

DECISION OF THE TRIBUNAL

The Respondent confirmed in writing, on 28th April 2017, a decision to refuse a Placing Request made by the Appellant in respect of his son, "The Child". A reference received on 16th May 2017 under Section 18(3)(da)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") appealed against that decision.

Decision of the Tribunal

The Tribunal unanimously upholds the appeal, overturns the decision of 28th April 2017 and requires the Education Authority to place the child, , in the School A

A Summary decision of the Tribunal was issued on 7th August 2017.

Preliminary Issues

1. A case conference call took place on 16th June 2017. Late Productions were tendered by the Appellant's representative. The Respondent's representative reserved his position in relation to those Productions until he had an opportunity to peruse same. On the first day of the Tribunal Hearing he confirmed that the documents could be lodged without objection. These documents form items A17-A60, A61-A71, A73 and A75.
2. The Appellant's representative sought to amend paragraph 1 of the Case Statement (A1) by adding the information that the child speaks English as an additional language. This amendment was allowed and agreed by the Respondent.
3. The Appellant was granted permission to call three witnesses, there being no objection from the Respondent.

4. The Appellant advised that witness statements and credentials would be lodged with the Tribunal in advance of the Tribunal Hearing. The Respondent advised that he did not intend to lodge witness statements and would rely on reports contained within Productions. Witness credentials were lodged by parties in advance of the Tribunal Hearing.
5. Both parties agreed that due to The Child's age and the extent of his communication difficulties further exploration of his views was not likely to add any further information to the evidence in the case papers from those who note his reactions to, and how he behaves, in each context. Accordingly, the child's views were not obtained.
6. The Appellant's representative confirmed that he intended to depart from the argument in the case statement that the unit cost was to be provided in calculating additional cost to the authority. He accepted the authorities lodged by the Respondent.
7. The Appellant's representative raised an issue in relation to the Respondent's interpretation of the law in respect of incidental expenses and the cost of any individual additional support required. It was agreed that this issue would be considered further in submissions at the Tribunal Hearing. Subsequently the issue was resolved by agreement contained in a Joint Minute of Agreed Facts which was submitted to the Tribunal (T23), and accordingly no Preliminary Issue required to be determined.
8. It was determined that the Education Authority would lead at the Hearing. All late evidence was received without objection by either party. The representative for the Respondent produced a written submission on the second day of the Tribunal Hearing accompanied by documents entitled "Class Sizes for Special Schools and Units" and "Guidance on Appropriate Qualifications for Teachers of Children

and Young Persons who are Hearing Impaired, Visually Impaired or both Hearing and Visually Impaired”. He agreed that these documents should not be treated as Productions but would be referred to by him in closing submissions. In addition, on the morning of the third day of the Hearing, in advance of making submissions, he lodged a Practical Guide for Public Authorities in Scotland to Decision Making and the Law entitled “Right First Time” and copy of an authority, Dundee City Council Petitioners 1999 Family LR 13.

9. During the course of the Tribunal the Appellant’s representative lodged a number of photographs of the child, including two photographs lodged on the final day of the Hearing (A115 [A-P]). He also lodged A113, being an update assessment from the Department of Ophthalmology in respect of the child. In view of the nature of this evidence and the parties agreement to late lodging, and the evidence being relevant to the Reference, the Tribunal was satisfied that in all of the circumstances it would be fair and just to allow the 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”).

Summary of Evidence

The Tribunal considered a detailed bundle of evidence (including all late evidence) and had regard to (a) the Appellant’s case statement (as amended) and (b) the Respondent’s case statement.

Written submissions were also lodged by both parties.

The parties lodged a Joint Minute of Agreed Facts.

The Respondent's representative confirmed on the first day of the Tribunal that he withdrew his submission in this case that transport costs were not an incidental expense. The parties agreed to amend the Joint Minute to reflect their agreement that the cost to the authority of transport, plus escort to and from School B, is approximately £633 per annum.

The Appellant's representative lodged an Inventory of Productions for the Appellant (A116).

The Respondent's Productions consisted of

1. Case statement (R1 to R4)
2. Decision of Lord Glennie in SM -v- The authority 2006 CSOH 201 (R5 to R29)
3. Decision (Parent of the child) -v- Glasgow City Council 2014 SC 209 (R30 to R38)
4. Decision of the Tribunal (R39 to R62)
5. Psychological Services Reflection on Educational Establishments Being Considered (R63 to R68)
6. Email to Additional Support Access Point dated 31st January 2017 (R69)
7. Letter dated 27th January 2007 – Parental views on a child who may need special education provision (R70 to R72)
8. Medical report by Doctor, Consultant Paediatrician, dated 25th July 2016 (R73 to R76)
9. Email to Additional Support Access Point dated 9th February 2017 (R77 to R82)
10. Email to Additional Support Access Point dated 10th February 2017 attaching Educational Psychologist's Report and SALT Report for The Child (R83 to R89)

11. Letter of Decision in relation to placing request dated 28th April 2017 (R90 to R91)
12. Credentials of witness Witness A (R92)
13. Credentials of witness Witness B (R93)
14. Email from Respondent Representative dated 21st June 2017 (R94)
15. Decision in the case K Petitioner for Judicial Review of a decision by North Ayrshire Council 2011 CSOH 203 (R95 to R104)
16. Minute (R105)
17. Statement of H contained with email dated 27th June 2017 (R106)

The Tribunal heard oral evidence in the Respondent's case from:-

1. Witness A, Educational Psychologist H
2. Witness B, Acting Head Teacher, School B

The Tribunal heard oral evidence in the Appellant's case from:-

1. Witness C, Habilitation Specialist, School A
2. Witness D, QTVI, School Link Teacher, School A
3. Witness E, QTVI, Chartered Teacher, School A
4. Appellant, father of the child

The Tribunal had the benefit of written witness statements provided as follows:-

1. A77 to A82 Statement of Witness C, Habilitation Specialist
2. A83 to A88 Statement of Witness D, QTVI School Link Teacher

3. A92 to A95 Statement of Appellant and Qian Yu, the child's parents

4. A96 to A10 Statement of Witness E, QTVI Chartered Teacher

At the close of the third day of evidence the Members convened and deliberated, reaching a unanimous decision. A summary decision was issued dated 7th August 2017, the Tribunal being aware that the new school year was due to commence imminently in respect of either school.

Findings in Fact

1. The Child was born in 2012. At the date of the Tribunal he was 5 years old.
2. The Child was born with DYRK1A gene mutation, which is a rare gene mutation with no treatment available. He has bilateral microphthalmia with bilateral retinal detachment and a severe visual impairment. He is registered blind.
3. As at July 2017, when The Child was examined by Consultant Ophthalmologist, his right eye has no vision but no signs of inflammation were present. His left eye has very limited vision due to microphthalmia and traction retinal detachment. Continued checks of intraocular pressure and of the position of the retinal detachment are necessary. The Child's visual function is dependent on a small area of attached retina in the eye. With this he is able to perceive the movement of large shapes and light.
4. The Child has microcephaly and atopic eczema.
5. The extent of any developmental delay or learning difficulty for The Child has yet to be firmly established.

6. The Child has English as an additional language. His first language and that used at home is Mandarin Chinese.
7. The Child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”).
8. By way of a letter dated 27th January 2017 the Appellant wrote to the authority requesting that The Child be placed at the School A (“the Specified School”) in terms of a placing request (A5 to A7).
9. On 9th March 2017, the authority’s panel of advisors, Case Management Review Group, (“CMRG”) considered the Appellant’s placing request and recommended a placement at School B in preference to the Specified School. Minute of said meeting is contained within R105.
10. Witness A, Educational Psychologist (“Witness A”) prepared a report providing psychological services reflection on educational establishments being considered. Witness A visited the School A on 30th March 2017 to gain information in respect of the preparation of said report. The date of said report was 27th April 2017, a date after the recommendation of the CMRG had been made on 9th March 2017.
11. Formal letter issued to the child’s parents refusing the placing request was dated 28th April 2017 (T3-T4). The Respondent relied upon one ground of refusal: Schedule 2, paragraph 3(1)(f) of the 2004 Act.
12. Minute of Meeting of 9th March 2017 is lodged at R105. No evidence was provided as to the matters taken into consideration at that meeting as regards respective suitability of School B and The School A in respect of the provision for the additional support needs of the child, The Child.

13. The Report prepared by Witness A on 27th April 2017 was not available at the time of the CMRG meeting on 9th March 2017.
14. At the date of Witness A's attendance at the School A (30th March 2017) in preparation of her report, CMRG decision and recommendation had been made (R105).
15. The conclusion of the report provided by Witness A, based on what she had seen and her knowledge and experience of children with similar educational needs, was that The Child's educational needs could be met in either School B or the School A, in conjunction with the ongoing support and advice of the multi-disciplinary group already involved in assessing and planning to meet his additional support needs, and continued good liaison with his family.
16. The Child has received one to one supervision and support throughout his time at School C. He has attended nursery there from August 2015 with a part time place for five sessions per week. He continued to be a pupil there at the time of the Tribunal.
17. The Child needs one to one support to facilitate his learning (R78 – Report from School C and R80 Minute of Meeting 8th December 2016).
18. The Child has attended playgroup within the School A weekly since Spring 2015. He is well known to the Playgroup team where his ongoing development has been recognised and observed.
19. Between June 2016 and January 2017 no visual impairment teacher was provided by The authority to The Child.
20. The Child's visual impairment is profound and impacts on all areas of his development and ability to learn. It is his primary additional support need.

21. The Child has a recognised delay in verbal communication and language acquisition. Alongside having English as an additional language, he has a complex picture of additional support needs.
22. The Child's additional support needs can be partially met at School B.
23. The School A is not a public school. It is a grant aided school, being financially supported by a direct grant from the Scottish Government.
24. The cost to the local authority of a place for The Child at the School A is £22,616.46 per annum. Due to the proximity of the Specified School to the home of The Child, his parents intended to transport him to school and accordingly there will be no cost for transport.
25. There are no additional costs to the authority for a place at School B. The cost to the authority of transport to and from School B is in the region of £633 per annum. The cost of transport is an incidental expense.
26. The School A is a specialist school for children and young people from P1 to S6 with a visual impairment, including those with additional support needs or other disabilities. The school environment has been adapted to suit the needs of severely sight impaired pupils as well as those with significant visual impairment and complex needs.
27. School B is a special school for pupils aged 3 to 18 years who require a significantly modified learning environment. Needs of learners are primarily associated with learning disability and significant visual, sensory, health or medical needs.
28. The authority has offered a place to The Child in School B.
29. The start date for placement at the Specified School is 21st August 2017.

30. The ground of refusal relied upon by the Respondent at the date of the Tribunal, being Schedule 2 Section 3(i)(f), does not exist as Conditions (ii) and (iii) are not satisfied.

Evidence

The onus of proof lies with the Respondent. The Respondent led at the Tribunal. He relied upon Productions lodged (as previously detailed) and the oral evidence of Witness A, Educational Psychologist and Witness B, Acting Head Teacher at School B.

Witness A

Witness A's witness credentials are detailed at R92. She qualified as an Educational Psychologist in 2001 and has been employed as an Educational Psychologist since that date. She is currently employed by The authority. The report which she was asked to prepare by the Authority in respect of The Child can be found at R63 and is a psychological services reflection on educational establishments being considered.

In the course of preparation of that report Witness A visited the School A. She did so the day before school broke up for the Easter holidays (30th March 2017). It was her evidence that she had a tour of the School A and discussed provision with Witness D.

Witness A adopted the report as her evidence, in addition to her report at R84-R87, dated 10th February 2017, and productions R77 to R82.

Witness A's evidence was that The Child was operating at an early level and still trying to establish reciprocity of communication. Speaking Mandarin at home could make progress slower and affect his language development. She considered that the main consideration is the need to develop communication per se and she was not expecting him to be tutored in Chinese or English. He required the building blocks of communication at this stage.

In relation to the proposed class size for The Child at School B (referred to at 3.5 in R67), Witness A is of the view that one of the key things that she would be assessing in learning development is social learning through interaction, and how children interact with their peers. Her definition of peers was not necessarily on a chronological basis but children would be similar in age. She felt it beneficial to The Child to be in Primary 1 with children of a similar age starting school and moving into a structured learning environment together. She felt that the children learn from each other, for example about who snatches toys and how to react to what is happening around them socially.

Witness A's position was that her knowledge of authority provision is that the City Council has excellent provision for academic learning. She defined academic potential in respect of The Child. She described that he is interested in working out how things work and has the potential to explore. She has known and met him at School C and she is aware that no person puts limits on him. His skills are at a very early level regarding communication and being able to take direction but he is still at an exploratory level of play and directed by his own agenda. She rejected the implication that if he did not attend the School A, there would be limits to his success academically. She considered that School B had a wide range of children doing national exams and her role was to assess where children are educationally and to support them to achieve their potential. She had no reason to think that process would stop. If she thought that The Child was more academically able then his place at School B could be split or he could transition to main stream school. That possibility was open to him at School B but he needs to make progress in areas of educational need identified for him as a priority.

Witness A was directed to A105 to A112, which is information to enable understanding of DYRK1A and 21q 22.3 Deletion Syndrome. She recognised the description of the effects of the syndrome in The Child. Although it is a rare condition she considered that the impact of the condition is not rare. She would expect to be able to provide special

support for learning to meet The Child's needs. She thought it was difficult to assess The Child in standard pre-school assessments as he had not reached the stage of shared attention or focus. He is directed on a one to one basis at the moment but shows useful skills, perseverance and problem solving. It is not unlikely that he has learning disability issues mixed with visual impairment and communication difficulty. He is 5 and has not had the opportunity to learn in a range of environments, but is making progress.

In cross examination Witness A confirmed that she had been The Child's educational psychologist since around June 2016. She had seen him at times as part of a child planning process and at other times observed him in or around the nursery, when she was there in respect of other children. In total, she had had sight of him around 5 or 6 times but had specifically observed him on around 4 occasions. She has also attended meetings regarding The Child and been involved in discussions regarding his plan, specifically the Minute and Plan at R79.

Witness A understood that the visiting visual impairment (VI) teacher at School C, had retired in June 2016 and at The Child's Planning Meeting on 8th December 2016 no one had been appointed to replace her. The VI role was to help translate medical information from Dr, Paediatrician for The Child into an educational context for those providing The Child's child education plan. She was unaware of the current provision for a visual impairment service for The Child. She accepted that at the Planning Meeting no one had attended from the Visual Impairment Service, although she did not accept that this meant that those working with The Child were not continuing to follow advice to develop and grow The Child's engagement with education. At the time of the Tribunal no functional visual test had been carried out by an RBI specialist but Witness A advised that she wishes that to be carried out when The Child starts school, in order that it was carried out in a specific learning context.

In respect of The Child's special needs, Witness A's view was that lack of vision does not cause The Child's learning needs problem, it is his lack of communication (R85). Combined with visual impairment it is very difficult to teach him in a free play environment. The staff at School C did not have additional VI support that may have been useful to him, but they had strategies and ideas of how to support him. Mr S, who is a Habilitation Specialist, Blind Children UK and not a Visual Impairment Support Worker had given advice to them about The Child's needs and how to support him to develop.

In relation to the process of determining a placing request (as referred to in R3), Witness A advised that she was aware that there were three stages and that these three stages had been undertaken in relation to this placing request. She advised that she was not a member of the CMRG but she was aware of the decision which had been made to refuse the placing request. She was referred to the letter refusing the placing request (R90). She believed that the reference therein to reports was a reference to the report lodged by her and dated 27th April.

Witness A advised that she visited the School A immediately before they broke up for the Easter holidays and she sent her report to (the Respondent's representative) on 27th April 2017. She accepted that was the first date that her report comparing the two schools was available to the local authority. She had not mentioned The Child's attendance at the School A Playgroup and the history of placements attended as she considered it appropriate to mention only local authority placements. She viewed the School A Playgroup as being extra-curricular and more of an opportunity for the family to go to a family playgroup.

Witness A was asked to comment on the School A summary assessment report at A61, which had been provided to her in advance of the Tribunal.

In relation to page 4 “Visual Sphere” information she felt that The Child did not need 1:1 supervision when in School C. He built up a visual map but does not require 1:1 guidance moving around the nursery or in respect of other children. This contradicted the evidence contained in R78 (adopted by Witness A as her evidence) that The Child needs 1:1 support to facilitate his learning.

As regards unexpected obstacles, Witness A’s evidence was that The Child is most often able to negotiate his way around those obstacles. In relation to the issue of obstacles in his lower vision field, Witness A considered that he did not require constant 1:1 supervision but uses a variety of strategies to manoeuvre himself safely. She did not accept that daily input from Habilitation Specialists would be necessary, but in relation to “Vision Recommendations” (A65), conceded that she was not an expert on visual impairment or habilitation.

In relation to The Child’s attraction to bright light, she disagreed that minimal distraction would be beneficial to The Child. It is her view that she wants him to be distracted by what is going on at times and wants him to have the opportunity to react to distractions, so that he will learn rather than having his learning explicitly tailored to one particular environment. She was concerned that this would not enable The Child to develop skills for life. She was of the view that he had benefited from the cluttered nursery environment and had been able to show his preferences for things that he was interested in. If the environment at School B was limiting his development in any way, staff can return to education psychologists to ask about it and gain further advice.

In relation to “Functional Movement and Independence” (A66) Witness A thought there had been evidence of The Child reaching out and picking up high contrast pieces and smaller objects, popping bubbles etc. His sight is impaired but she could not say that his ability to reach out and pick up is absent, as he can do it at times. Although The

Child is not always happy to accept adult support, he has learned to negotiate steps in the nursery independently and knows how to keep himself safe.

In relation to functional movement, Witness A agreed with the assessment that The Child continued to benefit from the expertise of professionals. She conceded she is not an expert on pre-braille skills but emphasised that she was still trying to get The Child to a position of sharing joint attention with toys in a box or understanding defective toys. Pre-braille is pre-literacy and she would not expect The Child to be at a stage yet to be ready to learn that. Witness A accepted that she had heard about pre-braille skills but could not say what it was personally although she knew that it was generally about gross and fine motor skills. She felt The Child had a lot to do before being ready to learn braille as he needed to access his motor skills development first.

In relation to Habilitation Specialist input, Witness A's position was that she disputed that daily access to a Habilitation Specialist was necessary. It was standard practice that the education authority had access to advice from a specialist but not direct access to a specialist every day.

In relation to "Curriculum Access and Learning Observation and Assessment", (A66) Witness A largely agreed with the report. However, she disputed that capturing The Child's attention relies on a skilled adult to manipulate the environment and carefully select objects. She was of the view that another child would capture The Child's attention at times and that could be built on. For example, in nursery his attention could be drawn by something he has heard or someone else playing with something, and she felt staff could go in and capitalise on that and focus his attention there which was a very useful strategy.

In relation to "Curriculum Access and Learning", (A67) Witness A agreed with the terms of the report and she did not dispute the assessment at A68 or A69. While Witness A

largely agreed with A70 she did not agree with the view that the teaching staff all required to be Qualified Teachers in Visual Impairment (QTVI). She would expect teachers to access advice from Habilitation specialists and not be qualified VI teachers.

As regards A71, Witness A agreed The Child's difficulties are complex but she wished to emphasise that advice and support should be directed to him with one whole plan. While she was keen to make sure that his visual impairment and communication issues were addressed she also wanted sufficient thought to be given to other issues, for example his potential learning disability, interest in peers etc. She wanted a holistic approach to be taken rather than allowing one issue to be dominant.

Turning to Witness A's own report (at R63), a significant part of Witness A's evidence related to the basis upon which she prepared the report. It was suggested to Witness A that she had told staff at the School A when she visited on 30th March 2017, that the decision about The Child's placing request had already been reached. She denied that she had said anything of that nature to the staff. She recalled that the School A had assumed that a decision had been made, but she had assured them that it had not, as she was ingathering information to enable the CMRG to make a decision.

When the date of the panel meeting (9th March 2017) was put to Witness A, she advised that the CMRG have several meetings and that there must be a mistake in the date of the placement decision. She was clear that her report had been prepared and submitted on 27th April 2017. When the letter contained at R90 was put to Witness A, showing that the refusal decision was made on 28th April 2017, her position was that a meeting must have taken place between receipt of her report and the decision being issued.

Witness A was asked about discussions she had been involved in regarding the placing request. She provided evidence that in October there had been a planning meeting and

at that time the parents had wanted mainstream schooling. She had discussed the specialist provision and when the parents had talked about the School A she had said that her feeling was that The Child's needs could be met within The authority and it was unlikely that the local authority would look outside for that provision, but the parents were entitled to ask.

It was suggested to Witness A that she had used a template, and used copy and paste for large parts of her report. She advised she had done that in order to do a comparison of the two schools. She had attended the School A with a checklist, looking at what was the same and what was different in each school. She had not carried out such a report before but wanted the report to be meaningful in terms of a comparison of the two schools.

In relation to the comparison between the facilities at both schools (R65) it was suggested to Witness A that the School A was more suitable to The Child as the facilities for visual impairment activities were within the classroom, rather than in a separate room. Witness A did not necessarily agree with that position, as she felt that it was dependent on a child's needs. At School B the need would be identified and the class adapted accordingly. She agreed however, there were other children with visual impairments starting primary 1 at the same time as The Child in School B. While she appreciated that it may be more suitable to have designated visual impairment areas within the classroom, an appropriate area could be designated out with the classroom to meet the needs of the specific children involved.

In relation to class sizes, Witness A felt that larger class sizes in School B were an advantage as it allowed The Child to learn alongside others in a large room, as he had done in School C. She felt that he had shown that he could manage in that environment and that it had been beneficial to parts of his development.

In relation to the staff/pupil ratio, Witness A confirmed that School B has one QTVI full-time and one part-time (0.5) teacher. She understood that the full-time QTVI is in the nursery and that her expertise is accessed across primary 1 and 2, as developmental needs from nursery to primary 2 were relatively similar.

In relation to educational psychology provision, twelve visits were undertaken per year. Witness A confirmed that these are not visits to individual children. The visits are generally three hours long and she can discuss several children at one time. She confirmed that if The Child was in the School A he would continue to have educational psychology involvement from The authority but in a different capacity. He would have a yearly review and if the school requested input it would be provided. She had no children in her caseload at the School A at the date of the Tribunal.

In relation to Witness A's experience of the facilities and learning environment at the School A, she confirmed that she had visited the school approximately ten years ago for a historical case and she had a visit in the preparation of her Report. She had been given a tour of the school by Witness D and (school teachers) and they had given her information about what happened at the school.

In relation to differences between the two schools she felt that the School A emphasised early Braille skills as all children attending there have visual impairment. School B currently has one Braille user.

In relation to the difference regarding learning opportunities, the School A has some children with visual impairment as their only additional support need, but School B has children with a range of support needs, often more than one. She did not believe that any current pupils at School B would be doing Highers.

In relation to the importance to the School A of employability, life skills and social inclusion Witness A confirmed that that was the focus she was directed to and that it comes down to the cohort of each school. The School A emphasises those skills in the senior phase. In School B the pupils in the senior phase who appear to be managing more academically would be transitioning to mainstream school whereas at the School A visually impaired pupils are more likely to stay there for their senior phase.

A further difference in the two schools identified by Witness A was that the focus at the School A was on habilitation. At School B, that is not the core focus as they have a wide range of pupils with a range of needs.

At the School A class composition was based on developmental stage and chronological age but it was dependent on who was attending the school, whereas at School B The Child would join a class of seven similarly aged pupils. There are six class groups within the primary phase.

Further, within the School A there is the opportunity of respite and home school liaison. Witness A confirmed that there is no respite provision at School B and liaison is with the class teacher.

In relation to staffing, Witness A accepted that both schools had QTVI's, but the difference in approach is that at the School A all teachers are qualified in visual impairment. In School B class teachers draw on the support and advice of QTVIs.

On re-examination, Witness A confirmed that it is evident that it is not just The Child's visual impairment and communication difficulties which impact on his development as he is showing evidence of developmental delay and learning disability too, but he has a lot of self-directed positive skills, like perseverance. A visual impairment functioning assessment would be commenced at the start of primary school by Dr on admission to

School B or The School A. In school The Child would be observed in context to see how best to address the need. Either school would require to pay close attention to the medical view as the medics have ultimate responsibility for The Child's vision.

In response to questions by the Tribunal, Witness A confirmed that her preference for The Child to be placed in a class group of similar age is not based on concerns about the potential class in which he would be placed at the School A, but she felt that it was important for The Child to access a peer group. The setting he had been in nursery had 20-30 mainstream children and additional support need peers. That enabled Witness A to see him in context and she would be keen to ensure that he had access to peers, particularly exposure to children who did not necessarily have a visual impairment. Her concerns were that at the School A everyone had a visual impairment and therefore the peer group tended to be the same. She felt that in a bigger class at School B there was more chance of peer to peer interaction and peer / adult interaction too, a very important aspect of learning development.

Witness A also confirmed that 1:1 tuition was recommended for parts of The Child's education and 2:1 for other parts, and he will always be educated on either basis in the class group. She understood there would be four adults in a class of seven or eight children at School B. She noted that The Child had benefitted at School C from being in an environment with other children and he did not need a separate room to meet the needs of his visual impairment. She did not feel it was beneficial for him to constantly have 1:1 support, as more flexibility was required to enable social interaction and for The Child to be creative when he was not in his peer group.

Witness B

Witness B is the acting Head Teacher at School B. His credentials are lodged at R93. He has a Post-Graduate Diploma in Autism and has had management roles as depute

head teacher and acting head teacher with The authority since 2014. He has been a teacher since 2008, teaching mathematics until 2010.

No Statement was lodged by Witness B but he was referred to the Report prepared by Witness A (R63). Witness B had been in attendance at the CMRG Meeting on 9th March 2017, and recalled that meeting as having made the decision to refuse the placing request made by The Child's parents. He could not recall details of the discussion in respect of The Child or the details of any papers placed before the meeting. He provided evidence that meetings took place over two days when all placing requests were considered. The meeting he attended on 9th March 2017 was the first one that he had sat on during 2017. He recalled considering 14 pupils for Primary 1 and a handful of pupils for nursery school. He understood the context of the meeting to be in relation to making a decision whether a child qualified for a special school place and if so, whether the provision was to be provided by the local authority or in accordance with the parental request. Witness B was asked whether the report at R63 had been taken into account in reaching the view at the meeting that School B was the more suitable school. He advised that it had been taken into account (the Production having been shown to him). When the date was pointed out i.e. that the report was not prepared until 27th April he accepted that he could not have had the report available to him on 9th March. He advised that he knew a report was being done. He was asked whether R70, R73, R78, R79, R84 and R88 were put before him or considered at the meeting. He could not remember. His evidence was that he read any paperwork which was available to him (but could not recall which papers he had seen) and felt that he could meet the needs of The Child at School B. He accepted that he was not aware of any information from The authority in relation to visual impairment requirements for The Child but if he needed a visual impairment assessment, he could ask the Central Team of VI Teachers, but he had no recollection of having had any input from Habilitation Specialist or VI Teachers in reaching the decision about The Child. He had no recollection of any input from the School A or any comparison between the provision at

School B and the School A. He reiterated his evidence that reading the papers he had, he felt it was appropriate for The Child to go to School B, but he could not recall what information led him to that conclusion. He accepted that the default position of the local authority was that if they felt that the child's needs could be met, they did not examine other provision outwith the local authority. He was aware that the parents' first choice was the School A but he considered School B would meet The Child's needs, and as far as he was able to recollect that was why the meeting "went for" School B rather than any alternative provision. He accepted that he did not have information at that meeting about the cost of a place at the School A. It was Witness B's position that the CMRG are the decision makers in relation to placing requests and suitability of provision. His position was that the decision was recorded as part of the Minutes and then the decision letter goes out. The Minutes were recorded by the Respondent's representative.

Witness B confirmed that School B has a full-time nursery nurse whose speciality is visual impairment, in addition to a 0.5 part-time VI teacher. Additionally, the school's Principal Teacher who teaches in the nursery is QTVI. The full-time nursery nurse has no visual impairment qualification (and accordingly is not a QTVI) but she is constantly training and attending courses. Her main focus is visual impairment and she was recruited to that particular post for that reason.

Witness B advised the Tribunal that School B was the first school in Edinburgh to be awarded a bronze award for inclusive community, having been awarded same by the Visual Support Opportunities Project. The school is now being assessed for a silver award. This demonstrated how the school is invested in community support.

"Life Skills" are imbedded from nursery throughout the school. The school has a range of abilities and children with different special needs. There are currently approximately

36 children at the school with a visual impairment. The school population this year is 80 but next year will be 92.

Communication with parents is needs-based i.e. with some parents there is communication daily and with others it is not necessary to have it that often. Liaison between class teachers and parents is by way of home school diaries, phone calls, emails, news on their website and two parents' meetings per year, planning meetings and with parents as required. At School B a lot of work had been done in relation to family input. The hydrotherapy pool was opened on a Friday morning to allow for family involvement and to promote family learning. There was also a plan to extend family learning into homework tasks which would increase communication and engagement. As all pupils are transported to and from School B there is no daily face to face contact with parents or between parents. Further involvement in the school community helps to reduce parent isolation. There is an active Parent Council and social events are organised by parents.

The intention is that The Child will join a primary 1 class of eight pupils, five of whom have a visual impairment and three have active involvement from a visual impairment specialist (including The Child). This means targeted support, which involves the child being taken out of class to receive targeted input. Otherwise the child will be within the class. The visual impairment support practice is to give general understanding to teaching staff of the impact of visual impairment.

In relation to the hydro-pool, at the moment there is no sensory element (and therefore it would not be of use to The Child) but funds are being raised to have that installed next year. This summer a specialist outdoor space is being prepared. This is a space geared to a range of disabilities and will have a sensory zone, music zone and play zone. Witness B was optimistic that work would start in relation to the hydro-pool during the summer of 2018 when the funding was in place.

When asked about the relationship between the classroom and the visual impairment room (VI room) Witness B confirmed that the VI room is a base. The VI teacher has sessions there. Some classes have designated space within the class, which is an area lined and carpeted so that the different zones are marked out for different activities. The class rooms have space for flexibility and all is dependent on the need of the pupils. If there was a need for a VI adapted space in a class that would be done very quickly.

In relation to pre-Braille skills, Witness B's understanding was that these are motor skills using sensory exploration, use of fingers, tracking sensitivity of touch, searching, feeling etc. He confirmed that staff have an understanding of learning through touch and an understanding of the function of reading and language. He was not familiar with The Child and could not comment on whether The Child would benefit from learning Braille. He felt that it would be necessary to develop The Child's communication first as he needs to look at how to explore things and a lot of work would require to be done in relation to communication.

Witness B confirmed that the school has a member of support staff who is a Mandarin speaker and who would be more than happy to support The Child in developing his Mandarin. However, The Child has complex needs and early communication is about reciprocal exchange systems, turn taking, learning to play. These more basic interactions and communications skills were fundamental. Speech and language services could be accessed. Many learners in the school have English as an additional language. They are flagged to monitor their progress, and once every 4 weeks they are specifically assessed. If it was necessary for Mandarin to be used in communication with The Child that support would be available full time.

Witness B confirmed that The Child will be in a class with 7 other similarly aged pupils. There will be two primary 1 classes and twelve learners at the stage of primary 1, eight pupils in each (two of whom will be primary 2 pupils). The pupils will all work together and Witness B felt it was important for The Child that he is allowed peer group for accessing communication learning, turn taking reciprocity and communication. He will be in a very appropriate peer group of the same age. Older children in a peer group can present a challenge for integrators in relation to their motivators, interests, and the size of pupils physically. The number of pupils in the classes at School B allows for the school to stream the children into targeted support. If there is a big age range and a big ability range it would be very challenging to keep the class appropriate to every learner.

Witness B's position was that School B has excellent education provision for all levels. Some children attend there only due to physical or social need and are capable of achieving national qualifications. In the senior phase, they have the opportunity to learn with mainstream school which is in close proximity to School B. There can be shared placements and transition into mainstream.

In relation to The Child's condition, Witness B felt that the information (A105) highlighted that visual impairment is part of The Child's condition, but there is a complex picture of additional support needs and visual impairment is not the only one. In relation to the description of the most common features of DYRK1A syndrome Witness B indicated that each one of those features could be found in a pupil within School B. Accordingly, The Child's learning needs were familiar to him and he has other pupils with similar learning needs. He indicated that School B would appreciate that The Child had a learning disability in addition to his other complex needs but teaching would be adapted as required as staff differentiate every lesson every day in order to meet his needs.

In relation to the focus of habilitation, mobility and life skills Witness B's position is that habilitation is a focus for all children throughout the school. All classes access a living base "flat" each week to develop skills for life. In terms of visual impairment The Child needs to become familiar with his environment. When he attended the transition afternoon at School B he appeared to be very confident and was moving about and exploring. He spent an hour with a visual impairment teacher. His teaching would be developed to ensure his safety and strategies used to support habilitation, for example using trail rails and object signifiers in each room. He would have a tactile timetable and he would get used to exploring the school and moving around. That ability to explore could be transferred and developed in other environments and over time he would become confident moving around other areas within the building and using those skills outside the building.

Witness B confirmed that School B considered it to be most important to enable children to be as independent as possible and The Child would be supported for pre-cane skills and pre-Braille skills. His position was that habilitation is "the bread and butter" work of the school every day. The visual impairment teacher has a qualification in habilitation, and occupational therapy (OT) support is available in school at all times. The VI teacher and OT support work in classes with staff to deliver habilitation. Although the School A has a designated habilitation person, School B does not, but habilitation is imbedded in everything that is done at the school. There is a habilitation specialist in Additional Support for Learning Services who can be tapped into, if necessary. In addition, School B work closely with Mr S, who is the Habilitation Specialist for Blind Children UK. Mr S has been in the school regarding another pupil and could not suggest anything that was not already being done for that pupil.

The whole school had training in Canaan Barrie on- body signing, which would help The Child and everyone working with him to better understand his environment. In relation to the Report which had been prepared by the School A (at A66) Witness B's position

was that he disagreed that daily access to a habilitation specialist was necessary. His position remained that habilitation was embedded in all staff and did not require specialists to come in and deliver it.

He did not consider that it was necessary for The Child to have daily combined expertise of occupational therapy and QTVIs. The QTVI could build support in the capacity of all staff and VI input could be accessed if necessary

If The Child was to start at School B he would have a full visual assessment with Dr and that would build up over time so that a full picture of his vision was available and his curriculum could be differentiated accordingly.

Witness B agreed with the recommendations at A62 and A63 of the School A Report but confirmed that these recommendations could be applied at School B. In relation to the issues of curriculum access at A67 he agreed with the recommendation but advised that he would expand paragraph 3 to include opportunities to learn and play independently and collaboratively.

In relation to paragraphs 5 and 6 of A67 Witness B's position was that the team providing The Child's education in class would be skilled in tactile and sensory learning and they would have daily access to teachers who were expert in pre-Braille. Technology is a big part of the development of education at School B and The Child would have the opportunity of using screens to develop skills such as swiping, reaching and tapping.

Witness B agreed the curriculum access and learning recommendations at A67.

In relation to the recommendations at A70, in relation to interaction with others, Witness B's view was that The Child does not require to be in a class with all pupils with severe

visual impairment to benefit from education. All teachers do not require to be visual impairment teachers as long as the staff have access to a qualified teacher of visual impairment. Witness B would agree with the recommendations contained otherwise within the conclusions, but he confirmed that he would be able to implement all of those recommendations at School B.

Witness B felt that there were possible additional opportunities to The Child from attending School B. The school links with School D Primary School and has shared play times with School D. A holiday club operates from School B and some pupils access the School A After-School Club already. Free school buses are available every day to take pupils out for targeted learning and to be part of the community.

Witness B confirmed that he could not comment on The Child's interaction during transition as he wasn't there. The visual impairment staff had helped at transition and thought that The Child interacted well. He was sure that The Child would benefit from attendance at School B.

Witness B was cross-examined in some detail. When asked specifically if the QTVI teacher at School B had a habilitation qualification Witness B believed that had been built in to her QTVI course, but he would need to check whether she had any specific habilitation qualification.

In relation to the principal teacher of QTVI it was suggested that she was full-time in the nursery school. Witness B advised that she was the principal teacher for nursery and also the VI teacher as she happened to have that qualification. She taught daily in the nursery but not in the primary school. She was teaching alongside a teacher, in and out of the classroom, building capacity in the school and delivering continuing professional development. Pupils at School B have access to qualified speech and language therapists, occupational therapists and all teachers have a teaching

qualification. The specialists do not have direct input with the children necessarily on an individual basis but the whole team use the skills used by the specialists.

In relation to staff/pupil ratio Witness B's belief was the class sizes were dictated by the Council and one member of staff to 8 pupils was an appropriate ratio for the class into which The Child would be placed. It was suggested to Witness B that the class size limit for pupils with severe visual impairment should be limited to 6 but that was not Witness B's understanding of the requirements. He did not accept that there was a requirement for teachers of children with visual impairment to have a recognised qualification. Witness B was not aware of the class limit sizes in relation to visual impairment. The classes are streamed towards need and visual impairment services are not called on often as habilitation is imbedded in the school for all pupils.

In answer to questions from the Tribunal, Witness B confirmed that if The Child had to leave a classroom a member of staff would go with him but the hope would be that over time The Child would carry out any tasks independently.

Witness B confirmed that a speech and language therapist would continue to be available for The Child. The availability of speech and language therapists within School B is 4 days per week at present. Witness B was not sure how often The Child would be able to access 1:1 speech and language support, but speech and language therapists would be available within the building. Witness B was unable to say how often The Child would have group work with speech and language therapists or 1:1 support but advised that it would be provided on a needs basis.

On re-examination Witness B confirmed that he did not know the extent of targeted support which would be required for The Child as a functional visual impairment assessment had not been done. Some pupils have one to one support throughout their time at school and others do not require that. The support, however, would not necessarily be unlimited. If 1:1 support was required from a QTVI throughout each day

of schooling Witness B would require to seek funding for that from the Local Authority. The expectation would be that the QTVI would support the class staff. He could not say that the funding would be guaranteed but in the past he has asked for support and received it.

On the third day of the Tribunal Witness B was recalled to give additional evidence in relation to The Child's transition visit to School B. It was put to Witness B that The Child's visit had not gone well because the classroom in which the visit took place was cluttered, The Child was not guided enough and the visit was not meaningful or enjoyable for him. Witness B confirmed that he had seen The Child briefly but the staff did not report any concerns. All of the P1 pupils and parents had come together and the pupil and parent had gone to the class group to which they would be allocated for Primary 1. Witness B was shown photographs which had been produced by The appellant at A115 (O and P). He accepted that the class appeared cluttered but confirmed that it was not set up for the Primary 1 intake in August and that classes build up an accumulation of items over the course of the year. At the transition visit the school would have relied on the parent to take the lead role in guiding.

Witness B confirmed that eight pupils would be in The Child's class, five with visual impairment and recalled that all of those pupils had been present at the transition day. In the current Primary 1 class, there had been seven in the class photographed, three with visual impairment.

An issue that The appellant had raised was that The Child had been expected to sit in the group and take part in a group activity. Witness B was unable to comment on that as he was unaware of the activity. He confirmed that Braille materials would be available for The Child as part of his development plan at the pre-Braille level.

Witness B was unaware of the issue of flooring causing any visual disturbance i.e. if the floor surface is reflective but advised that any issue which arose could be addressed.

In relation to the issue raised of scissors sitting on the table where The Child was working during his transition day Witness B accepted that scissors should not be within the reach of any pupils and advised that he would keep everything like that away to enable the children to be safe.

In relation to the set-up of the classroom he confirmed that the individual teacher in the class decides on the layout and adapts that as the year progresses in relation to whatever meets the needs of the children.

Evidence of H

The evidence of H was contained within an email lodged at R106 which was not disputed by the Appellant.

H is a visiting teacher (visual impairment). She previously offered support to the nursery and parents regarding The Child's development. The visual impairment service runs a playgroup and The Child was attending there when he went to nursery at School C. He attends the School A Playgroup on Fridays.

The staff at the playgroup consists of a visiting teacher of visual impairment, several nursery nurses/pupil support assistants and a mobility assistant. H was employed in January and asked to support The Child at the end of January. It was several weeks after this before she finally met The Child. She was leaving messages with no reply at the number that she had for him. She knew he attended School C so she arranged to see him there. The first time she visited he was absent due to illness on 21st February and so she arranged to visit him on 2nd March 2017. This visit was also cancelled due

to illness. She finally met The Child at the School A playgroup on Friday 10th March. Since then she has been visiting The Child and his mother at home once a week, apart from a few exceptions on both sides. They have been happy with her input and she gets along well with them. They have been working on developing basic concepts such as big/small and open/close as well as encouraging The Child to use the vision he has by providing a range of activities and toys which appeal to his specific interests.

H is linking in with recommendations from The Child's speech and language therapist, M, to develop his communication. For example, The Child is encouraged to ask with the on-body sign "again" for activities he has enjoyed. A visiting teacher (visual impairment), at School B had been asked to joint one of the sessions last week but it was cancelled due to The Child being ill.

Written Evidence Lodged by the Respondent

A Report from Speech and Language Services dated 10th February 2017 is lodged at R88. The summary of the Report confirms that The Child has significant communication and interaction delay. This is associated with his sensory and global developmental delay. School C had been pivotal in supporting and encouraging the progress, albeit slow progress, that has been made in all areas of The Child's development, including communication.

The Report from School C School dated 29th January 2017 is to be found at R78. That Report identifies that The Child needs 1:1 support to facilitate his learning. He needs structure and repetition. He needs to learn in a communication based environment. He needs specialist support and resources to ensure progression.

The Appellant's witnesses

Witness D

Witness D's credentials and written Witness Statement are contained at A83 to A88. The Statement was adopted by Witness D as her evidence and she explained in more detail the nature of her qualifications. She has previously worked for the The authority as part of the VI Team, East, West and Midlothian for 0-18 years pupils through mainstream, primary school, nursery school and special needs provision. She had worked for five years at School B, including School B Nursery. She had been a visiting teacher at Brightstart Nursery, which is a playgroup and nursery for children with additional support needs. She had a role with The Child at that time as a VI teacher and worked with all of the children making observations and looking at strategies to assist their learning and discussing their progress with parents.

Witness D prepared a Summary Assessment Report which is lodged at A61. She adopted the terms of that Report as her evidence. She confirmed that she did a day's observation and assessment and had information from The Child's attendance at the School A playgroup for a period of two years to inform her report. During attendance at the School A playgroup once per week she had intensive contact with The Child working with him on a 1:1 basis in different environments. Sometimes she would be in the sensory dark area, larger playrooms or outdoor play space. She observed particularly how The Child would use his vision. She focused on the best strategies in all situations for The Child to see how best to use his vision effectively and to increase the use of his vision.

In relation to A64 (paragraph 3) and reference to lower field loss, Witness D was asked about Witness A's view that this did not specifically mean that The Child would need 1:1 supervision and guidance in school. Witness D explained that she was referring to moving around the playgroup environment. The Child cannot predict where children will be but can predict layout of rooms, furniture, and things which can be kept stable and unchanging. He cannot, however, predict where there will be objects, toys or children capable of moving. If the environment is fixed he can create a mental map of the environment over time but initially he does not see the objects. With a large number of children moving in different positions if the staff are expecting The Child to move independently and access learning freely then he requires to predict his environment, therefore everything is to be where he has left it. Someone is required to supervise him on a 1:1 basis to allow movement around that environment and to avoid injury to him or others, for example, if a child was on the floor in his path.

In relation to A65 and the reference to vision recommendations and daily pre-cane skills, Witness D explained that pre-cane skills are about a child having awareness of environment and being able to move independently, eventually using a cane. In relation to Witness A's evidence that pre-cane skills were about things like pushing trucks, Witness D was clear that it was not simply about moving items. She confirmed that pre-cane skills were about mentally mapping an environment and understanding where self fits in with that environment and space. It is specialist work. The Child is very clued-up in listening and has good auditory sense. At the School A the staff would take that and use it to compensate for lack of vision. For example, out of the door if he can hear a waterfall in the sensory garden, staff would encourage him to recognise that it is a waterfall and to relate it to where he was in a certain place of the school and at a certain time. That is one aspect of pre-cane training. The other side of it is about orientation of self and basic mobility. In the School A there are trail rails all over the school encouraging children to move independently and encouraging them to locate themselves using lots of different means, for example, objects of reference, colour-

coded environment, flooring surfaces etc. A child using a daily routine and reinforcement using some pointers can create a mental map.

It was suggested to Witness D that it was not necessary to have specific input from a habilitation specialist in order to encourage independent learning. Witness D was clear that it would require a qualified habilitation specialist to understand The Child's needs and adapt the environment accordingly. As a QTVI, Witness D had two days awareness training and so she could understand and follow instructions given by a habilitation specialist, but that specialist will have been trained for two years or three years if trained part-time. For The Child, early intervention is key due to his willingness to move independently and a specialist is needed to hone in on that and develop that skill and ability. For him to move safely, and not feel held back, specialist input is required to develop appropriate skills in The Child.

In relation to Witness D's position at A65 regarding bright light and stimuli, Witness A had provided evidence that it was not always beneficial to have minimum distraction and that The Child must have the opportunity to learn in an unpredictable environment. Witness D confirmed that the real world is unpredictable but children with significant ASL needs require support and "scaffolding" in order to make them independent adults. She has observed The Child and known him for a long time. In a busy, distracted environment with high stimulus he has a tendency to dart about in the space. He uses auditory and sensory senses to understand what is happening around him. He uses those senses to make sense of what is happening and he follows the noise. Bright light attracts him and the extent of his vision is about seeing bright lights or objects. Accordingly, he will have a tendency to want to go towards those objects. It is useful in learning approaches to gain his attention but in a situation where that is not wanted, he will find it difficult to focus on an activity if he is otherwise distracted by a bright light.

In relation to reflective surfaces (particularly flooring), consideration has to be given to this issue as reflective surfaces have a big impact on children, like The Child, with significant visual impairment. Reflection of light on surfaces causes a distraction. At the School A blinds are available to remove light and flooring needs to be matt and non-reflective, otherwise it can give the feeling of walking through water for The Child due to the visual disturbance. Non- matt surfaces create a feeling of motion as he cannot judge the depth of the surface. The Child is very aware of surface changes and non-matt and reflective surfaces make it difficult for him to move independently.

In relation to Witness A's evidence that she had observed The Child picking up objects and therefore she questioned whether The Child's sight impairment impacts on the development of his fine motor skills, Witness D confirmed that while The Child may be able to pick up objects he will not learn from an environment in an incidental way. Most children learn from what they see and how people interact with each other. If a child can't see it, they can't learn from what other people do to pick up objects. The Child cannot learn from others how to reach, how to find, how to pick up. He is good at manipulating objects but his opportunity to do so is limited by his vision.

In relation to pre-Braille skills (A66) Witness D defined these skills as early literacy for children with vision impairment. They use tactile approaches and learn to use it in a particular way. In relation to Witness B's definition of pre-Braille skills involving motor skills, searching for objects, following a story in ways similar to any primary 1 pupil, Witness D advised that whilst that was correct to an extent, the issue is that The Child does not have vision. Accordingly, staff require to look at how The Child can be enabled to access objects, to find, to process and share information. There are parallels with early literacy but in Braille learning it takes a specialist approach to look at fine-tuning tactile skills and how to deliver skills in a Braille rich environment.

Witness A had questioned whether a skilled adult was required to capture The Child's attention as she had considered that his attention could be captured in many ways and capitalised upon. Witness D's position was that the notion of having a skilled adult available on a 1:1 basis with The Child is what would allow The Child to develop. A skilled adult can recognise the opportunities and make sure that The Child is able to access those opportunities. A sighted child can follow a child's lead but the skill of a visual impairment teacher is the ability to recognise something that The Child is doing and develop it. For example, if he is playing in the garden The Child at times makes it clear that he has been swinging long enough on the swing and wants to go inside. Witness D had observed him getting to the side of the building and working out where the windows were. He got frustrated that he couldn't get in. He came back and located the supervising adult and reached to take the adult to the building and locate where the windows were. The adult was able to say "do you want to go inside" and to interpret The Child's response. The Child felt confident to go around the side of the building and to go in. The adult did not physically take him in, but facilitated his understanding and learning to be able to get back into the building.

In relation to Witness B's position that collaborative play was important for The Child, Witness D agreed that would be important in time. She acknowledged that in the playground setting The Child showed some interest in the other children as he wants to follow them and know what they are holding or carrying in case he wants it. However, to play collaboratively he needs to understand play first. The Child must have his environment set up specifically for him to enjoy and relax into play. He requires to be well supported. For example, when The Child came to the School A for a visit it was to another area of the building which was not known to him. In the soft-play room he found it tricky as he has a need to go around the room and create a mental map of the room before he can relax to play. He maps out where the doors and drawers and windows are before he will settle to play. In the new environment in soft-play he found it very difficult. He found a box left out with toys and he found it hard to settle to one

task. He needed to know where things were, where he would find them and where they would be if he went back for them. In that situation, she would be looking to create the best environment and best opportunity for imagination and independent play as a basis for learning for The Child. The environment that he is in therefore needs to be carefully designed and adapted so that he can focus and do that. That requires specialist input and 1:1 observation.

As regards the issue of the size of the room, Witness D's position was that can make a big difference to The Child. He is better in a smaller space where there are fewer pieces of furniture as he will feel more secure. Young children with visual impairment find it difficult being in a room where they cannot touch the sides, and if a small room is used children can more easily become familiar with their environment.

As regards Witness D's Report at A71 and Witness A's view that the focus at the School A on visual impairment would be to the detriment of The Child's other needs, Witness D's evidence was that the combination and complexity of The Child's difficulties cannot be unraveled, with each part being dealt with separately. Whilst the impression of the School A is that it is all about vision, which is its main focus, almost all of the children at the school have additional support needs, and some needs are very complex over and above visual impairment. At the School A, the staff consider the whole child, using expertise to do that, creating "scaffolding" around the lack of vision to allow the child to learn. Vision is the primary sense for learning and it has an impact on every other area of development. The Child has significant vision impairment and the impact of that on his social communication and emotional skills should not be under estimated. Visual impairment support should not be "an add-on" but should be at the core of The Child's learning

Witness D has a wide range of experience in her role as visiting teacher and has supported lots of children in lots of different settings. . At the School A, there is

specialist provision in each class. At School B, staff have access to specialist teachers rather than having specialist teachers available in class. For many children access to specialist support works well and she did not under estimate the good work done in School B. For some children it works, but not for all. Within the spectrum of all children with additional support needs there are lots of different approaches to benefit the child.

Witness D advised that the School A is a very specialist provision with a high level of expertise not required for all children, but it would be suitable for The Child. The difference for The Child is that due to his complex needs there is recognition across the range of professional that his difficulties with learning are difficult to define. It is unclear how his development will progress. In the two years that Witness D has worked with him his level of communication, movement and understanding others has improved, but for the improvement to continue he needs a high level of support to get to the stage of fully accessing the curriculum (as identified by School C). The School A is unique in that it has a variety of experts on tap to feed into The Child's needs. For example, in relation to Braille, staff understand how to teach it. No-one would expect someone to teach a sighted pupil to read just because they can read. They need to know how to teach. Having a significant sight impairment enormously impacts on communication development. The Child has a genetic condition which has the possibility of impacting on the development of his speech. In addition, English is an additional language to The Child. Vision is a primary sense and it is necessary to expertly explore it to establish approaches to develop communication.

In relation to habilitation skills, Witness D described The Child as being fiercely independent. She believes that the School A has an environment which is tailored in a way that most other schools are not to provide what he needs to enable him to develop that independence. There are smaller class sizes with high staff ratio and focused attention which gives staff the ability to observe, to watch and to build on what they see

through specialist eyes and to direct The Child. If The Child was to start at the School A in August he would be one pupil in a class of four.

In cross-examination Witness D confirmed that VI support from a QTVI at School B was not provided directly in class but the QTVI informed the class teacher. In the School A, all teaching staff are QTVIs or working towards that qualification. The habilitation specialists are not teachers but have habilitation qualifications.

Witness D was asked about Canaan Barrie provision for The Child and confirmed that Canaan Barrie was devised by the School A. It is a system of supporting language communication and understanding and acquisition in children with visual impairment and additional support needs. Witness D was asked whether the School A would have any idea what level of Canaan Barrie was appropriate for The Child. She confirmed that Canaan Barrie has no level. Canaan Barrie signing is child-centred. The School A recognise that The Child uses gesture in a meaningful way and accordingly they reinforce gesture. The Child can be resistant to people touching him so with Canaan Barrie the School A take a different approach. He is not happy with on-body signing and accordingly uses signs in front making movement and sound. Along with The Child's mum, the School A have looked at signs which could be more appropriate for The Child, for example, he claps his hands for play and he puts his hands out for help or taps for more. The use of such signs lets The Child have greater understanding of learning and communication. The expertise comes from Canaan Barrie understanding, identifying where it is helpful and useful. School A expect staff to have a high level of signing knowledge in class using Canaan Barrie like typical spoken language and to reinforce its use. The benefit of such signing depends on how well staff know the child and a high level of knowledge of signing is essential to support the pupil.

During cross-examination, Witness D advised that when Witness A came to visit the School A on 30th March 2017, she had not been given a tour around the school (as she

had advised in evidence). She had met Witness D and the Deputy Head Teacher and they had talked about the facilities offered. They had offered her a tour of the school but she did not feel it necessary as she had a report from a colleague about what the school had to offer. Normally Witness D would show people around the facilities at the School A. Witness A had a list of questions which Witness D did her best to answer.

When re-examined in relation to this issue Witness D confirmed that Witness A's visit to the School A lasted around an hour. Witness A told her that a decision had already been reached regarding the placing request and a letter was to be given imminently to the parents confirming the decision. She had, until then, understood that the purpose of the visit was to look at the school and provide a Report to allow a decision to be made. The visit took place on a Thursday. Witness D was aware that The Child and his mother would be attending playgroup the following day within the School A. She made a point of going down to the area at the pool to catch up with The Child's mother to see if she had received the letter with the decision as she knew The Child's mother would be upset. It was clear from the discussion that The Child's mother had not received the decision letter and accordingly Witness D felt that it was not her place to tell her the decision.

In relation to the issue of peer group, Witness D confirmed that the School A's peer groups are defined by chronological and developmental age and there were children of similar chronological age to The Child in the school. The School A also has a direct link to St. Peter's Primary School and The Child's parents had been keen that The Child may be able to access that mainstream facility eventually. In the class The Child will join, some of the children will be of similar chronological age to The Child and some will be developmentally similar. The School A can offer an entire package to The Child. As people do not have a clear idea of the extent of his learning disability Witness D was relying on her own observations and confirmed that The Child's development is dependent on being in a familiar environment, and the strategies employed by the

people there. Sometimes he has good, clear interactions and other times he presents as if he is not receiving the communication. This is very much to do with environment and in the School A environment would be created and maintained to enable The Child to use his skills to the best of his ability. The Child is at an early stage of spoken language. He uses tone and vocalises in appropriate ways but not through language, except through gesture. He interacts and expresses communication. He can also initiate that and seeing him do so makes Witness D think there is potential and that he is beyond the early stages of understanding communication and expressing it. Communication is multi-layered and part of development. It is not clear cut and Witness D's observations and experience of working with The Child indicate that he can express communication beyond the initial level but he is in an early developmental stage, not using speech or clear words. In terms of The Child's current functioning level, being in a larger busier group makes it more difficult for him to learn.

Witness D was clear having read the Report from School C (at R78) that The Child is provided with 1:1 support there to function and learn. He continues to need that level of support in primary 1.

Witness D advised that she would be wary of saying that The Child had cognitive difficulties. She is aware of Dr. assessment which was done almost a year ago. She advised that from her own observations The Child does not participate and learn as other children of a similar age, and there could be lots of reasons for that. Until she is clear about the reasons she will not know the extent of his learning difficulties. The existence of cognitive learning difficulty will not prevent The Child learning Braille. Similarly, Canaan Barrie is widely used with children with a range of cognitive ability as it is a way of understanding spoken language and giving it meaning.

Witness D confirmed that The Child needs one to one support and guidance to be able to move safely around the environment. She reiterated that other children and objects will move, whereas some objects will be fixed. By 1:1 support and guidance she does not necessarily mean that The Child requires to be taken by the hand. He needs support and a programme of learning from habilitation support to recognise and anticipate objects in his way. There is a long progress of training before he could move safely. He has no lower vision and does not see people at floor level which is an obvious risk. It is important for The Child to have access to a variety of environments. The optimum environment is distraction free and predictable, where he can concentrate without distraction, where he knows where things are. Although he can link with others and learn coping strategies in a busy environment his close space requires to be limited in distractions.

In relation to A65 and the observations of Witness D on The Child's functional movement it was suggested that The Child could look and reach towards objects and pick them out during his assessment. Witness D confirmed that she could report on weekly experiences of The Child over the past two years. If The Child knows an object or can predict where it is, he has an opportunity to look for and find that object. He generally reaches to the object and reaches passed it. He finds it difficult to reach it first time around but after the first or second time if the object is fixed he will get it. He will see a large shape but it is difficult for him to get more detail and therefore there is an inaccuracy of reach.

In relation to The Child being able to negotiate the steps at School C independently, Witness D advised that she had not seen that for herself. She would be interested to know if there was a handrail or if The Child had been supported to do it and what process he had gone through to achieve independently using the steps. She confirmed that she has watched him skilfully building up knowledge of his environment. When he had gone to the School A to use the swing in the garden his mother had taken him

through that process step by step. Initially getting him to sit, then safely holding the swing and repeating the process again and again until he could follow the instruction. Accordingly, if the experience of walking up the steps had been built up and repeated he would learn how to do it, but he would not be able to move around independently or safely.

Witness D advised in cross-examination that in the School A all teachers had post-graduate qualifications as qualified teachers of visual impairment. In School B she understood that there was a 0.5 QTVI and a person who worked as a nursery teacher who had completed part of the post-graduate course to certificate level but not to diploma level. While she understood that there were many pathways to reach accreditation she was of the view that there could not be disparity between the level of experience and ability between one route or another. Whichever route was taken to have the QTVI qualification the person having it would have to have the same level of knowledge and understanding as someone who had acquired the qualification through another route.

In answer to the Tribunal clarifying Witness D's views about the best communication strategy for The Child she confirmed that the consensus was that it was important to use a variety of communication approaches rather than just one. The Child seems to understand the spoken language and his understanding is better in Chinese Mandarin than in English. By using the signing system, the two languages could be blended. Using a word in Mandarin and reinforcing it in English and signing it to give it a sensory nature and actual meaning was beneficial for The Child. This had been applied in playgroup at the School A playgroup. The Child's mother reciprocated by telling staff about gestures that she had seen The Child use and then they would work together to develop that. It was a two-way process between The Child's parents and the school to listen, to feedback and use the information and develop it in The Child's interests.

Witness E

Witness E provided her witness credentials and Witness Statement at A96 – A104. Witness E is a QTVI, Chartered Teacher, at the School A. She has been a QTVI and orientation and mobility specialist (habilitation) at the School A since 1996. Her experience is extensive. She adopted her written Statement as evidence and explained to the Tribunal the meaning of pre-Braille and UEB (Unified English Braille). In addition, she explained the advanced enhanced core curriculum available at the School A. This was an expanded core curriculum unique to blind and visually impaired pupils to enable them to develop a set of skills allowing them to access the core curriculum in mainstream education. Schools all over the world use this approach. The nine areas of skill considered core skills are listed A98. Witness E confirmed that these skills can be applied across a range of visual impaired disabilities, for example to those with no additional support needs but also to those with significant additional support needs.

At A101 Witness E provided the Tribunal with her thoughts on the expertise that the School A can offer a pupil with The Child's unique learning needs, in particular expertise in the field of blindness and visual impairment; expertise in educating and supporting children and young people who are blind and visually impaired with additional specific learning needs; a tailored physical environment with unique features designed to support the learning needs of blind and visually impaired learners, some of whom had specific additional learning needs; a robust programme of training for all staff keeping abreast of current best practice in the field of blindness and visual impairment and additional specific learning needs including medical and therapeutic intervention.

Witness E confirmed that if The Child joins the School A he would benefit from small classes with specialist teachers. She would be The Child's class teacher and there would be four pupils including The Child in the class with an age range of 5, 6 and 7. There would be good opportunities for social interaction with an age range of pupils

throughout the school and each pupil would have an individual programme of education, but have the opportunity for group activities which are particularly communication related.

Within The Child's class of four pupils Witness E would be the class teacher, the Education Learning Practitioner (nursery nurse) and two classroom assistants would be present at all times. All staff have extensive experience working with blind children, visually impaired and additional support needs and have Braille UEB qualifications.

Witness E confirmed that she has worked with both models of delivery of visual impairment teaching, one where the QTVI is a class teacher and one where the class teacher has access to support but is not QTVI. She confirmed she has worked in both fields and has been a visiting teacher. She has also worked from the School A in Outreach over an extended period of time in independent schools. Her years of experience in delivery of both models informed her opinion. Blindness is a unique disability. The child requires immersion in a situation where everyone understands the impact of the visual impairment, down to the person serving lunch and doing the cleaning. It is important for the child to have in class a QTVI and support staff who are experienced and qualified regarding children and visual impairment. It is essential to help that child develop in the environment and feel confident to develop skills. If a child was a candidate for mainstream inclusion Witness E would recommend spending some time in the School A before transition as they can always learn better if learning is in a setting where a child is immersed and there is constant acknowledgement of blindness or visual impairment. The impact on communication is significant as visual communication is the way that children learn from twelve weeks old to one year. She had felt very frustrated in the visiting teacher role that she was not doing enough to impart the information in the way teachers could absorb, take it on and keep it with them when she was not in the school. A visiting QTVI will have the same skill set as Witness E but they cannot spend the same time with each child, for example with an

eye condition you must understand the condition and the way the child sees to look at the implications for their education. With one eye condition, there can be a wide range of implications so one needs to know the basics and likely impact. Adaptation is often required, and understanding that it is a shifting situation. It is necessary to know how to conduct informal VI assessments every day and note subtle changes and adjust the education provision accordingly. She would not expect a mainstream teacher to take all the specialist information onboard and utilise it daily.

School B is a special school and class teachers have experience with visual impairment. Witness E's view was that staff require to have a VI qualification to work effectively with children with visual impairment, especially if it is the child's primary disability. Visual impairment can fluctuate depending on environment, for instance the flooring and lighting. Lots of things can affect how a pupil uses residual vision. Knowledge of these aspects is essential to be aware of that and to react as appropriate.

In answer to cross-examination Witness E advised that The Child's communication is delayed first and foremost due to his blindness and visual impairment. Each Report prepared in relation to The Child mentions his severe sight impairment or significant degree of visual impairment. This has a significant impact on his ability to acquire language. The skills set he requires for pre-Braille may not lead to him being able to understand Braille but it will help him to develop as a young learner, and if he can progress to Braille that would be beneficial to him. The skills learned pre-Braille will assist him in other learning.

Witness E felt unable to comment on whether The Child has cognitive learning difficulties of a moderate level. She confirmed that he had developmental delay but as she had not worked with him extensively on a one to one basis she did not feel she could comment on whether his delays were cognitive or vision related. A moderate

learning difficulty would not necessarily preclude The Child from learning pre-cane or pre-Braille skills.

It was suggested to Witness E that a visiting VI teach could disseminate information to staff dealing with visually impaired children. She did not dispute that, but confirmed that it takes skills and it is about how well it can be delivered in their absence, and how well progress is interpreted. It can be done but Braille is a language and one would not expect children to be taught a different language by staff not qualified to do it in any other learning environment. At the School A, the most experienced staff are placed with the children learning and using Braille and the learning support staff in class have Braille code and understand it. A highly individualised approach is taken for each pupil according to their needs. It is not prescribed or rigid learning but instead is adapted in a personal way for each child. Often for blind, visually impaired and additional support needs learners spoken and written language can be meaningless or less connected to tangible experience. For example, children can learn lots of words but they need to be able to relate them to something meaningful.

Witness E confirmed the evidence provided by Witness D in relation to the use of Canaan Barrie and its benefits.

In relation to The Child being attracted to bright lights Witness E felt that The Child needed to be in a situation to make the best use of his residual vision, so while he can see the bright lights and is attracted to them he need to be encouraged to make the best use of his residual vision. For example, in the dark area or soft-play area in the School A there would be bright colours but not shiny and high contrast. In these situations, The Child can hone in on the white switch or the white/black wall showing that in situations where there is not a glare or bright light he can use his vision to pick out finer detail. His attraction to bright light is not the best thing for using his residual vision in a refined way. In every School A class, there is a separate annex which is

painted black and has a blackout curtain and this space can be used to have specific visual training.

In relation to The Child's progress at School C (detailed at A65) Witness E confirmed that The Child has found his own way of dealing with his limited vision. He is very adept at picking up other environmental queues, for example if objects are in the same place in the same way every day he will pick them up. It is likely that he will have learned where certain things are and expects certain things to happen at School C as it is an environment he is familiar with, since if The Child is attracted to something he tends to remember where it is. Witness E would be unable to say if The Child looks for things himself. Witness E has gained knowledge of The Child from reports, from two colleagues and the Educational Learning Practitioner working with The Child in the playgroup and from her own observations. She observed him over three hours in total and confirmed that he remembered a toy in a corner of a room in the soft-play and got assistance to go back and engage with it. He appears to have a good memory. Children with visual impairment adapt in their own way and can often present as having greater vision and it is not until they are in an unfamiliar environment that the limitations can truly be assessed.

Witness C

Witness C is a Habilitation Specialist at the School A. Her evidence is provided by way of written Statement at A77, which she adopted as her evidence to the Tribunal. Details of her qualifications are at A77 – A79. Her role at the School A is to assess pupils for habilitation needs and to design and deliver individualised programmes of training. Witness C's areas of expertise and interest are at A79.

Witness C advised that habilitation is under two sections. First, mobility and orientation and secondly, living skills and independence. It is not simply skills based but extras are added on to enable visually impaired children to access the world around them and understand it. Witness C confirmed that at the School A 95% of the work that she carries out is on a one to one basis with pupils. She could be in The Child's classroom and with the class during outings. She would support The Child to learn about his environment, to familiarise himself with different rooms in the building, and unguided walking, some independent pre-cane skills and to develop independence. The Child would need one to one supervision to be safe in the School A. To ensure that staff reinforce the habilitation skills they would work with Witness C to reinforce the skills that The Child is learning. Formal habilitation input would be daily. As The Child became more familiar with the building it would become twice per week but every time he moved he would be having his skills reinforced. All staff would be aware of his visual impairment requirements and would be adjusting and reinforcing all the time. Witness C would assess The Child's development and pass information to Witness E. This involves a large amount of close liaison on an almost daily basis with Witness E. If there are any issues arising Witness C would do an additional class visit or trail The Child to give proper advice and assess his progress.

Habilitation is integral to what the staff do at the School A. All the children start from an assessment on the base line and have missing foundation skills. Once these are identified they are built upon and as the child progresses skills are taken to the limit of the child's ability.

Witness C is a National Tutor which reflects her ability. She was invited to tutor due to her experience. She has developed the habilitation course and delivered it. She was aware that at School B a Habilitation Specialist is not in the school consistently but there are visiting specialists, and habilitation is "embedded" in all staff (in accordance with the evidence of Witness B). Witness C confirmed that the skill set can be used by anyone but it does not mean that the skills will be used effectively. She felt that it was like giving the basics but not being able to interpret the child or to address understanding for the child of how the world works and that is where the expertise comes from. The reason for a degree course is to learn about sensory development and outcome learning. In the School A, staff liaise with Occupational Therapists and other Therapists to develop and incorporate language and skill sets through living skills. All staff know what methods to use in relation to the child and check electronic records to see how the child uses his skills.

The visiting Habilitation Specialist, Mr S, is known to Witness C. He had attended a visit at School B in respect of a pupil there and had no further recommendation for habilitation. Witness C would be surprised if there was nothing that staff could not reinforce. She was aware that Mr S has a habilitation qualification and will be fully qualified in September. He has experience gained from adult provision.

It was put to Witness C that School B had input from a QTVI and that was enough to inform staff. She confirmed that she delivers the practical skills element for orientation and mobility in both programmes for QTVI qualification at Edinburgh and Birmingham Universities. It is a two-year programme and they have one day in each year. There is an awareness day and a half day pre-cane and a half day sighted guide training.

They are assessed as to whether they have retained it and are aware of how the skills are carried out, but they do not do supporting skills or interpretation. Two days input in habilitation is not equivalent to studying for two years to have a habilitation qualification and the experience and knowledge cannot be gained in two days. The purpose of the two days is for a QTVI to reinforce habilitation skills taught by a Habilitation Specialist but students are made aware that they are not qualified to teach habilitation skills and identify why a child has a problem.

Witness C had not observed The Child at School C but had observed him on a one to one basis for one and a half hours within the School A. She was in no doubt that any child at The Child's stage would require one to one supervision to keep him safe, giving his visual impairment. In relation to negotiating steps independently at School C Witness C felt that if The Child was familiar with the steps and had regular input then he may be able to negotiate them, but there is a difference between doing that in one place and doing it elsewhere in an environment with which he is not familiar.

Appellant

The Appellant is The Child's father. His evidence consisted of a parental statement lodged at A92 to A95 and oral evidence given at the Tribunal. He confirmed the information provided at A113. He explained that The Child was also at risk of building up of pressure in his eyes. It has happened to the right eye before and is painful. The Child required to have the lens removed in his right eye to relieve the pressure and his right eye has further deteriorated as a result. Close attention is paid to the pressure in The Child's left eye to make sure that the same issue does not arise.

In relation to the written statement The Appellant demonstrated how The Child was attracted to very bright light (with the use of a small torch). When The Child sees strong light, he is attracted to it. He likes toys with light and puts them to his left eye to see them. Dr had advised The Child's parents to encourage that play.

Although The Child appears to have a learning delay, he has progressed a lot in the previous year. At first, he did not crawl when he was supposed to but with help from OT has learned to do so. He has learned to grasp good mobility and has surprised his doctors by being able to walk and run freely. In terms of learning language and other skills, he has good problem solving, plays with toys, wants to learn how toys work. He enjoys simple press button toys to more complex problem solving. He had been shown by his parents the changing of a battery in one of his toys. Thereafter he has learned to find the battery in one place, the toy in another place and the screwdriver in another. He will bring those items to his parents to indicate that the battery needs changed. Although he does not use speech he demonstrates early vocalization. He appears to understand simple words and follow simple instructions such as turn off, turn on. His parents have learned to communicate through gestures, for example he will indicate he is happy by shaking his hands out. He will indicate help with his hands and also uses gestures and signs in the way of simple Canaan Barrie. If he taps on the floor or the table it means he wants more. The School A had suggested this simple Canaan Barrie at playgroup as a method to communicate. In addition, The Child's speech and language therapist, had given the family help, for instance to repeat simple words to reinforce The Child's learning. He did not learn anything like that at nursery at School C as there was no visual impairment teacher. Although he had one to one support there, it was not specialist support. The teacher there was keen to help develop The Child's communication skills but had to wait for instructions from the speech and language therapist and then try out as they had been instructed to do. She has no expertise in visual impairment.

In relation to the placing request at the School A, The Child's parents had looked at School E, which is a mainstream primary school, and had been keen for The Child to attend there. They had taken an openminded approach to The Child's education but wanted him to go to the most suitable placement. They looked at a range of

mainstream schools from October 2016 including those close to their home. Their thinking had been that The Child demonstrates good learning and they wanted him to be able to access mainstream schools. They were hoping that by this stage (immediately prior to entering Primary 1) he would have developed his speech and be able to adapt to mainstream well. It remains their ultimate aim that he does move into mainstream school in the future.

Of the mainstream schools looked at, School E was the most suitable. It had a mostly flat layout and wide corridors. It appeared to be the easiest for The Child to navigate and there was a dedicated learning support officer in that school. The School A have some links with School E and it is a two-minute walk from there to School E. The Child's parents had asked if The Child could share a placement there as there is a joint teaching program with the School A. Thereafter the family went to see different special schools including School F, School B and the School A. They had come to accept that The Child was very mobile and would find it difficult to sit in a class room with other children in mainstream. It would have been difficult for him to cope with being in a class of 30 pupils and it was plain to The Child's parents when they visited special schools that there was better support for The Child there, including lower pupil/staff ratio which would be better for staff to be able to follow The Child moving around in class.

During a Child Planning Meeting and discussions, the parents reached the view that specialist schools were more suitable for The Child's needs and they took advice from the professionals involved. They had visited a number of mainstream schools in October, the School A in November and School F and School Bs in December 2016.

The Child had gone with his parents to the initial visit at the School A and really enjoyed it. He had not initially attended at School B but had been taken on a few visits between February and June. He had visited with his mother at School B for transition meetings. It was The Appellant's position that The Child did not adapt well to School B's

environment. The class was quite cluttered (and photographs were produced of the class layout at A115, O and P). The Child was not guided enough and appeared to be roaming around in the school and the last trip was not enjoyable and meaningful for him. During the visit staff at School B wanted all the children to sit in a circle for someone to tell a story and The Child was not able to participate in that.

Having listened to the evidence provided to the Tribunal, The Appellant felt that his view that only the School A was suitable for The Child had been strengthened. The expertise of the staff at the School A would allow them to understand his movement, how he does things, how he accesses learning and it was preferable to the approach at School B. The Appellant wanted The Child to be given every opportunity to learn and develop as best he can.

In relation to the importance of braille and on- body signing, The Appellant felt that it was important for The Child to be able to rely on a range of communication methods. He enjoys tactile learning and the early indications are that he should be able to learn braille, which will help him to access knowledge and the curriculum. In the Royal Bank School, there is a library of braille which is very suitable and the teacher has expertise to teach it. This will improve The Child's access to the curriculum.

In relation to sign language, The Child was hoping to communicate using signing but no one is ruling out that he could learn other methods. The range of total communication environments is very important for The Child and can be provided at the School A. At School B there is no expertise in teaching braille or material ready to teach it.

Whilst The Appellant appreciated the input of M, visiting Speech and Language Therapist who had worked with The Child at School C, the frequency of her input was low. She would visit The Child at home about once per month for 15 mins. The School A would cater for The Child regardless of his learning potential. He appears to have

great potential to learn despite his visual impairment and needs a range of expertise to develop his potential. The School A have the experienced teachers on hand to develop The Child's communication skills. If The Child attended School B he would continue to have input from M and a visual impairment support teacher, but that teacher is only part-time and would not give one to one support nor would she be able to give the close frequent input required to link with the speech and language therapist to inform the visual impairment teacher. The School A, on the other hand had a very close working relationship between therapists and class teacher. The class teacher would be QTVI and therapist's suggestions are reinforced in the class by a specialist teacher. The speech and language therapist understands the visual needs and the two sides complement each other to the mutual benefit of The Child's needs.

In relation to habilitation, it is very important for The Child to learn to safely manoeuvre in his environment, to learn independent skills and to merge into activities eventually becoming more independent and using a cane in the longer term. He needs to learn how to move with purpose and structure. He has learned how to walk almost freely but has no method to protect himself. He can bump into tables and doors at school and always requires to be supervised.

The habilitation specialist, Mr S, started two years ago to teach The Child mobility skills. He has advised The Appellant that there is nothing further he can teach The Child. The Appellant has no doubt that The Child needs to learn more, for example to be taught how to explore a room in a structured way rather than randomly and how to use sounds as a tool for learning rather than allowing noise to distract him. A high level of expertise and habilitation is required to show The Child how to move independently, safely and to protect himself.

The Child has had one to one support throughout his nursery life and is always supervised at home. When Mr S had advised The Appellant that there was nothing

further he could teach The Child, The Appellant was concerned that the safety aspect for The Child had not been taught. He would simply walk with no regard of danger and in a familiar environment that could be okay, but if some item is moved from its familiar place or if something moves unexpectedly, for instance a door closing after he has opened it, he cannot react. A habilitation expert is needed to show the next stage of The Child's ability to move independently and be safe. Mr S would be the habilitation support provided to The Child if he went to School B. Whilst he is the habilitation specialist provided, he is currently undergoing training and is not a qualified habilitation specialist. The Appellant appreciated that his lack of experience may be why he felt he could do nothing further for The Child, but the witness, Witness C, had immediately been able to identify a number of things that could be taught to The Child, for example showing The Child how to create a buffer zone when walking. This expertise would be of significant benefit to The Child. School B has no in-house habilitation expert. During the visit to School B The Appellant had been advised that the visual impairment teacher had habilitation qualification but it amounts to three days training rather than a full two-year qualification specializing in habilitation.

The Appellant felt that from all the information he had from the School A, their method of teaching- from the expertise of the teachers to the design of their school- was vision centered. Each class teacher is aQTVI and their expertise would enable The Child to be integrated and not isolated. The QTVI would have consistent daily input to The Child and would be linked to the habilitation specialist, speech and language therapist and physiotherapist. All different aspects of the care that The Child needs would be coming together in a holistic approach which is necessary for The Child to learn.

The Appellant confirmed the details of information provided by H in R106. In the two years prior to the Tribunal, H had visited The Child at home once and then had participated in Child Planning Meetings. She would see The Child at School C but not frequently (approximately four times over the whole period of her involvement) and

usually when she saw The Child at School C it was for the purposes of a Child Planning Meeting.

In relation to Witness A, Educational Psychologist, it was The Appellant's recollection that Witness D had talked to his wife on Friday 31st March at the School A playgroup and asked whether she had received a decision letter. It was not received until after 28th April. His understanding was that the meeting between Witness D and Witness A had taken place on 30th March.

The Appellant made it clear that he and his wife had made the placing request for The Child to the School A as he felt it was the most suitable school to meet The Child's needs, to help him develop his potential and enjoy his life fully and be as independent as possible.

In cross examination, The Appellant advised that he was concerned about the environment at School B which he felt was not beneficial to The Child. The school floor surface was very reflective. The classroom had many tables and was cluttered. There had been scissors on a desk within reach of The Child during his visit and he would not be taught by experts the skills necessary to show him how to develop his learning and communication and to protect himself.

Reasons for Decision

The Tribunal considered all the evidence within the Productions lodged, together with late evidence and the oral evidence of the witnesses who attended the Tribunal. The parties made oral and written submissions, all of which were duly considered.

The Respondents 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”. Schedule 2 of the 2004 Act deals with the authority’s duties to comply with a placing request and paragraph 2 of that Schedule relates to the duty to comply with placing requests.

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 exists. In this case the authority relies on paragraph 3(1)(f) namely:

“(f) if all the following conditions apply, namely that:

- i. the Specified School is not a public school
- ii. the authority is able to provide 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 the respective cost (including necessary incidental expenses) of the provision of the additional support needs of the children 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 has offered to place the child in the school referred to in paragraph (ii)

If the Tribunal is satisfied that this ground exists then, and only then, the Tribunal moves to the second stage. 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.

Accordingly, the Tribunal requires to consider the terms of paragraph 3(1)(f). The onus of proof lies with the Respondents to demonstrate that each of the conditions set out in sub paragraphs 3(1)(f) applies.

In this case it was accepted that the School A is not a public school and that the authority have offered to place the child in School B. Accordingly, parts (i) and (iv) are not in dispute.

In relation to paragraph (ii) the Tribunal was not satisfied, based on the evidence led, that the authority was able to make provision for the additional support needs of The Child in a school other than the Specified School. In this context the term "school education", first mentioned at Section 1(1) of the Act and detailed in Section 1 subsection 2 includes "such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential".

The Respondent has failed to satisfy the Tribunal that the authority is able to make provision for The Child's additional support needs in School B. The Tribunal accepted that School B could partially meet The Child's needs, but were of the view that the provision at School B did not provide the consistent, one to one specialist support over a range of The Child's needs that would enable him to develop his personality, talents, mental and physical abilities to his fullest potential, and allow his needs to be fully met.

At School B, The Child would not have the benefit of direct specialist teaching daily from a QTVI. Therefore, the opportunity for a skilled, qualified teacher for the visually

impaired to assess The Child's progress, develop his learning and adapt to his environment to facilitate that learning would not be provided to him.

Although School B have habilitation "embedded" throughout every aspect of their curriculum, more expertise and specialist input is required to meet The Child's complex needs and to develop his full potential. The extent of The Child's learning disability is not yet known. The Tribunal accepted the evidence provided by Witness D in her summary assessment at A61 to A71. To meet The Child's vision needs he requires daily access to qualified teachers of visual impairment, the use of imaginative and varied teaching approaches carried out by staff with training and experience in the impact of severe sight impairment; ongoing assessment with formal and informal of functional vision by experienced and qualified practitioners; an individual education plan tailored to support non sighted access to the curriculum; an individually adapted multi-sensory curriculum with a focus on stimulation of The Child's remaining senses and encouraging the use of his residual vision; an intensive programme of support from a qualified habilitation specialist to ensure development of The Child's awareness of keeping himself safe and to promote his independent living skills; daily pre-cane skills from a qualified habilitation specialist; and access to a dark sensory area tailored to his visual needs throughout the course of his school day.

Witness D's recommendations in relation to functional movement and independence were all accepted by the Tribunal. It is necessary for all staff working with The Child to have clear awareness of the role his auditory skills have in compensating for his severe sight impairment. He requires combined expertise of occupational therapists, habilitation specialists and qualified teachers of visual impairment to build on his strengths and needs in both gross and fine motor skills in order to work on a program of pre-braille.

Daily access to a qualified habilitation specialist is available to The Child at the School A. This is required to ensure that the practical and emotional aspects of severe sight impairment such as independent living skills, self-awareness and orientation and mobility skills will underpin The Child's access to the curriculum and improve his potential for learning. Capturing The Child's attention requires a skilled adult to manipulate the environment, carefully select appropriate objects and gauge when it is appropriate to intervene to develop play or interaction.

The Tribunal accepted the recommendations made by Witness D in respect of curriculum access and learning and communication for The Child, and the recommendations made in relation to his interaction with others. It follows that the Tribunal accepted that The Child requires to be placed in a specialist setting, supported throughout his day by staff who have a high level of expertise in the developmental needs of children who have a complex picture of severe sight impairment and additional support needs. Support needs require to be addressed in a setting with a high ratio of skilled staff to pupils which has been designed and organized to optimize his learning.

The requirement for The Child to have specialist 1:1 support on a daily basis is supported by the report provided from School C at R78 and also from the view expressed by M, Speech and Language Therapist and recorded in production R79/80 (all adopted by Witness A as her evidence). This level of specialist 1:1 support would not be provided at School B.

The Tribunal had the benefit of very detailed evidence from the Appellant's witnesses in relation to the level of expert support required to meet The Child's needs, and the necessity of availability of that on a daily basis for The Child. Each witness for the Appellant had particular expertise. Representative for respondent urged the Tribunal to disregard the evidence of Witness D as being verbose and unclear. On the contrary, the Tribunal found Witness D to be a highly experienced and credible witness, who could

explain in detail her recommendations and specialist opinion. The Tribunal accepted the evidence of Witness E and Witness C as being highly credible, knowledgeable and reliable witnesses.

By contrast, the evidence provided by the Respondent, upon whom the onus of proof rests, was not persuasive.

It appears evident from the evidence that the CMPG meeting held on 9th March 2017 concluded that School B was the most appropriate for The Child without carrying out any comparison with the provision at the School A, which was the school of parental choice. Witness B could not recall the documents which were placed before that meeting or the basis of the decisions. He had no recollection of having any information regarding the School A before him. It was his understanding that the decision to refuse the placing request was made at that meeting of 9th March 2017 but he could not explain the basis of the decision.

In relation to the three-stage process of decision making, referred to in the Respondent's case statement, Witness B could not give any evidence as to the gathering of reports or the extent to which these reports had been considered at the multi-disciplinary panel of advisors with special knowledge of additional support needs. The Minute of the Meeting was produced at R105 and records that the meeting agreed the suitability of School B and could offer a nursery placement. Accordingly, the Tribunal took the view that panel had not "considered" the placing request at the meeting on 9th March 2017. Rather the panel had, it appeared, looked at the option of School B and not carried out any comparison with the school that was the subject of the placing request, i.e. the School A.

The evidence provided by Witness A was that she had toured the School A and taken information from staff there to assist her in the preparation of her report at R63, which

was psychological services reflection on the educational establishments being considered. The evidence of Witness A to the Tribunal was that she had carried out a comparison for the purposes of enabling prospective suitability of each school to be assessed. She denied advising Witness D that a decision had already been reached to refuse the placing request.

For the Tribunal to rely on the evidence provided by Witness A in relation to the respective suitability of each school it must be satisfied that her evidence is credible and reliable. It is the view of the Tribunal that Witness A's evidence cannot be relied upon. The Tribunal preferred the evidence of Witness D in relation to the conversation which took place when Witness A visited the school on 30th March 2017. Witness D clearly recalled being advised that a decision had been reached refusing the placing request. As a result, she had deliberately approached The Child's mother the following day to establish whether that decision had been intimated to her and when it was clear that it had not been, she did not consider it her place to advise Wife of appellant of the refusal. Witness D's evidence, that the decision had already been made to refuse the placing request, accords entirely with the evidence provided by Witness B. He too was of the view that following the multi-disciplinary meeting on 9th March 2017 the decision had been made to refuse the placing request.

The credibility and reliability of Witness A's evidence was fatally undermined by the contradictory evidence which she gave in this regard. The Tribunal was asked to rely upon the terms of the report prepared, submitted and dated 27th April 2017 (at R63). It appeared to the Tribunal that when this report was undertaken, Witness A did not have an open mind in relation to the respective suitability of each placement. Further, Witness A's report appears to have been submitted and immediately a formal letter confirming the decision for the placing request was issued. The extent to which the report was considered or influenced the decision is not clear. However, the letter of refusal which can be found at TT3 indicated that the decision for refusal was made

“after careful consideration by a panel of experts in additional support needs carefully considering all of the assessment information gathered by the educational psychologist, including parental preference and comments”. The Tribunal was not satisfied in view of the evidence provided that the decision had been made on that basis.

The Tribunal acknowledges that it must be satisfied about whether the grounds for refusal exist as at the date of the Tribunal. The Respondent’s submission that the Tribunal must address all the circumstances as they exist at the time of the Tribunal was accepted by the Appellant’s representative and is accepted by the Tribunal. However, the evidence which was placed before the Tribunal and upon which the Respondent’s case relied, consisted of the oral evidence of Witness A (upon which the Tribunal could not rely for the reasons stated above) and the oral evidence of Witness B, in addition to the Productions and documents referred to in this decision. The onus of proof in this case lies with the Respondent. The Respondent sought to rely on the evidence of Witness A and Witness B, and neither witness provided evidence sufficient to discharge that onus.

Witness B’s evidence was generalized and unspecific. He was not clear about the level of speech and language, QTVI or specialist Habilitation input which would be available to The Child. He was not clear about the basis of the decision that School B met The Child’s needs and whether any consideration was given to the suitability of The School A or comparison made of the two at the meeting of 9th March. He could not say which Reports had been read at the CMPG meeting and what information he had relied upon. He was not clear about the national standards in relation to class sizes. He was not clear to what extent The Child would need one to one speech and language support and whether that would be provided. He was clear that staff were not all qualified in habilitation. He was clear that the QTVI Teacher was a principal teacher but had a full timetable. The visual impairment specialist was only in 0.5 of the week and no evidence was provided as to how many pupils she required to provide support to in that time.

Witness B was clear that he would require extra resources from The authority if The Child required 1:1 support on a constant basis. There was no guarantee that that would be provide, although he was confident it would be approved.

His position was that The Child's support needs could be met by the approach in School B of habilitation being "embedded" in every aspect of the curriculum. He did not consider it necessary for The Child to have daily input from a QTVI or to have one to one teaching. It appeared to the Tribunal that his understanding of the impact of visual impairment on the development of learning for The Child was not based on any specialist knowledge. He appeared to have little awareness of the difficulties for The Child in being in a cluttered classroom (such as was shown in the photographs produced) or the impact upon The Child of certain aspects of his environment, for example reflective floor surfaces. He did not appear to appreciate the significant impact of The Child's visual impairment on every aspect of The Child's development. Whilst Witness B said that if support was required for The Child he would make a request for same, he could not guarantee that that support would be provided, nor could it be guaranteed that staff would have the expert skills require to identify the need and devise a plan to meet it.

The Tribunal preferred the detailed evidence provided for the Respondent, which clearly satisfied the Tribunal that The Child's complex needs should be met within the School A, where visual impairment and habilitation are the primary focus of the school. The skills required to meet The Child's daily needs and ensure that he has education which matches his potential (as identified through expert, continual assessment), can only be provided by specialist QTVIs and Habilitation specialists closely observing him and reacting daily. Whilst the Tribunal accepted Witness B's evidence that features present in The Child due to DYRK1A syndrome can be found in individual pupils in School B, the combination of each of the features being present in one pupil is rare, as the condition is rare. The Child's education needs to be devised by experts capable of

identifying his strengths and deficits and acting upon them. Witness B advised that vision impairment and habilitation is not the core focus at School B, where pupils have a wide range of needs. The Representative for the Respondents accepted in closing submissions that the specified school was a specialist blind provision. The Tribunal considered that The Child's needs could only be partially met in School B. Accordingly, the Tribunal was not satisfied that the ground for refusal in 3(1)(ii) was met at the date of the Tribunal.

The Tribunal is not required to consider the second stage as a result, and does not require to identify that the ground does not exist in more than one part of s3(1)(f), but for the sake of completeness, the Tribunal will specify its findings in relation to s3(1)(f)(iii).

The Tribunal was not satisfied that the ground for refusal in 3(1)(iii) was established as at the date of the Tribunal. For the Tribunal to be satisfied that (as at the date of the Tribunal) it was not reasonable to place the child in the School A, having regard to both the respective suitability and to the respective cost of the provision for the additional support needs of the child in the specified school and in School B, the Tribunal would need to accept the evidence of Witness A. For the reasons stated above, the Tribunal does not feel it can rely upon Witness A's evidence and therefore cannot rely upon the evidence provided in relation to respective suitability. Witness B's evidence did not constitute a comparison of respective suitability of both education resources and respective costs. Accordingly, there was no reliable evidence before the Tribunal upon which to establish the existence of the ground.

It follows therefore that the Tribunal, having concluded that the grounds for refusal do not exist as at the date of the Tribunal, overturns the decision of 28th April 2017 and requires the authority to place the child in the Specified School, being the School A.