

DECISION OF THE TRIBUNAL

Gender: Female

Aged: 13

Type of Reference: Contents of Co-ordinated Support Plan

1. Background

(1) The **appellant** is (mother of **(the child)**). The authority is **(the authority)**. Together the appellant and the authority are referred to as **the parties**. The authority made a co-ordinated support plan (**CSP**) in respect of the child dated 5 January 2016 (pages T13 to T17 of the papers before the Tribunal).

(2) The appellant gave notice of a reference to the Tribunal under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004, as amended (**the 2004 Act**), dated 2 March 2016 (pages T1 to T12 of the papers). The information referred to the Tribunal in terms of section 18(3)(d)(i) of the 2004 Act is information contained in the CSP by virtue of section 9(2)(a)(ii) (the educational objectives), section 9(2)(a)(iii) (the additional support required) and section 9(2)(a)(iv) (the persons by whom the support should be provided) (page T7 of the papers).

2. Procedural history

(1) Case conferences involving the convener and the representatives for the appellant and the authority took place on 25 May and 4 July 2016. On 25 May 2016 having heard representatives for the parties, of consent, the

convener allowed (1) the appellant to withdraw paragraph 10 of the appellant's case statement (at page A5 of the papers) and (2) the authority to withdraw conclusion (1) at section E of the authority's case statement (at page R15 of the papers). On 8 July 2016, both parties having agreed in writing to dispense with a hearing, the convener discharged the oral hearing of the reference scheduled for 18 August 2016 and directed that the reference be decided by the convener without a hearing all in terms of rule 26 (power to decide reference without a hearing) of the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 (**the 2006 Rules**).

3. Matters in dispute

(1) This reference was made to the Tribunal in terms of section 18(3)(d)(i) of the 2004 Act.

(2) It was agreed by parties that the matters in dispute between them concerning the CSP are the educational objectives (section 9(2)(a)(ii) of the 2004 Act), the additional support required (section 9(2)(a)(iii)) and the persons by whom support should be provided (section 9(2)(a)(iv)) (see page T24 of the papers).

4. The CSP

(1) The CSP (at pages T13 to T17 of the papers) is dated 5 January 2016 and is in a form substantially to the same effect as the form set out in the Schedule to the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005. The CSP sets out various details (the child's home address, contact telephone number, date of birth, gender, etc.) and the child's parental details on page 1 (page T13 of the papers). Under the heading "Profile", the CSP sets out a summary of the child's skills and capabilities and other relevant information (pages T14 to T15 of the papers). The CSP identifies the factors giving rise to additional support needs in respect of the child as—

“Extreme anxiety and avoidant behaviour”,

“Autism Spectrum Disorder with communication difficulties, social interaction difficulties, obsessions and rigidity of thought”

and

“Sensory processing disorder” (at page T15 of the papers).

(2) The CSP sets out a single educational objective: “[The child] to attend school regularly” (page T16 of the papers).

(3) The additional support required by the child to achieve that educational objective set out in the CSP is–

“Speech and language therapist to provide advice, resources, training and consultation services to school staff on an occasional basis”

and

“Occupational therapist to provide resources, training and consultation services to school staff on an occasional basis” (page T16 of the papers).

(4) The persons providing the additional support specified in the CSP are identified as “Speech and language therapist” and “Occupational therapist” (page T16 of the papers).

(5) The amendments which the appellant proposes to be made to the CSP are set out in tracked changes in blue at pages T19 and T20 of the papers.

5. Findings in fact

(1) The appellant is, mother of **(the child)**.

(2) The authority is responsible for the child’s education.

(3) The child is a 13 year old girl enrolled as a pupil at School A. The child has not attended school regularly since December 2013, and not at all since October 2015. The child is not currently attending school.

(4) The child has a diagnosis of Autism Spectrum Disorder and complex mental health issues which cause her to experience high anxiety and engage in avoidant and oppositional behaviours. The child’s mood and resulting behaviour is difficult to predict. The child has a debilitating fear of failure.

(5) The child’s mental health issues present a significant obstacle to her reengagement with education.

(6) The child self-harms and has expressed suicidal ideation on several occasions.

(7) The child experiences vestibular and proprioceptive issues, sensory difficulties, and struggles with noisy environments. The child dislikes certain smells and finds certain clothes uncomfortable.

(8) The child experiences high levels of anxiety and requires consistency, predictability and routine.

(9) As a result of the foregoing complex factors, the child has additional support needs in terms of section 1 of the 2004 Act.

(10) The child has had significant involvement with NHS Child and Adolescent Mental Health Service and The Authority Social Work Authority.

(11) The child has complex additional support needs emanating from her diagnosis of ASD and her complex mental health issues. The child is unable to benefit from, or meaningfully engage with, her education without significant support. The child is academically able, but experiences difficulty in communicating verbally and has severe difficulty talking about emotions, feeling and sensations. The child reacts badly to direct questions and is usually unable to respond to them. The child is very articulate, with a large vocabulary, which can mask her severe communication difficulties.

(12) The child has been engaging with a worker from Barnardo's to attempt to build her confidence and self-esteem, seeing the worker on Wednesdays between 3:45 and 5:00 pm.

6. Powers of the Tribunal

(1) The powers of the Tribunal in relation to this reference are set out in section 19(4) of the 2004 Act. They are to confirm the information or require the authority to make such amendment of the information contained in the CSP as the Tribunal considers appropriate by such time as the Tribunal may require.

(2) Noting the obligation imposed on every education authority by section 10 (reviews of co-ordinated support plans) of the 2004 Act to keep under

consideration “the adequacy of any co-ordinated support plan ...” it appears that in determining this reference I require to reach a conclusion as to whether the referred information – the education objectives, the additional support required, the persons by whom the support should be provided – renders the CSP adequate or not. If it does render the CSP adequate, then I should confirm the information (section 19(4)(a)). If it does not render the CSP adequate then I should require the authority to make such amendment of the information as I consider appropriate by such time as I may require (section 19(4)(b)).

7. Discussion

(1) I have decided this reference on the basis of the papers numbered T1 to T36, A1 to A81 and R1 to R216, including the notice of reference, the response, the statement of case and the written evidence submitted in accordance with the 2006 Rules, which included the Minute of Agreed Facts. Having considered the information referred to the Tribunal, I am satisfied to the extent, and for the reasons, set out below that the CSP is not adequate and should be amended as required below.

Educational objectives

(2) Section 9(2)(a)(ii) of the 2004 Act provides that a CSP must contain–
“the educational objectives sought to be achieved taking account of [the factor or factors from which the additional support needs of the child ... arise]”.

(3) Section 9(3) of the 2004 Act provides that–
“The references ... to educational objectives are to objectives set to secure that the child ... benefits from school education (within the meaning of section 1(1)) provided or to be provided for the child...”.

(4) The *supporting children’s learning code of practice* (Revised edition) 2010 (**the code of practice**), was published and revised by the Scottish Ministers under section 27 (code of practice and directions) of the 2004 Act. By virtue of section 27(8) of the 2004 Act education authorities and appropriate agencies must, in exercising their functions under the 2004 Act,

have regard to the code of practice. Chapter 5 of the code of practice concerns the CSP. In paragraph 50 of chapter 5, it is stated–

“What is important is that the co-ordinated support plan contains those educational objectives which require the various forms of support to be co-ordinated if the education objectives are to be achieved”.

(5) In paragraph 57 of chapter 5 of the code of practice, it is stated–

“For some children or young people, legitimate educational objectives could be, for example, learning to travel independently or learning particular social skills concerned with, say, feeding or dressing. What is important is that the plan contains those educational objectives which require the various forms of support to be co-ordinated if the educational objectives are to be achieved. For example, a teacher and speech and language therapist may need to ensure their support is well co-ordinated if the educational objectives to be achieved are related to improving the communication skills of a child with an autism spectrum disorder; a teacher and residential social worker may need to work together to ensure that a child looked after away from home is able to complete schoolwork assignments outwith school”.

(6) Paragraph 60 of chapter 5 refers to Annex C to the code of practice, which contains examples of educational objectives. It also states–

“Those drawing up the educational objectives will find it useful to consider as a starting point the *Experiences and Outcomes* in *Curriculum for Excellence* because these apply across all schools in Scotland and are relevant for all children and young people as they pursue their school education”.

(7) By measuring the sole educational objective specified in the CSP against the requirements of section 9(2)(a)(ii) of the 2004 Act and the terms of the code of practice it is clear from the paucity of the educational objective which the authority has concluded should be sought to be achieved that the CSP is not appropriate.

(8) It is not clear from the CSP, or from information provided by the authority, how it is intended that the sole educational objective – “[the child] to

attend school regularly” – is to be achieved. Even if it was, it is not clear how the additional support specified in the CSP would contribute to achieving that educational objective.

(9) Despite the statements in the code of practice that it is important that the CSP contain “those educational objectives which require the various forms of support to be co-ordinated if the educational objectives are to be achieved”, it is not clear how the provision of “advice, resources, training and consultation services to school staff on an occasional basis” by a speech and language therapist and the provision of “resources, training and consultation services to school staff on an occasional basis” by an occupational therapist, if properly co-ordinated, would assist in achieving the educational objective of “[the child] to attend school regularly”.

Additional support required

(10) Section 9(2)(a)(iii) of the 2004 Act provides that a CSP must contain–

“the additional support required by the child to achieve those [educational] objectives”.

(11) In paragraph 61 of the code of practice, it is stated–

“The co-ordinated support plan must describe the additional support required to achieve the educational objectives stated. ...The additional support will cover teaching and other staffing arrangements, appropriate facilities and resources, including information and communications technology, and any particular approaches to learning and teaching. It will also include any provision made outwith the educational setting but which will contribute to the child or young person achieving his/her educational objectives. The statement of support to be provided should be clear and specific and, wherever possible, should be quantified. Everyone should understand and be clear about what is being provided and why it is being provided. Statements such as “learning support as necessary” or “speech and language therapy as required” are too vague to be helpful”.

Thereafter, at paragraph 61, some examples of additional support are provided.

(12) By measuring the additional support specified in the CSP against the requirements of section 9(2)(a)(iii) of the 2004 Act and the terms of the code of practice, it is clear from the paucity of the additional support which the authority has concluded is required by the child to achieve the sole specified educational objective that the CSP is not adequate.

(13) The two measures of additional support specified in the CSP (set out in paragraph 4(3) above) – requiring advice, resources, training and consultation services to be provided “to school staff on an occasional basis” – are too vague. They are as vague as the statements given in paragraph 61 of the code of practice (“learning support as necessary” and “speech and language therapy as required”) as examples of statements which are “too vague to be helpful”.

(14) The two examples in the code of practice of statements that are “too vague to be helpful” at least have the benefit that they appear to be referring to support – learning support and speech and language therapy – which is to be provided to the child or young person. The two additional support measures specified in the CSP – “Speech and language therapist to provide advice, resources, training and consultation services to school staff on an occasional basis” and “Occupational therapist to provide resources, training and consultation services to school staff on an occasional basis” – appear to be support to be provided to school staff rather than “additional support required by the child... to achieve [the additional support needs of the child]” in terms of section 9(2)(a)(ii) of the 2004 Act.

The persons by whom the support should be provided

(15) It is a matter of agreement between the parties, recorded in the Minute of Agreed Facts, that–

“[The child] has not attended school regularly since December 2013 due to issues arising from her diagnosis of ASD and complex mental health issues” (paragraph 5 of the Minute, at page T34 of the papers)

and

“[The child] has complex additional support needs emanating from her diagnosis of ASD and mental health issues. These conditions mean that she is unable to benefit from, or meaningfully engage with, her education without significant support” (paragraph 24 of the Minute, at page T36 of the papers).

(16) The child has previously had involvement with NHS Child and Adolescent Mental Health Service. The authority itself indicates at paragraph 3 of Section E of the authority’s case statement (at page R15 of the papers) that it has, and continues, to work in co-ordination with the Social Work Authority and NHS to seek to meet the child’s additional support needs. That being the case, the lack of reference in the CSP to staff of the Social Work Authority and of NHS whose efforts are to be co-ordinated to provide additional support to the child to seek to achieve the educational objective demonstrates that the CSP is not adequate.

The CSP

(17) It is not only by measuring the educational objective and the additional support specified in the CSP against the relevant provisions of the 2004 Act and the code of practice and by noticing the lacking in the specification of the persons who are to provide that support that it is clear that the CSP is not adequate. That the CSP is not adequate can be seen by measuring its terms against what the authority itself says in its case statement. At paragraph 3 of Section E of the authority’s case statement (at page R15 of the papers) the authority states that–

“...it has made and is continuing to make all reasonable efforts to meet [the child’s] additional support needs in co-ordination with the Social Work Authority and NHS Lothian”.

No explanation is given as to why the CSP does not address co-ordination of additional support to be provided to the child by the authority, Social Work Authority and NHS.

(18) For the foregoing reasons, the CSP is not adequate.

(19) I considered whether it would be appropriate to require the authority to amend the CSP in the terms proposed by the appellant as set out in tracked changes in blue at pages T19 and T20 of the papers. I decided, for two reasons, that it was not. First, I was not satisfied that certain aspects of the proposed amendments were appropriate. For example, it appears that Barnardo's, who are specified in the proposed amendments as a person providing additional support (see page T20 of the papers) is not an "appropriate agency" in terms of section 23(2) of the 2004 Act and is, in fact, contracted by the authority to provide services on behalf of the authority. For that reason it appears that Barnardo's cannot be a person subject to co-ordination in a CSP.

(20) Second, it appears to me that the authority requires flexibility to allow it to consult with the Social Work Authority and NHS to put in place an appropriate package of educational objectives and support measures that, with appropriate co-ordination, will address the child's specific additional support needs and to identify (but not name) the persons by whom the support is to be provided.

8. Decision

(1) In terms of section 19(4)(b) of the 2004 Act the authority is required to amend-

- (1) the educational objectives (section 9(2)(a)(ii) of the 2004 Act);
- (2) the additional support required (section 9(2)(a)(iii)); and
- (3) the persons by whom the support should be provided (section 9(2)(a)(iv))

so as to-

- (a) provide specific, clear, measurable educational objectives to pave the way for the child's return to full-time education at School A and to otherwise allow the child to benefit from school education;

- (b) specify clearly the additional support required to be provided in co-ordination between the authority, the Social Work Authority and NHS required to achieve those objectives; and
- (c) specify (but not name) the professional persons (whether occupational therapists, speech and language therapists, staff of NHS Child and Adolescent Mental Health Services, or others) by whom that support should be provided and the frequency and level of the support to be provided,

the amendments to be made by 11 November 2016.