendance at the Specified School,
- (d) if, where the Specified School is a school mentioned in paragraph 2(2)(a) or (b), the child does not have additional support needs requiring the education or special facilities normally provided at that school,
- (e) if the Specified School is a single sex school (within the meaning of section 26 of the Sex Discrimination Act 1975 (c.65) and the child is not of the sex admitted or taken (under that section) to be admitted to the school,
- (f) if all of 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 not reasonable, having regard both to the respective suitability and to the respective cost (including incidental expenses) of the 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), or
- (g) if, where the Specified School is a special school, placing the child in the school would breach the requirement in Section 15(1) of the 2000 Act.
- (2) An education authority may place a child in the Specified School notwithstanding sub-paragraph (1)(a) to (e).
- (3) The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply where the acceptance of a Placing Request in respect of a child who is resident out with the catchment area of the Specified School would prevent the authority from retaining reserved places at the Specified School or in relation to any particular stage of education at the school.
- (4) Nothing in sub-paragraph (3) prevents an education authority from placing a child in the Specified School.
- (5) In sub-paragraph (3), “reserved places” means such number of places (not exceeding such number, or, as the case may be, such percentage of places at the school or relating to the particular stage of education as the Scottish Ministers may by regulations prescribe) as are in the opinion of the Education Authority required to accommodate pupils likely to become resident in the catchment area of the school in

the period from the time of consideration of the Placing Request up to and during the year from 1st August to which the Placing Request relates.

- (6) In sub-paragraphs (3) and (5) “catchment area”, in relation to a school, means the area from which pupils resident therein will be admitted to the school in terms of any priority based on residence in accordance with the guidelines formulated by the authority under section 28B(1)(c) of the 1980 Act.’

Accordingly, in terms of Paragraph 2(2) of the Act above, the Authority is required to meet the fees and other necessary costs of the child’s attendance at the Specified School unless one of the circumstances in paragraph 3 is established.

The Authority have indicated in this case that they seek to rely upon Schedule 2, paragraph 3(1) (f) of the Act.

Section 19(5) of the Act (outlined above) provides that a two stage test should be applied.

At the first stage, the Tribunal is required to determine whether the Authority has established one or more of the circumstances provided in Schedule 2, paragraph 3(1) of the Act. If the Tribunal determined that the Authority has succeeded in establishing one or more of those circumstances then, and only then, the Tribunal is required to move to the second stage of the test.

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

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

The First Stage

In this reference the Tribunal is only concerned with Schedule 2, Paragraph 3(1)(f) of the Act in determining whether the duty outlined in paragraph 2(2) of the Act applies or whether the first stage of the test is satisfied and the Tribunal requires to then move to the second stage.

In this case there was agreement between the parties that the conditions in Schedule 2, Paragraphs 3(1) (f) (i) and (iv) apply. Accordingly, the Tribunal was only required to determine, in terms of Schedule 2, Paragraphs 3(1) (f) (ii) and (iii), whether:

“(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, and

(iii) it is not 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.”

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 issue for the Tribunal is whether the Current School is able to provide the child with an adequate and efficient school education.

At the outset the Tribunal heard evidence from the Head Teacher of the Current School. She accepted that the child's needs were 'significant and extensive' and that he has a learning disability diagnosis. She often referred to the Individualised Educational Programme (IEP) and fixing targets. She stated that the Appellant quite properly challenged the targets over the year. She stated that academically the child was struggling to learn. The Head Teacher of the Current School stated that the whole class team would contribute towards the IEP and the targets. The team meet once a week with additional ad hoc meetings. It is therefore a collaborative process, including the parents. The Tribunal noted in detail the process that led to the child being discharged from SALT. We formed the view that communication with the parents about the proposed closure of the CSP was unclear at times appeared somewhat confusing. We note that the Head Teacher of the Current School stated that she worked on an assumption that the Appellant was happy to work with no CSP. The closure of a CSP, a document created by a statute, is an important decision. The Authority may wish to revisit their agreed processes for such a closure in the future.

The Head Teacher of the Current School however was very clear that functional communication for the child was of great concern. The parents made it very clear to us that in order to function the child would require to be encouraged to communicate. They expressed concern that this is not being attended to proactively enough.

Links with Social Work was identified by the Head Teacher of the Current School as important in view of the problems experienced at home. The Head Teacher of the Current School stated that Social Work were also routinely invited to reviews, providing them with Minutes, having informal meetings and as-required meetings. She stated it was more a case of Social Work asking for her help as the child was so difficult to manage within the home. She stated that the school offer help to social work. Respite had been identified (The Respite Centre). She stated that the school work with the Respite Centre- to skill them up with board making, symbols and giving visual information, e.g., what is happening and the order of what is

happening. The school have attended the Respite Centre. They set goals for the Respite Centre. They share information about the child to make his time there as successful as possible. The Tribunal note that the parents spoke well of the Respite Centre. In her evidence the Appellant stated that this was a very important input for the child and he had 'improved strongly'. We note that the Respite Centre take the child outings – there was also reference to the PlayScheme operated by the Current School. The child has been attending the Respite Centre since he was 6 years old. The parents were particularly positive a worker at the Respite Centre. We note she has attended a course on Autism. She was described by the Appellant as 'excellent'. She has attended meetings at the school but we also noted that she has not always been invited according to the Appellant. The Tribunal note that the staff at the Respite Centre has been consistent over the years. There is not a high turnover of staff resulting in the staff knowing and understanding the child well. The Head Teacher of the Current School confirmed that she has meetings with the Social Worker when they discuss the child's progress at school and stated that she made the initial referral to social work. The Head Teacher of the Current School also asked for the IAF meeting on 1st April 2009 to come together (see R28 of the closure of CSP bundle). This was the the Head Teacher of the Current School's first chairing of this type of meeting. She called the meeting as 'the situation at home was dire'. This meeting was a fairly new style of meeting trying to look at all of the child's needs holistically and how that impacts upon the family and their needs too. The Tribunal noted the involvement of the Authority Liaison Group, a multi-agency group looking at decision re placements and resources. The Head Teacher of the Current School stated that she did not consider other agencies (including social work) were required to meet an educational objective within the school but accepted they enabled the child with self help and living skills. The Appellant's Representative explored with the Head Teacher of the Current School if there was a behaviour plan in existence. The Tribunal were advised that there is a single sheet which describes when the child is agitated and the intervention required to combat such incidents. This is kept within his IEP. We understand there are no specific targets/objectives in place for behaviour management. This is primarily because within the school the Head Teacher of the Current School (and others) stated that the child is a compliant young man who is very easy to manage. Whilst it was accepted there are problems with hormones, there are no big outbursts according to the Head Teacher of the Current School and on the whole the child is well behaved. She stated that the child is rarely agitated within the school. She described the child as 'a very well behaved, likeable, easy to manage young person.'

The Head Teacher of the Current School fully recognised the challenges however within the home setting. She stated that it is very difficult to put into place the strategies suggested by social work at home. The child needs a very high level of adult support and prompting. The Head Teacher of the Current School concluded that with the additional dynamics of his brother the whole management of the child at home, including his behaviour is 'very very difficult'.

The Tribunal noted extensive information about the child and family life on the very first day of evidence when the parents attended together. We noted the obsessive behaviours of the child and the structured routine he has for going to bed. The Tribunal note that around September 2009 the child moved into his own bed. The Appellant stated that she hoped that she might be able to manage the child's behaviour in the future, stating that she feels more confident. The child's brother attends a special needs school. The Tribunal noted the very difficult relationship between the brothers. The Appellant on many occasions stated that the child will do something when he is ready. As a dedicated parent she knows him the best. She has found coping strategies of her own. She described incidents of self harm and damage inflicted within the home, e.g. holes in the walls, doors off hinges. The child's behaviour has recently improved according to the Appellant. We understand he has not self harmed in recent times. He is more manageable at home. We will revisit this passage of evidence at a later stage. We noted that the child is really focussed when with his mum on a 1-1 basis. She stated that he does not get that at school. She feels he gets a lot of 1-1 and 1-2 at the Respite Centre. She stated that the Respite Centre look after the child. They 'get him to do more jobs....they stimulate him a bit more..' The Appellant graphically described working with the child with no distractions on a sticker book. She stated that he knows his colours, numbers and some letters. He worked on the book for some 11 hours. The Appellant stated that on a 1-1 he was so focussed. She also stated that 'he was also so happy.'

It was very clear to the Tribunal the genuine concern of the parents regarding the child's speech. They stated that this is his only form of communication. They expressed their concern of how his speech is practiced, where, when and how often. They are concerned about the child's communication with the outside world. There is an obvious and perhaps understandable natural concern from the parents, about the involvement of SALT. There is frustration from both parents that more needs to be done for their son. They want everyone to pull in the same direction, to improve his communication and his education. The father highlighted the critical importance of addressing and improving the child's social and living skills on several occasions. He stated that the child's primary problem is his Autism and not his learning difficulties. He is concerned that his son could remain in care for the rest of his life. There were criticisms of the Current School from both parents but they stated that the school do listen but the parents do not agree with how things are tackled. The father stated the school concentrate on language skills and communication but he stated the child's problems are principally social – not educational. The parents visited the Residential Centre. They stated it was not appropriate from what they saw. They described it as a residential unit. They confirmed that change is not good for the child but still wished the child to go to the Specified School.

The Speech and Language Therapy Locality Manager was called by the Authority as the line manager of the Speech and Language Therapist. The Speech and Language Therapy

Locality Manager has never met either the child or the Appellant. The Speech and Language Therapy Locality Manager was able to advise the Tribunal of the Speech and Language Therapist's reasoning around closing the CSP from her professional viewpoint as no direct input was considered appropriate for the child. She stated that the child's diagnosis of Autism is incredibly important and that his complex needs which will interplay and effect each other. She stated what was important for SALT was the effectiveness of any intervention in life and in participating in daily activities. She described this as her 'raison d'être'. The Speech and Language Therapy Locality Manager described several methods of communication, e.g. PECS, Communication Books. She stated that any attempts to communicate should be accepted. She described this as multi-modal. She recognised that the child is able to utilise oral speech with short phrases and words. Now that the child has been de facto discharged from SALT there is no active care plan. There is a staged approach for input; universal, targeted and individualised. Team Leaders meet with the Speech and Language Therapy Locality Manager and they look at everyone's case ever 8 weeks. We understand the child has not directly seen the Speech and Language Therapist since at least April 2009. There are 6 sessions per week (over three days) of SALT in place for the Current School. Allocation is based upon needs. The Speech and Language Therapy Locality Manager described the staff at the Current School as a highly trained and stable staff. The Tribunal note that there was significant SALT training provided to the Respite Centre.

The Authority's Representative indicated that the Authority were still in discussion with Social Work about how they might input into the Educational Objectives. We noted that this has not happened because of the Tribunal process. She accepted that it was important to look at all the factors, including the home situation with the child's brother. She confirmed to status of the child being a looked after and accommodated child. The child's needs will require to be regularly reviewed. The Tribunal note that after social work were asked for their opinion the Authority took the view that a CSP should be re-opened for the child primarily to reflect the significant statutory change in the child's status. The Tribunal were also provided with a copy of the draft CSP. The Tribunal had the benefit of hearing directly from the Social Worker who has been the child's social worker since November 2003. He has more involvement now, on a weekly basis, since the child became looked after and accommodated on 16th October 2009. He has seen the child at the Respite Centre, at school and at home. He contacts the Respite Centre checking how the child is getting on, phones the Appellant at home, attends the Current School and speaks to the Head Teacher of the Current School and the deputy HT at reviews and meetings. He described frequent communication with the Head Teacher of the Current School about the child. She has asked him for advice by telephone when a situation has deteriorated. This could lead to a further meeting and discussion. He reaffirmed that he regularly speaks to the Respite Centre by phone. He stated that he must visit the child at least six weekly. The child now resides at the Respite Centre from Monday to Thursday, for four nights and stays with the Appellant from Friday to Sunday, for three nights at the

weekend. The child has been residing at the Respite Centre since 19th October 2009. The Education Authority pays for the Respite Centre. The Social Worker does not see the child in a teaching environment. He was not aware there is a Communication Book. He has not seen it at any time.

He stated that the child has severe communication difficulties. He stated that the Respite Centre have learned to understand his communication including his facial expressions, his actions and his body language. The Social Worker acknowledged the importance of the child functioning as a person, his personal communication, independent living skills, and self help skills. He considered it important to identify these, maintain them and develop them. He was clearly of the view that it is important to transpose these skills throughout the care setting. From his professional viewpoint giving the child respite assists him as a young person to reduce stress with appropriate care and support. This would benefit him and his family. In a broad sense this would assist him to access his curriculum at school. This was described as meeting to needs in 'a holistic way'. The Social Worker stated that social work played a key role in his opinion with a CSP.

The Social Worker stated that he was in a unique position to see the child in various different settings, commenting that the child does behave differently in different settings.

The Fieldwork Manager (Children and Young People) Social Work Department freely acknowledged the 'unbelievable task to give care support and structure' to the child and his brother. She highlighted the 'phenomenal efforts by the parents.' There had been a long involvement with the family and social work. In summer 2009 there were growing problems at home and problems were not resolving. She described there being a lack of progress of a solution and a very stressful situation within the family. She stated that the family dynamics had deteriorated considerably not withstanding the 'super human effort' of the parents. She referred to the Appellant's health suffering and stress impacting upon that. She stated that the child has coped well in the Respite Centre. He is less stressed. She considered things had settled down. She made reference to social work having concerns for the Specified School. She stated that there had been a professional holistic assessment from the outside. When invited to explain this approach the Fieldwork Manager (Children & Young People) described this as putting the child at the centre, looking at his personal needs and preferences, both in the short and long term, his environmental needs to include safety factors, all his health needs and educational needs and the views of the child's parents. The Tribunal note the recommendation within the Care Plan documentation for the child at R94 of the Closure of CSP bundle:

'The child needs a long term placement where there is a high level of awareness of the implications of ASD and LD. Where there is an Individual Support plan in place for the child with appropriate positive planned experiences presented in a structure way. The child requires this as a constant provision available throughout the year(52 week provision) as

school holidays are a particularly stressful time for the family if both the child and his brother are in the home.'

The Fieldwork Manager (Children & Young People) Social work Department indicated in her evidence that the Specified School is a 39 week provision, and that provision would be required for weekend and holiday periods. She argued that having a resource outside the Authority would naturally impinge on the Authority's ability to monitor, liaise and have regular communication on a regular basis. There is a distinct preference for a local provision. She stated 'we want to be in and around.' She argued that it would be beneficial to the child to be within his own community. She argued this would also be more convenient for the family. She argued that transition planning for the child is critical. She argued that being in the community is preferred where he will be familiar and where there are local resources in place for him. She stated that the Authority could not deliver consistency for the child if he were to attend the Specified School. She stated that they can plan a level of respite especially during the holidays with 52 week provision being offered by the Residential Centre. The Education Authority is unable to provide a 52 week provision for the Respite Centre. The Fieldwork Manager (Children & Young People) voluntarily stated that it is her duty to consider best value for money, stating however that this was not an over-riding consideration. There is a huge demand for respite. The Fieldwork Manager (Children & Young People) stated that the Residential Centre is a few miles from the Appellant's home. Transport will be relatively easy with little negative impact upon the child. She described this as a small purpose built unit, with 5 bedrooms all on the ground floor, with an enclosed garden space. Support can be provided until 19 years old. This provision is accredited with the National Autistic Society. They have staff who can support the child, they support people with Autism, and they have children with similar needs. We were advised that there is a matching process in place for respite whereby there is a personal centred planning approach, looking at individual needs and wishes and if the placement can relate to and meet the young persons needs. Staff at the Residential Centre visited the Respite Centre to discuss the matching. The cost of the Residential Centre is £52,000 (this does not include transport and an escort. Possible cost is £50 per journey). This provides 2-1 staffing. Additional staffing will be considered for the child is required. This would increase the cost of that provision, charged at £11 per hour for that additional member of staff. The Fieldwork Manager (Children & Young People) accepted that 'across the board, we accept additional staffing will be required from time to time. She emphasised the importance to operating on a 'needs based' provision. The Fieldwork Manager (Children & Young People) confirmed that the child would fit in well with the other people at the Residential Centre. The professional view is that the child would benefit from the environment of the unit and the support provided therein. The Respite Centre are unable to offer a 52 week provision for the child. They cannot guarantee the child urgent respite if required. The Fieldwork Manager (Children & Young People) described that as a 'frustration' from the Authority viewpoint. The Respite Centre have contractual agreements with other authorities and the Education Authority obviously have no impact upon those agreements. Accordingly

they are unable to guarantee the level of respite they can call upon as and when the child and his family require this provision. The Residential Centre can however meet the residential care needs of the child on a consistent basis. The child can access this provision on a flexible basis. The Respite Centre cannot therefore continue for the long term. The Residential Centre is available for the long term. The 52 weeks respite provision for the child will provide him with the intensive additional support he requires. The Fieldwork Manager (Children & Young People) once again stated that the 'demands on any one individual being exceptional'. She respected the wishes of the parents. She does not wish the child to be in care. The parents wish to have family life and to enjoy it will be enabled by the child remaining at the Current School and having the 52 week provision at the Residential Centre. The Fieldwork Manager (Children & Young People) confirmed the Authority have previously placed people in the Specified School. The Authority do recognise the wishes of the parent but the Authority are responsible for objectively looking at the child's rights and needs. The Appellant's Representative in questioning The Fieldwork Manager (Children & Young People) stated that the Current School is a good school but the parents were seeking the 'gold star' and on balance they want to request the Specified School.

The Director of the Specified School assisted the Tribunal with details of his school including its provision, class sizes, teaching staff and their training and knowledge. When discussing providing a 24 hour curriculum he stated that the residential staff "like to buy into aspects of the curriculum". He stated that it is important to deliver consistency for everything for young people. His school provide an absolute focus on Autism. There is a place for the child at his school. He met with the child and his parents. He stated that his profile matches the school. The Director of the Specified School has visited the Current School on a number of occasions. He was complimentary about the school. He confirmed that the Head Teacher of the Current School and the Principle Educational Psychologist visited the school following upon the Placing Request. He stated that some children do not make the adjustment to his school, stating that it is a partnership between the child, parents and the Authority. The Specified School have had pupils from about 17/18 authorities. He stated that he has worked with the Current School in the past and have shared pupils. He stated that he had the 'highest regard' for the school. The Director of the Specified School accepted that structure is very important for the child who has spent many years now at the Current School. He further stated that 'instability is critical.' He argued that it is 'critical not to move for the sake of it.' He emphasised that a 'big flashpoint is disruption and change,' but also argued that this is a fact of life and would have to be prepared for. Disruption will have an impact but this would require to be managed. Support would be required for any transition in the child's life. The cost of the Specified School is £93,605 for a 39 week (195 school days) placement. Travel would be on top of that. The Tribunal noted however that the parents expressed a willingness to carry out this element of travel if the placement is granted. The Tribunal had careful regard to the papers in the bundle providing further information about the Specified School.

The Principle Educational Psychologist stated that the child requires considerable support. He has Autism. A supported placement is required for the child in her opinion. As part of a multi-agency approach the view has been formed, that the Current School meets the child's needs well. She accepted that the child would require support in every aspect of his living- at home, at school and in the community. She concluded that he would require 'support with every element of that.' She visited the Specified School and was clearly impressed with the premises. Whilst it is a purpose built provision, it would none the less be an environment he would require to adapt to. The Principle Educational Psychologist was of the view that it would be a 'retrograde step' for the child to move. She argued that the Current School would be more stimulating. The Specified School is a quiet environment. She stated that the child enjoys the Current School and she would want him to 'build on this....we want him to cope with demands'. She stated that the child's body is changing and she was concerned with him changing in any event. The Principle Educational Psychologist argued forcibly that the child should remain within his own community and build on the good relationships he has successfully built up. There is now expertise and special knowledge within the school about the child. The Principle Educational Psychologist accepted that the Specified School is a quality educational establishment. That having been said it did not automatically follow that a placement there would be in the best interests of the child. The annual cost of the Current School is £25034 with the additional cost of transport. The Principle Educational Psychologist advised the Tribunal that she had been Specialised Principal in Autism for two and half years in another Authority. She has been an Educational Psychologist since 1977 dealing with every kind of additional support needs.

We return to the evidence of the parents. We understand they have been considering and looking at other schools for several years for the child. They have concluded that the child would benefit from the Specified School. The Appellant however when invited to express her concerns about the Current School she stated it is a great school, great staff, and it is within the community. She stated that the child benefited a lot in primary school, especially from the nursery provision. She stated there was now stagnation. He was not progressing. She stated that he was bringing nothing home from the school but did bring home skills from the Respite Centre – he likes cheese toasties now... in her words that was 'wonderful'! The Appellant said her son has so much more to offer. The child's potential is not being realised. She accepted that the child is 'relaxed and comfortable' in the Current School. She argued that the child requires specialist input to realise that potential. The father stated that 'Complacency has settled in here'. The Appellant confirmed that in recent weeks things have been a lot better at home. The child enjoys time alone with his parents. The Appellant recalled as recent experience where the child enjoyed kissing, cuddling and hugging her. She talked of the future and her plans for the child and his brother. The father argued that whilst the Specified School is indeed a new community setting for the child, he will continue his current community

life with his parents. The father was clear in his view that the Current School is not doing anything at all for his son. He stated that the Authority is offering nothing which would, in his opinion, improve the situation.

The Appellant recalled her visit to the Residential Centre. She stated that she did not wish her son to remain in care. Her plan is for the child to stay at home, within a family unit. The Residential Centre was described by her as a beautiful house, clean, tidy, with good staff and nice rooms. The child was described as socially more adaptable than his brother by the Appellant. She described the provision at the Respite Centre as part of the child's life. He has made friends and relationships there. She stated the staff at the Respite Centre goes the extra mile. They all love him. They do not want to lose their connection with the child. Once again the parents argued that the child has become stagnated within the current school. The father stated that his son 'has got language – it's not about talking books.' The Appellant stated that in recent times the child has not been so bullying towards his brother and 'not in his face all the time.' The child appears to be happier spending more time with his mum and individual times with his parents at home. The Appellant described the child now doing pencil skills and paint by numbers, colouring in by himself and choosing to even change the colour number codes. We noted that in the last week the child was able to cut his own nails and kept himself tidy. The Appellant said that the child had visited the Specified School. He was quite mischievous an indication that he was quite relaxed. He said "Yes" he did want to go to the new school. She also described the school as a calm quiet environment but indicated the children seemed to be well occupied. The Appellant stated that autistic children are very unpredictable. She stated that if he knows the area/venue he does not have a problem.

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. At the second stage, the Tribunal is required to exercise its discretion and determine whether, in all the circumstances, it is appropriate to confirm the decision of the Authority.

To assist in the final stage, namely the appropriateness of the Authority's decision the Tribunal had careful regard to the final submissions from the Appellant's Representative and the Authority's Representative. The Appellant's Representative highlighted the fact that the evidence did not conclude that the Specified School as a provision was not suitable. She invited the Tribunal to consider the ultimate approximate cost of the Current School and keeping the child in care in the Residential Centre or the Respite Centre as opposed to the cost of a placement at the Specified School and to weigh up the benefits to the child. She

argued that the Authority is now of the opinion that for the child's needs to be met he will require this on a 24 hour basis. She argued that the Authority have failed to come up with an equivalent alternative provision. She further suggested that the proposal of the Residential Centre from the Authority would keep the child in care and that is not what the parents want. The Tribunal do not accept this argument. The facility of the Residential Centre is respite for the child and the family. The Tribunal also had regard to the Case Statement of the Appellant.

The Appellant's Representative stated that no one could fail to be impressed with the commitment shown to the child by his parents who simply want what is best for the child. There had been a long search for another provision for the child which would better meet his needs, both now and in the future. In her final submission to the Tribunal the Appellant's Representative stated that the Director of the Specified School and the parents had expressed their views of the Current School in very positive terms. She stated however that 'no matter how well the Local Authority feels they can address the child's needs his parents feel they are not doing enough.' She stated that the child's parents know him best of all they are 'as sure as they can be that the Specified School will be the best for him.' They have the right to ask for this placement and 'truly feel this would be the better opportunity for the child to reach his potential.' The Appellant's Representative in conclusion invited the Tribunal to take into account all of the family circumstances and to overturn the Authority's decision to refuse the Placing Request.

The Tribunal explored with the Appellant's Representative the costs she felt we had not thus far noted. She highlighted the baseline figure for the Residential Centre namely £53,000. On top of this would be transport costs and the cost of extra staff. Thereafter there would of course be the cost of the Current School. She indicated the cost for the Specified School would be approximately £95,000 and total transport costs. The Appellant's Representative as indicated above confirmed that the parents are willing to transport the child to school. Thereafter there is the cost of the respite provision. It was argued that it might indeed be possible to continue to utilise the Respite Centre for respite if the child were to attend the Specified School.

In this case the Tribunal is satisfied that the First Stage has been established and therefore the Tribunal require to consider the appropriateness of the Authority's decision. The Tribunal is satisfied that the decision to refuse the Placing Request is appropriate in all the circumstances as noted above.

The Tribunal in their final deliberations preferred the final submissions of the Authority having regard to the evidence presented to us. We agree that the Specified School indeed offer an effective professional service to its population. We fully accept it is a Centre of Excellence for Autism. However the continuation of the child's placement at The Current School will in the Tribunal opinion avoid significant disruption to the child's education. It will also allow the child

to continue to interact and further develop his engagement with the social group he has become part of in school. We note it is the view of the ongoing professional assessment of the child's needs that the Education Authority can continue to meet his additional support needs in the Current School, a special school under the management of the Authority. This assessment was undertaken by staff at the child's current educational placement, the Authority's psychological service, social work personnel, health service personnel, specifically the Speech and Language therapy service and staff supporting the child at his residential accommodation with the Respite Centre. The Tribunal also empathised with the concerns expressed by the Principle Educational Psychologist that to move the child at this stage could indeed be a retrograde step for him. We note the proposals for accommodation/respite for the child at the Residential Centre which is within fairly easy travel distance for the child and his family too. We noted the expressed concerns raised by the Authority in regard to possible future problems with regard to post school transition from an out of area placement to adult services in the local community.

From the evidence before the Tribunal we are satisfied on balance that at this stage in the child's education the Current School offers a more suitable provision taking everything into account, including the evidence before us of the child's needs.

The Tribunal had sympathy with the Authority's view that given the circumstances which give rise to the child's additional support needs, i.e. the complex/multiple factors of Autistic spectrum disorder, challenging behaviour and complex learning difficulties, the Authority does not view a placement in the Specified School as being in the child's best interests and indeed may potentially be an arrangement which could cause upset for the child. The Tribunal note that the Authority takes the view that this constitutes a 'more intrusive intervention than is indicated by professional assessment in order to meet the child's needs and a more fragmented arrangement of provision.'

The Authority's Representative addressed the matter of costs in her final submissions. She stated that 'cost has not been a significant consideration in the Authority arriving at its conclusion to refuse the Placing Request submitted. Indeed were the Specified School in the Placing Request a less costly option the Authority would still retain its view that the more suitable option, based on professional assessment, is continuing attendance at the Current School for the child supported by a placement in the Residential Centre, located a very short distance from the school.'

The Tribunal is very mindful that our decision is not what the parents requested. The Tribunal is not persuaded that moving the child at this stage to the Specified School would be beneficial. We recognise that the family require considerable assistance with respite. The Residential Centre can in the Tribunal's opinion make appropriate and necessary provision for the child's needs. This is a 52 week provision allowing considerable flexibility for the family throughout the year. We are minded to accept the Authority's concluding argument in their submission:

'the continuity of a placement at the Current School and the provision of accommodation at the Residential Centre allows for the extension of the excellent curricular practices at the Current School to be further developed in collaboration with the appropriate trained staff in the Residential Centre to support the child on a 24 hour, 52 week basis. The continuing work with parents at local level would also ensure that their priorities are taken account of and there is flexibility in the local support arrangements provided. '

Although refusing the Placing Request, we consider it is of great importance that the Authority ensures that they work very closely with the child's parents to regain their confidence and trust. There were criticisms and concerns raised by the parents in evidence resulting in a feeling of complacency as described above. At the core of everything must be the child, his education, and his critical needs both now and in the future. The Tribunal thank the parents for their attendance and their courtesy throughout the hearing.