Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

Summary of the Decision

The Tribunal confirms the decision of the authority and refuses the placing request that the authority places the child in the school specified in the placing request in terms of section 19(4A)(a) of Education (Additional Support for Learning) (Scotland) Act 2004.

Introduction

1. The appellant made a reference to the Tribunal on July 2017 under section 18(3)(da)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") in relation to the refusal by the local authority ("the authority") on June 2017 of a placing request.

2. This reference relates to that placing request by the appellant for her son, for a residential placement at School A, which is an independent school (the specified school). The local authority has offered The Child a place at School B Enhanced Provision, which is the school nominated by the authority.

3. The Child has additional support needs in terms of section 1 of the 2004 Act.

Preliminary issues

4. At the hearing which took place over four days in February 2018, the appellant was represented by a solicitor. The authority was represented by a in-house solicitor, who was instructed by the respondent.

5. Prior to the commencement of the hearing, there were a number of preliminary issues which required to be dealt with. This related particularly to documents lodged shortly before, both by the appellant and the authority.

6. In particular, concerns were expressed by Solicitor for Respondent that a number of important documents were lodged by the appellant very late in the

day. Her request for an adjournment on that basis had already been refused by decision of 2 February, because of objections from the appellant, the difficulty of rescheduling and the imperative for the case to be concluded expeditiously (not least because The Child is currently being home schooled pending the outcome of this reference). Consideration was given to arguments about their admissibility and relevancy at the start of the hearing.

7. With regard to the documents lodged late by the appellant, these documents were allowed (with two exceptions) and we agreed with Solicitor for Appellant that any issues which the documents raised should be dealt with in evidence or cross examination. We accepted Solicitor for Respondent objections to papers headed up “Briefing for (M)”, generally on the grounds that these contained allegations which were based on anonymous complaints to which the authority had not had an opportunity to respond. However, we allowed the letter sent from (MD) at A59 to the authority on the grounds that its contents and subsequent actions were in the public domain.

8. Indeed as a result of that letter, the School received a further visit from Education Scotland in March 2017 which resulted in a report dated April 2017. Although marked confidential, Solicitor for Respondent subsequently obtained confirmation that it could be lodged (R 267).

9. That report had recommended that an improvement plan should be put in place, and that Improvement Plan was lodged at R244 to R256. We therefore accepted it would be helpful to hear evidence from Witness A, quality improvement manager for the Respondent Council.

10. Newspaper articles regarding additional support needs spend by RESPONDENT were similarly not permitted because we did not consider that general comments regarding overall spend were relevant to the specifics of this case, where the authority was offering to meet The Child’s additional support needs.

11. Solicitor for Appellant had lodged an inspection report relating to School A, whereas Solicitor for Respondent sought to lodge a more up to date one (R243) which was allowed since it was not opposed. We did not however allow additional assessments relating to School A from 2014 and 2015 which we considered that, if relevant, were out of date.

12. Solicitor for Appellant also sought to lodge the British Psychological Society Guidelines which Witness F had mentioned in his affidavit. Solicitor for Respondent referred to and subsequently lodged the Educational Psychology Assessment Guidelines (2014) which were also referred to by Witness F in evidence (R272).

13. Further documents lodged by Solicitor for Respondent, namely The Child's transition passport (R257) and a strategies document prepared by Witness B (R263) were allowed because there was no objection from Solicitor for Appellant.

14. An agreement had been reached during case management that witnesses would lodge affidavits/witness statements/reports which would stand as their evidence in chief. Supplementary questions were permitted, not least in light of the late lodging of a number of productions.

Evidence at the hearing

15. At the hearing, the Tribunal heard oral evidence for the authority from Witness B, class teacher of Spectrum Support at School C, who had taught The Child since August 2015. Witness B's evidence related to educational provision for The Child until he left School C in June 2017.

16. The Tribunal also heard evidence from Witness C, principal teacher of additional needs at School B Enhanced Provision, which related to her knowledge of provision there, of the transition arrangements for The Child, and plans for improvement to the school facilities which are currently underway.

17. As mentioned, we heard evidence from Witness A, quality improvement manager at RESPONDENT regarding the up to date position on the improvement project, the decision-making process in respect of the placement request, and costs to the authority. Witness F who is the principal educational psychologist for RESPONDENT gave evidence regarding past and future provision, although he had not met The Child and his evidence was based on the case papers provided by The Child's allocated educational psychologist, Allocated EP (who is currently on maternity leave) and his professional opinions.

18. The authority also lodged statements from (S), chief officer of schools regarding the date of the refusal, (T), team leader for children and families in respect of social work input, and (D), speech and language therapist.

19. We also heard evidence from The Child's father. Although The Child's parents have separated, and Father was not a party to the action, he exercised his rights as a parent to be present in the Tribunal room and therefore had the opportunity to hear the evidence prior to himself giving evidence regarding his views, to supplement his written statement.

20. The Tribunal also heard oral evidence for the appellant from Witness D, head teacher at School A, regarding the educational provision available at that school. We heard from Witness E, chartered clinical psychologist, who was leader of clinical psychology service for NHS Respondent Area between 1995

and 2015. He spoke to the report which he had prepared at the request of The Appellant, which considered past assessments of The Child and made comparisons between the two schools, notwithstanding the fact that he had not been given permission to visit the facilities at School B.

21. The Tribunal also heard from The Appellant who gave evidence about her concerns and her views on the extent to which she believes that the local authority can meet The Child's needs. Unfortunately, due to perfectly understandable childcare reasons, The Appellant was unable to attend the Tribunal on the first three days. In light of our ultimate decision, the Tribunal considers that it was particularly unfortunate that The Appellant did not hear the first three days of evidence regarding detailed proposals for The Child's education at School B, which highlights a breadth and depth of knowledge regarding The Child's needs, as well as plans for new facilities which will significantly improve what is on offer there.

22. The Tribunal also considered a large number of documents and reports produced in a joint file of productions, which are referred to throughout this decision where relevant, and which were all taken into account in reaching our decision.

The Views of the Child

23. As a specialist tribunal, we would normally always seek the views of the child, even for a child with severe and complex needs. Indeed we were conscious, given the date of this hearing and transitional provisions set out in SSI/2018/4, Schedule 1, that it is the new rules which apply to procedure in this case, that is the First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Rules 2017. Although similar to the previous rules, these now include at rule 44 the requirement for the First-tier Tribunal to seek the views of the child involved in any case. We took into account the Guidance to Tribunal Members No.01/2018 which states that the tribunal's duty to seek the views of the child is distinct from a duty to obtain the views of the child. While the threshold for obtaining the views of the child is low, the guidance states that there may be limited circumstances where it is not possible to obtain the views of the child.

24. In this case we were concerned at the outset of the hearing that, notwithstanding an expressed intention on the part of the appellant's solicitors to instruct an independent advocate to obtain The Child's views, no report had been commissioned. We heard that was because The Appellant was of the view that it would not be possible to obtain his views, but on hearing our concerns was happy to consent to The Child meeting an independent advocate, if that was deemed appropriate. Solicitor for Respondent indicated that the authority was willing to help to source an appropriate local service.

We decided that we would reconsider the situation after hearing all of the witnesses.

25. We therefore sought the views of each of the witnesses who knew The Child well. We noted that all of the witnesses who knew The Child appeared unanimous in their view that it would not be possible for an independent advocate to obtain his views. The Child's father, shared that view. The Appellant advised that attempts to use talking mats (which might be a favoured approach of an independent advocate) had not proved fruitful in the past. We were particularly interested in The Child's views of prolonged periods away from his family (rather than asking him to make a comparison between the schools). However, in light of our decision and the views of those who know The Child best, we ultimately determined that this was one of the rare cases where his views would not be obtained, not least because any attempt to do so would delay the conclusion of this case further and is unlikely to produce results.

Findings in Fact

26. The Child is 12 years old. He lives at home with his mother (the appellant, The Appellant), her partner, and his sister, aged 15. Two or three times per week, the appellants partner's two youngest of his five children come to stay with the family.

27. The appellant, separated from The Child's father some five years ago. Although initially they lived close, The Appellant moved around two years ago.

28. The Child was diagnosed with autism spectrum disorder (ASD) in 2008. He presents with severe and complex needs. He has very limited language and communication skills. He displays extremely oppositional behaviour which is a characteristic of pathological demand avoidance syndrome. He is said to fit the profile of a 12 year old with attention deficit hyperactivity disorder, but has received no formal diagnosis.

29. The Child has attended school since P1, but has moved several times. He has been a pupil at Spectrum Support, then at Primary School A, and latterly at a purpose built specialist autism support unit called School C. He attended four days each week, with a half day at Primary School B, which is a mainstream primary.

30. The Child attends (A) for around 20 days each year, for up to four days in a block, to provide respite care.

31. In preparation for the transition to secondary, in October 2016, The Child's allocated educational psychologist, carried out an assessment of needs, and

produced a report, with input from various professionals who knew The Child well, as well as The Appellant and Father (A13).

32. The Child's needs were considered at the authority's (COG) which determines the appropriate school placement for a child in cases where a child requires enhanced educational provision. On the basis of reports supplied, including an audit by an occupational therapist, it was determined that his needs would be best met at School B Enhanced Provision (R84/85). That decision was confirmed following reconsideration in March 2017 at the request of The Appellant (R87).

33. The Appellant then made a placing request by letter dated May 2017, which was refused by letter dated June 2017.

34. In the meantime, transitional activities were taking place in respect of The Child's move to School B.

35. Since August 2017, The Child has been home schooled by his mother.

36. The School B Enhanced Provision is currently located at School B but separate from the mainstream school. It is equipped for the particular needs of children with additional support needs, including a sensory room, "safe spaces" and an enclosed outdoor area. There are three additional support needs classes, with 13 pupils, one of which is an autism specific class. It currently has three pupils. Witness C is the principal teacher and there are teachers for each of the three classes and nine additional needs assistants. An improvement plan is currently being implemented which will see a move to a purpose-designed department located within the school.

37. The appellant now expresses a number of concerns about past provision for The Child but has particularly strongly held views regarding the unsuitability of the School B Enhanced Provision.

38. Given those concerns, she followed up reports she had heard about the quality of provision at School A and consequently made the placing request.

39. School A is an independent and residential school which caters specifically for young people with autism. It currently has 28 pupils, 15 of whom are residential. There are currently five classes, 7 teachers, and around 100 staff across the school and residences.

40. The cost to attend School A with 1:1 support would be £134,041 excluding transport costs. Given that the authority will now require to engage an additional member of staff in order to provide 2:1 support at School B, there will be a cost to the authority of that option of between £16,748 to £18,759 per annum. In addition, transport costs will total £475 per week. Over 39 weeks of the school term, the maximum cost would be £37,284.

The relevant law

41. The general duties imposed on an education authority in relation to children and young persons with additional support needs are to be found in s.4 (1) of the 2004 Act. The education authority must "(a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person".

42. Section 22 of the 2004 Act gives effect to Schedule 2, which disapplies the ordinary rules relating to placing requests (set out in the Education (Scotland) Act 1980) and substitutes, in relation to children and young persons having additional support needs, the provisions of Schedule 2.

43. In terms of paragraph 2 (2) of Schedule 2 of the 2004 Act it is the duty of the authority to meet the fees and other necessary costs of the child attending the specified school. This is subject however to paragraph 3, which details exemptions from that duty. In this case the relevant exemption, and the specified ground for refusal, is set out at (3)(1)(f) and applies where: "all of the following conditions apply, namely
    i) The specified school is not a public school,
    ii) The authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
    iii) It is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and
    iv) The authority have offered to place the child in the school referred to in paragraph (ii)...."

44. The authority also relies on (3)(1)(g), where the specified school is a special school, placing the child would breach the mainstreaming requirement in section 15 of the Standards in Scotland's Schools Act 2000.

45. This is a reference in terms of section 18(3)(da)(ii) of the 2004 Act in relation to "the decision of an education authority refusing a placing request made in respect of a child or young person.....made under sub-paragraph(2) of paragraph 2 of schedule 2 in relation to a school mentioned in paragraph (a) or (b) of that sub paragraph".

46. Section 19(4A) states that "where the reference relates to a decision in subsection (3)(da) of that section, the Tribunal may -

(a) Confirm the decision if satisfied that –
   (i) One or more grounds of refusal specified in paragraph 3(1) or (3) of Schedule 2 exists or exist, and
   (ii) In all the circumstances it is appropriate to do so,
(b) Overturn the decision and require the education authority to –
   (i) Place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and
   (ii) Make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require".

47. This thus sets down a two stage test, and if the Tribunal is satisfied that at least one of the specified grounds for refusal exists, then the Tribunal must move 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. The authority bears the burden of proof in this case overall (at both stages of the exercise).

Submissions for the appellant

48. In written submissions, Solicitor for Appellant set out the background to the case and expressed concern about the fact that the authority refused School A permission to consult with staff at School C, and about Witness E not having been given access to the facilities at School B for the purposes of preparing his report. She set out the relevant law and then summarised the evidence. She referred to the relevant case law which sets out the correct approach of the Tribunal, relying in particular on **M v Aberdeenshire Authority 2008 SLT (Sh Ct) 126** in respect of the proper time for assessing when the relevant conditions were met; and **City of Edinburgh Council v Mrs MDN [2011] CSIH 13** regarding the need to take a "holistic approach", by considering both educational support and social work support.

49. Solicitor for Appellant submitted that the evidence clearly shows that despite efforts, The Child is not receiving adequate and efficient provision, and that the proposed placement will not afford such provision either. With regard to the suitability of provision at School A she submitted that the 24 hour curriculum could not be matched by RESPONDENT, and that School A offers a holistic approach to meeting The Child's education and social needs. With regard to the respective costs, she confirmed that the appellant would meet

transport costs because The Appellant would transport The Child herself and therefore the cost to the authority of placing The Child in School A would be £134.041.52 per annum.

50. On the question whether it is appropriate in all the circumstances to uphold the authority's decision, relying on section 28 of the Education (Scotland) Act 1980 and the (England and Wales) Court of Appeal judgment in **Haining v Warrington Borough Authority [2014] EWCA 398**, it could not be said that the placing request would incur unreasonable public expenditure if all costs incurred by the authority, including social work, community education, further education and SAAS budgets were taken into account.

51. With regard to the authority's argument that the placing request would breach the authority's duty to provide education in mainstream schools, Solicitor for Appellant submitted that the Enhanced Provision at School B is not in any event a mainstream school, and therefore that provision could not be relied upon by them, failing which the exemptions to the presumption of mainstream are met in The Child's case.

52. On the question of overall appropriateness, she argued that the authority had failed to put in the necessary reasonable adjustments to allow The Child to achieve at the expected level, whereas School A would be the ideal environment for The Child to flourish.

53. Finally, Solicitor for Appellant submitted that while the Tribunal must take account of the views of Father, given the fact that he is not his primary carer; the disinterest (sic) in The Child's education to date; the fact that he has not visited either school; is basing his decision purely on location and supports 2:1 staffing, which is contrary to The Child's best interests, the views of The Appellant should be preferred over his views.

Submissions for the authority

54. In written submissions, Solicitor for Respondent set out the relevant legal provisions and summarised the evidence which she said supported her submission that the various legal tests had been met.

55. In particular, she argued with regard to the question whether the authority were able to make provision for The Child's needs, that at the Tribunal the question had been split into two questions namely whether the authority has properly determined The Child needs; and whether the authority can meet those needs. With regard to the first, she set out the evidence which supports her submission that the authority has a good knowledge and understanding of The Child's needs at his primary provision. However, she argued that even if

the Tribunal were to determine that the authority had not properly understood The Child's needs, it does not follow that School B could not meet his needs going forward. With regard to this second question she relied on the fact that the Central Overview Group who had made the decision was fully informed about The Child's needs and the provision available, and had concluded that School B is well placed to meet his needs having regard to the well-being indicators. That conclusion is supported by the evidence.

56. With regard to the respective suitability and respective cost, Solicitor for Respondent relied on the evidence which indicated that there were risks of sending The Child to School A including the impact on The Child's family relationships and his place in the wider community; a concern that his bond with his mother is such that there would be an impact on him if he is away through the week, a concern that his communication would be impacted and the concerns of his father that he would be institutionalised.

57. She then contrasted the provision available in the two schools relying on the evidence heard. She argued that the needs and strategies offered at both provisions were similar, although described using different language. She set out the respective provisions available. She added that both provisions work in partnership with parents, although School A did not consult Father at all about The Child's needs or the proposed provision. Both schools indicated that they would do a functional behaviour analysis to deal with challenging behaviour; both facilitated activities in the community and while School A has a programme of extra-curricular activities there is scope to attend a number of establishments in the Respondent Area. The Child had visited both and witnesses reported positive reactions, although The Child was accompanied by his mother at School A and the evidence is that he responds better in her company. Both provisions have in the past had input from Education Scotland.

58. With regard to respective costs, the cost to the authority would involve the engagement of one ANA (Additional Needs Assistant) at a maximum cost of £18,759, as well as transport costs. While the School A invoice stated costs to be £134,041.52, if the school did later determine that 2:1 provision was necessary then costs would increase. While The Appellant was offering to transport The Child, the authority would be legally obliged to cover those costs and should the situation change, there would be additional transport costs of £14,820 per annum.

59. In conclusion, Solicitor for Respondent submitted that the evidence shows that both schools could meet The Child's additional support needs. She submitted that the authority has a longstanding knowledge of The Child and his needs that would be more easily transferred to School B due to the distance. She submitted that where a local provision and a residential

provision can both meet the needs that it is better to try to keep the child in their home environment and see if a local, well-resourced provision can work before a child is sent to a residential school. The school staff are keen to work in partnership with The Appellant, and Father's view is that The Child should be educated in the Respondent Area. She submitted that it would be appropriate for the Tribunal to confirm the decision.

Tribunal observations on the witnesses and the oral evidence

60. The Tribunal heard first from Witness B, who we found to be a credible and reliable witness. It was clear from her evidence and from the paperwork which she produced, including the strategy sheet prepared for the move from Primary School A to School C (R263), the transition passport (R257), and the list of needs prepared to assist the educational psychologist in the transition planning process (A20), that she knew The Child well and that she had a good understanding of his needs, motivations and strategies to seek to get the best for him. This was clear from the confident and unhesitating way that she gave answers to questions about The Child's needs. It was clear too that she took a highly individualised approach to meeting The Child's needs.

61. With Witness C, we got the impression that she too already had a reasonably good understanding of The Child's needs from her involvement in the initial transition and from her various observations of him. She had experience of dealing with children with autism, and was generally knowledgeable about that. Her evidence was helpful in understanding the provision on offer and how it could meet The Child's needs, and the plans for the construction of a purpose built department. Witness C did not seek to hide that the provision at School B needed improvement, and she was clear about how this would be tackled.

62. With regard to the evidence which we heard from Witness F, we were aware that Witness F had not met The Child. We appreciated that he had taken over as the lead educational psychologist for The Child because Allocated EP was on maternity leave. His evidence regarding The Child was largely based on Allocated EP's assessment, which he readily repeated as necessary. Although he could not remember exactly when he prepared the evidence profile at R104, it was not clear whether that was to inform the transition or specifically for this Tribunal. While we did not find his answers to be entirely straightforward or direct, we recognised that he was being careful and measured, and reluctant to criticise other professionals without the full facts, and trying to understand why they may have come to conclusions with which he did not agree (in particular Witness E and the School A Report).

63. With regard to the evidence which we heard from Witness E, this gave us cause for concern. While we appreciate that he was a witness who was called

by the appellant, we would normally expect an expert professional witness to be more circumspect, more objective, less defensive and less partisan. We also noted a marked change in the way he presented his evidence on the second day, and we were not sure whether that was because he had reflected overnight and felt the need to defend his opinions more forcefully or whether the appellant was present in Tribunal only on that day. We found the language which he used to be emotive and hyperbolic, for example, he repeatedly used the term “dangerous” with regard to the findings of professionals in reports relating to The Child.

64. This was a particular cause for concern because it became very clear to us that he did not have a full picture of what had been done for The Child in the past or what provision was to be on offer for him in the future. This was largely because the authority had refused him permission to view the provision and speak to the staff. That said, I specifically indicated in directions that the Tribunal would benefit from a report from an independent psychologist, and my expectation was that he would at least have prepared his report following a careful consideration of the affidavits lodged by the local authority, which were lodged expeditiously for that purpose.

65. While we were not made aware of exactly which papers Witness E had consulted to prepare his report (and Solicitor for Appellant confirmed that he had papers which were not in the volume of documents lodged), it was clear to us that he did not have all the documents which we have now had the benefit of considering when he wrote his report which is dated November 2017. Witness E makes specific reference only to the report by Allocated EP which we understood was an assessment of need (and which we heard from The Appellant that she contributed to) but was not the final word on the provisions required by The Child. The affidavits lodged by Witness F and Witness C were dated 21 November 2017 and we can therefore only conclude that he did not consider these before writing his report.

66. There was one document which gave us particular cause for concern, and that was the document at R104 (the “evidence profile”). Witness E initially said that he had not seen it, or at least that he did not recall seeing it. Given that we considered it to be an important document, we could only assume that he had not seen it before writing his report. Notwithstanding, he was very critical of it when he considered it while he was giving evidence. He appeared to be of the view that the identified issues had been determined without what he called was an essential functional analysis. It was not clear to the Tribunal how he could have known that from the information which he had. It was also not clear to the Tribunal why his opinion of that document and the document prepared by School A differed so much, except to the extent that he confirmed that he was judging the authority’s evidence profile and the School A report by

different standards, on the basis that the authority had extensive access to The Child which School A had not.

67. Thus while Witness E concludes in his written report that he did not see any evidence of what he considered to be the necessary intellectual assessment and functional analysis, it was clear to us that he had come to his conclusions without knowing the full picture. This is why we were surprised that Witness E was not more circumspect in his oral evidence to the Tribunal. The one question he felt able to answer definitively was whether he would send The Child to School B if he was given the information provided (which we assumed to include the paperwork now presented to the Tribunal). In response to a question asked by Solicitor for Appellant, he said that he had not changed his view having had a further opportunity to review further paperwork relating to The Child.

68. As discussed further in this judgment, we did not accept his evidence that no proper analysis had gone into determining the issues identified. We preferred Witness F's evidence that there has been a functional assessment of The Child's behaviour (although Witness F indicated that the terms could be used in a different way, and that the reference to functional analysis could refer to a particular method). Nor did we accept his evidence that "no direct assessment with, or observation of The Child had been carried out by the educational psychologist as part of the process of preparing the summary report", given we heard evidence to the contrary.

69. Further, as a specialist tribunal, we questioned some of the evidence base for Witness E's opinions, for example in his conclusion that "autism is a protective factor against change", in respect of attachment and residential care.

70. For all of these above reasons, we did not find Witness E to be a reliable witness. This was particularly unfortunate because of the impact which his views may have beyond this Tribunal, particularly in colouring The Appellant's views on the educational provision available for The Child. We did also note that The Appellant used what to us appeared to be professional language which appeared to match some of the language used by Witness E and she confirmed that she had been preparing her written statement for some time, and therefore we understood that that it was completed after she had received the report of Witness E, and had been influenced by his views.

71. The evidence of Witness D, head teacher at School A was very helpful in allowing us to undertake the respective suitability assessment. Although we did find her to be somewhat defensive when challenged on the report the school had prepared, and in relation to previous inspection reports, this did not influence our decision in relation to the suitability of School A.

72. With regard to the evidence which we heard from The Appellant, we had no doubt that she had The Child's best interests at heart and we understood her to be a very good parent to The Child. This was something which was acknowledged by Father. We were impressed by the commitment she showed and by her description of her programme for home education and the life skills which she was teaching him.

73. However, we tended to the view that she had set her face against education in the Respondent Area and was convinced that School A was the only suitable option, which meant that she lacked objectivity. We formed this view not least because we noted a number of inconsistencies in her evidence, and in respect of her position now as contrasted with her previous views, at least as set out in the paperwork. For example, at R71 in the CSP dated September 2016 it is noted that The Appellant stated that "The Child is benefitting from having a safe space at Spectrum Support and feels that this would be beneficial at home"; at R83 in a letter to authority dated November 2016 she stated that The Child is a child who requires 2:1 at all times; and in the report from parent dated May 2017 appended to the CSP, The Appellant was generally positive about the provision for The Child at School C. Where inconsistencies were highlighted to her, she stated that they were inaccurately recorded.

74. Further, we noted that The Appellant made a number of accusations regarding the treatment of The Child in evidence, such as self harming and being kept in a cupboard, although we were not aware that she had previously made any complaint about the way that The Child was treated at primary school. We required to give these allegations little weight, not least because the authority had not had the opportunity to counter them in evidence.

75. We got the impression overall that The Appellant's answers to questions were what she thought she should say rather than necessarily what she genuinely believed. We believed that she exaggerated what she saw as the negatives of School B and highlighted the positives of School A. Of the former, she said "I wouldn't leave my dog in the unit, and I love my dog". Of the latter, we noted that she had not visited the residences, and had not consulted the care inspectorate reports.

76. We found Father's evidence to be quite compelling, in the sense that we considered his opinions regarding The Child to be entirely genuine and got no sense at all that his views were presented with a view to being oppositional or contrary. We did accept however that some of Father's actions at least appeared contradictory. While we accepted that there was some legitimate criticism of Father in terms of his past interest in The Child's education, we were of the view that Father is genuinely very concerned about The Child spending such a long time not only away from him (as he will not be able to

see him on Tuesdays as he currently does) but he is also concerned about his being away for such a long time from his mother and sister.

77. While we understood that there is apparently currently a dispute between The Appellant and Father regarding access arrangements and the extent to which Father is able or willing to take the children, that is clearly not a matter upon which this Tribunal can adjudicate. That said, we understood the conclusion of the social worker, that since The Appellant takes the majority of the caring role for The Child, that her views must be given appropriate weight.

Reasons for decision

First stage

78. We first considered whether the authority has satisfied us that each of the paragraphs applies (set out in Schedule 2, paragraph 3(1)(f)(i) to (iv), above). We can deal very shortly with (i), that is that the specified school is not a public school, because this is conceded. The authority has offered to place The Child in a nominated school, namely School B, in fulfilment of paragraph (iv), which is also conceded.

Is the authority able to make provision for the child's ASN?

79. Considering paragraph (ii), the question we must consider is whether "the authority are able to make provision for the additional support needs of the child in a school, other than the specified school", that is School B Enhanced Provision. The appellant's position is that the provision offered by School B would provide a lesser level of support than The Child received at School C and would not meet his additional support needs, for which he requires an autism specific environment.

Determination of The Child's needs and past provision

80. In order to determine whether the authority is able to make provision for the child's additional support needs, it is important to be clear about what The Child's additional support needs are. The appellant has sought to argue at this hearing, in the first instance, that there has been a failure on the part of the authority to properly determine The Child's needs. We understood that to be what Witness E concluded in his report. This relates to what he sees as the failure to undertake a standardised intelligence assessment and a failure to carry out a "functional behavioural analysis".

81. In particular, he stated that the reports he had sight of produced by the authority "showed no evidence of a structured standardised assessment of The Child's intellectual and adaptive functioning abilities". Witness E undertook tests and concluded that The Child has a severe intellectual disability (A72).

82. We accepted that no standardised assessment had been undertaken to determine The Child's intellectual abilities. However, we accepted the evidence of Witness F that the advice provided to educational psychologists is that such an assessment is unnecessary. We accepted his evidence and that of Witness C that, although it could not be said that they would be unhelpful, these tests would not necessarily be required to determine educational provision, as the results were already evident from prior knowledge and assessment. We noted too that no such tests were carried out by Witness E or by the CAMHS team when they were involved with The Child, presumably because they were not deemed necessary.

83. Further, Witness E stated that he saw "no evidence of a functional analysis of The Child's behaviour having been conducted by RESPONDENT" and that a structured systematic functional assessment was required but had not been done.

84. We did not accept Witness E's conclusions in that regard. We accepted that assessment equivalent to a functional behaviour analysis had been carried out by teachers and staff at School C.

85. While we agreed that no formal assessment had been undertaken, at least not using formal methods which Witness E might recommend, we accepted from the evidence that there had been an informal assessment by Witness B, set out at R263, which is headed up "strategies and information". We understood, in any event, that Witness E had not seen that document before completing his report.

86. This document, and Witness B's evidence, clearly demonstrates a depth of understanding of The Child and the challenges that he faces, and indicates that there has been an in-depth analysis of behaviours, antecedents and consequences, and significant discussion around which strategies have been successful or unsuccessful to produce a detailed document like this. We heard that this was an ongoing process, whereby a detailed log of incidents and moments of crisis are logged, looking at the antecedents, the environmental triggers and whether the response had a positive or negative impact. We heard that these were used as a tool to inform behaviour plans for The Child, following extensive discussion with educational psychologists, and reviewed regularly.

87. From the evidence that we heard from Witness F and Witness C, we understood this to be a basic functional assessment. We noted that the conclusions of the staff as to the causes for behaviours and positive behaviour management were confirmed by Allocated EP, who noted, for example, that there was evidence of attention seeking and demand avoidance functions to behaviour. We accepted the authority's submission that it was

entirely appropriate that the assessment is derived from what teachers observed, with later input from an educational psychologist.

88. In so far as evidence was led that the assessments undertaken by the authority's staff had led to The Child being "taught challenging behaviour", we did not accept that. On the contrary, we were of the view that the strategies in place were designed, from appropriate observation and assessment, with a view to promoting positive behaviour.

89. We therefore did not accept Witness E's conclusion that "this suggests a significant area of need for The Child was not assessed or addressed by Respondent Area Council" or in particular that this indicated that the past provision did not meet, or that future provision will not be able to meet, The Child's additional support needs.

90. Ultimately, we did not understand there to be a dispute about the factors which give rise to additional support needs for The Child. Allocated EP, educational psychologist, set out the factors giving rise to The Child's ASN in a Summary of Needs Assessment (R79) following collaborative consultation with those involved with The Child and a number of direct observations. Those factors were recorded as: autism, and complex learning needs arising from that; the eating disorder PICA; as well as "challenging behaviours such as high demand avoidance, oppositional behaviour, hyperactivity, impulsivity, unpredictable behaviour, a physical need to climb, a constant need to test boundaries and an impulse to escape".

91. The Appellant confirmed in evidence that she had been involved in the development of that document, and we understood her to agree that the report was an accurate reflection of his needs. We noted that this document was stated also to have been informed, inter alia, by the views of Witness E.

Provision for future needs

92. Based on the information produced by Witness B and Allocated EP, Witness F had created "an evidence profile", following consultation with (L), educational psychologist allocated to the Enhanced Provision at School B and Witness C (R104-112). We noted that Witness E could not recall seeing that document and we assumed, given the conclusions that he reached, and given the significance of the information contained in that document, that he had not seen it. We were aware that he still had concerns about it after considering it at the hearing, but we understood those to relate to the process undertaken to identify the issues, but as discussed above, we found those concerns to be without foundation in this case.

93. In four columns, the evidence profile sets out identified issues (based on Witness B's assessments), identified needs (based on Allocated EP's

assessments) and enhanced provision identified at GA (based on Witness F's discussions with (L) and Witness C).

94. This document thus sets out in some detail what provision is in place to meet The Child's needs at the Enhanced Provision at School B. The authority's position is that it is resourced for children with complex and challenging needs, and that the staff are experienced and trained in supporting children on the autism spectrum. This position was supported by the evidence of Witness C, who lodged an affidavit at Page R172-185, which she supplemented with oral evidence. This included considerable detail regarding how The Child's needs would be met. We were of the view that her evidence clearly indicated that she knew and understood The Child's needs well.

95. The appellant's position however is that the authority cannot meet The Child's needs. We therefore considered each of the concerns raised by the appellant in her case statement. We were aware that we require to consider the provision on offer as at the date of this hearing.

Staffing

96. In the case statement, the appellant argued that "The Child would receive substantially less support than he is currently receiving. He would not receive 2:1 support". Although it appears that the appellant has now departed from that position, Witness C confirmed that The Child will receive 2:1 support, a requirement that was identified in his CSP. We accepted from the evidence that we heard that 2:1 ratio would provide The Child with the level of support which he required at school.

97. In the case statement the appellant argued that The Child would not receive specialist input from staff with autism specific training. We understood that the Enhanced Provision is lead by Witness C, as the principal teacher of additional needs. She has experience of working with and teaching children with autism, and is studying for a Masters degree in autism and children at Birmingham University.

98. All staff in the department have received training on ASD and alternative communication methods. Most staff are experienced in dealing with ASD, or at least familiar in dealing with young people with challenging behaviour and how to support them. There are 13 children in the department at present, all with severe and complex needs. There are three classes, with three teachers, and nine additional needs assistants (ANAs), with three pupils in the class identified for The Child, all with ASD. We heard evidence that the current teacher of one of the classes had previously taught in an autism specific department, and could be transferred to the autism class.

99. The staff at the Enhanced Provision have met The Child through transitional activities which had commenced. Witness B has passed on strategies for working with The Child. Although she advised in evidence that she would be moving schools within the Respondent Area, she said that she would be happy to assist with his transition, which will require to recommence given the gap since transition activities initially commenced.

Academic progression

100. The appellant submits that the proposed provision could not meet needs in relation to academic progression. The appellant argues in the case statement that The Child would not receive an individualised curriculum geared to ASD and associated difficulties.

101. The authority acknowledged that The Child will require a significantly differentiated curriculum, linked to national guidelines that extend The Child's learning experiences at his own rate and pace, including an individualised timetable and curriculum with targets for The Child's progression, with the expectation that The Child, along with other children in the department, will work towards National 1 and National 2 levels.

102. The appellant stated in the case statement: "despite the high level of support The Child has made no visible progress since attending the autism support unit". Although the authority accepted that The Child is not achieving the expected levels in the curriculum, as a specialist tribunal we noted from the CSPs which were lodged that it was clear that The Child had made progress at primary school.

Speech and language therapy

103. In the case statement, it was argued that The Child would only receive indirect SLT with the therapist consulting staff on an irregular basis. However, the evidence from the authority was that a speech and language therapist would visit the Enhanced Provision on a weekly basis to assist staff with communicating, and that there was potential for direct support, should that be assessed as required, which would be tailored to The Child's needs.

Buildings and accommodation

104. In the case statement, it was argued that The Child has "substantial sensory difficulties and requires low arousal environment. He is very lively and enjoys moving both indoors and outdoors. He finds it very difficult to cope within an area which does not take into consideration his need to run around. The Child has difficulty self-regulating and requires a safe space and time alone when feeling overwhelmed". The case statement indicated that specific attention needed to be given in relation to light, colour and sound to recognise the challenge of sensory processing.

105. Witness C gave evidence about the physical space which currently makes up the department, and we saw photographs of the outdoor area, the safe spaces and the sensory room. We heard that there is an independent living area for young people to learn life skills.

106. We heard evidence that the facilities at School B are a "total communication environment". The Child would be placed in a classroom low in sensory stimulation, with no harsh or bright lights and minimal information on the walls and an overall environment suited to his sensory needs with his own workspace area. We heard that measures were in place to help The Child in crisis moments and make positive decisions to use the available safe space when he starts to feel stressed. Further measures are in place to prevent him from hurting himself or others with use of a calm space to allow him to calm down. Staff are Team Teach trained to move The Child safely to the safe place if necessary.

107. In the case statement, the appellant expressed concerns that School B cannot meet The Child's needs in relation to his need for outdoor learning opportunities. The evidence heard confirms that there is a fully secure play area with equipment for The Child to trike, climb, trampoline and have regular physical breaks. Strategies are in place to manage The Child's desire to climb. The outdoor space will be utilised for both timetabled and unscheduled access for exercise, including PE and yoga.

Peer relationships and community involvement

108. In the case statement the appellant stated that The Child generally plays no role in his local community and is reported as having not one friend. The authority recognised that at present he is not interested in working with his peers or in a group and prefers adult company. However, there had been some success in relation to him joining the music class, and he will continue to be taught by the same specialist music instructor. The Child would be able to have classes with the mainstream PE, Art, Technical and Home Economics teachers, all of whom would be properly briefed. Further, there are also opportunities for him to participate in the buddy scheme with children from the mainstream school. The authority also stated that The Child will be taught life skills as part of his time tabled individual curriculum, and following appropriate risk assessments would be taught road safety and travelling on public transport, including shopping trips and trips going to local library/ swimming pool.

Sleep and diet

109. The school is aware of The Child's need to follow a non-dairy, gluten-free, sugar-free diet, and witnesses confirmed that would be provided. Reference was also made to The Child having problems with sleeping, although the

evidence was apparently contradictory, with The Child's father stating he did not find that and indications that it was not an issue at (A). In any event, we accepted Witness B's evidence that any lack of sleep rarely impacted on his behaviour at school, and Solicitor for Respondent's submission that there was no evidence that this was impeding The Child's ability to benefit from education.

The general environment

110. The Appellant advised in oral evidence that she had heard very negative reports from other parents regarding the Enhanced Provision, and having visited the provision on one occasion, made strongly worded complaints about the environment, the demeanour of the children, the smell, and the attitude of staff.

111. We were made aware that criticisms made by some parents resulted in a meeting with a local MSP (A59), and following that intervention, a visit was made by Education Scotland with an ASN specialist in March 2017 (R267-271).

112. As a result of that, an improvement plan was devised (R244- R256). That plan was designed to speed up plans for improvements at the school, and specifically in relation to the Enhanced Provision, which will be moved within the mainstream school into a bespoke new building designed by the same architect who designed School C. We heard that it is designed to take account of the sensory needs of the pupils, including sound proofing and acoustic panels to minimise auditory over-load, multi-functional low lighting and equipped with appropriate IT, as well as a room for parents to meet. Although there have been some delays with the building work, the project should be completed in or around May 2018. The cost of the building work is in the region of £1.1 million. Architects plans were lodged at (R266) with the identification of the two outdoor play areas at (R242) (for independent living skills (including gardening) and another for exercise); along with a report from specialists space design consultants, including CAD images of the sensory room, safe spaces and soft play area (R227- R240).

113. Our attention was also drawn by the authority to the Report of Education Scotland (R269, para 3.8) that, "The partners spoken to during the visit commented on the commitment and willingness of the...staff 'to go that extra mile' for the young people in [the department]".

114. Taking these factors into account overall, we concluded that the authority is able to make provision for the additional support needs of The Child at School B as required by paragraph (ii).

Respective suitability and cost

115. We then turned to paragraph (iii) which requires the authority to satisfy us that "it is not reasonable, having regard both to the respective suitability and to the respective cost...of the provision for the ASN of the child in the specified school and in [the nominated] school....to place the child in the specified school".

Respective suitability

116. While we have concluded that the authority is able to make provision for the additional support needs of The Child, we went on to consider the respective suitability of the two schools, and in particular whether School A would be more suited to meeting The Child's needs, relative to School B.

117. We heard evidence about the provision at School A. We had no misgivings that School A could meet The Child's additional support needs, and indeed we did not understand the witnesses for the authority to say otherwise.

118. The question then is, to what extent might it be considered to be more suitable. In this regard, we gave consideration to the provisions on offer at both schools.

119. With regard to staffing, we noted that at School B there would be one teacher for four pupils in The Child's class, and 2:1 support. At School A, there are currently 28 pupils, 15 of whom are residential, split into 5 classes, with one teacher and various support staff. The Child would be in Pine class, where there would be one teacher for five pupils and 1:1 provision.

120. The key difference is the fact that School A had assessed that 1:1 support was sufficient. This was based on observation from two visits when The Appellant was present. Witness D explained that less adult support could be appropriate to assist in the preparation for an independent life. She accepted however that The Child's specific needs would be assessed over a six month period as they got to know him, and their view of that could change. They do have some pupils who require 2:1 provision.

121. We noted that the authority had assessed the need for 2:1 support, after trials of 1:1, based on extensive experience of staff working with The Child. We noted in particular that it was stated that the 2:1 support was not just for The Child's safety (in relation to PICA and his tendency to run away) but to assist with his learning and help to keep him focussed. This may explain why School A had assessed 1:1 as sufficient, because The Appellant was present and we did not understand him to be having any educational demands on him while there, as is the case at (A). We considered that there was a real possibility that the situation at School A could change.

122. With regard to staff qualifications and experience/training/learning techniques, the witnesses for the respective school were not very clear about exactly what

staff training was provided. However, we accepted that training was provided in both schools. We accepted that the staff at both schools had experience in dealing with children with autism. We were aware that School A specialises in education for children with autism. We noted that School A had a high staff turnover and that in the past concerns had been expressed about training following induction, which Witness D said had been addressed.

123. With regard to access to specialist staff, we noted that both schools had access to, and support from, speech and language therapists. School A had visits from two speech therapists for two days a week. We understood from the evidence that would include both direct and indirect support, as assessed, as at School B. School B has a visit from a speech and language therapist one day each week (for 13/14 children). School B had access to an occupational therapy and School A had visits from an occupational therapist two days each week, as well as rebound therapy. At both schools, specialist staff, including clinical psychologists and local authority educational psychologists, would input to prepare individual education plans (IEPs).

124. With regard to physical facilities, we were aware that School A was specifically designed for children with autism, by an architect with who has a child with autism, with particular attention being paid to light and space. This contrasts with the current provision at School B, although the new provision has been designed by architects with experience of designing such provision.

125. With regard to the general environment, we understood both schools were offering a low sensory environment, a flexible working environment and a multisensory provision. We noted The Appellant was very impressed by the fact that School A had no safe space or rooms for restraint, but we noted from reports lodged that School A did require to deal with techniques for restraint, and indeed that The Appellant had said in her case statement that The Child on occasions needed a safe space.

126. With regard to outdoor learning opportunities, both schools recognised The Child's requirements to participate in physical exercise. It was recognised that School A has more outdoor space and a playground area.

127. With regard to the curriculum, both schools offered a fully differentiated, flexible and individualised curriculum which would be developed through working with The Child, with a multisensory approach to learning with a focus on life skills and safety awareness, but with the intention of working towards national 1 or 2 qualifications. Both schools will require to put transitional arrangements in place, and undertake so-called "functional assessments" to inform IEPs, and to track and monitor progress. Strategies proposed by both were similar and this is perhaps inevitable since the School A Report was

largely prepared based on paperwork produced by the authority, as well as two observations of The Child.

128. With regard to engagement with peers, both schools recognise that The Child needs opportunities to socialise with his peers, but that he tends to interact with adults. While School A offers the opportunity for The Child to socialise with other children with autism, concerns were expressed about The Child being educated only with other children with autism. In contrast School B would allow daily inclusion in the life of the mainstream school, and where, for example there was a buddying system. Both schools stated that they would make efforts to promote inclusion in the local community. There was evidence that School A had many partnerships with the local community, including links with local farms. Staff at School B would take The Child on visits to the local community, including the swimming pool and library.

129. We considered it relevant, when considering the respective suitability of the two schools, that The Child will require to attend School A on a residential basis. We noted that the provisions of para 3(1)(f)(iii) make reference to the provision for ASN in the specified school. We did not accept the authority's argument that we should focus only on the extent to which the schools were able to meet The Child's additional support needs that arise during the course of the school day.

130. We considered therefore that in assessing the respective suitability question we take into account the fact that The Child will attend School A on a residential basis, and that they are offering a 24 hour curriculum and a programme of after school activities specifically for children with autism, which was not on offer at School B. The appellant expressed concern that The Child's oppositional and uncontrollable behaviour had meant that she was unable to let The Child participate in extra curricular group activities which are open to other children with additional support needs. In this respect, we concluded that School A was better able to meet The Child's ASN.

131. On the other hand, concerns were expressed, particularly by Father, about The Child spending so much time away from his family and the local community. In particular, concerns were expressed about how such a change would impact in general on children with autism and with The Child in particular. The Child is currently being home schooled, and therefore spending most of his time with his mother, with whom it was universally accepted he has a very close bond. Father and other witnesses for the authority expressed concern that being away from her through the week may have an adverse impact on him. Further, concerns were expressed by Witness B in particular that his progress with communication would be stalled, since he communicates best with his mother.

132. Witness D stated that parents can visit the school during the week and take part in evening activities, and there are daily opportunities for phone calls and skype. Witness E was of the view that this was not a concern. Given we were conscious that The Appellant knows The Child best, we also took account of the fact that she was of the view that the change would not adversely impact on him, and that he totally trusted her to make the right decision for him. However, we concluded that there was likely to be an impact on The Child of the change, not least in relation to his communication skills.

133. We considered that it was appropriate for us to take these concerns into account when assessing respective suitability. We considered that any benefits which The Child might gain from the 24 hour curriculum were potentially outweighed by the impact on him of moving away from his family each week.

134. When considered in the round, and looking at all the circumstances, we could not say that School A was more suitable, or if it was, it was marginal.

Respective costs

135. With regard to respective costs, we had heard that the cost for the place at School A was in the order of £134,000. We were aware that this was based on 1:1 support, but that situation could change following assessment.

136. In **B v Glasgow City Council, 2014 SC 209**, the Inner House confirmed that the costs to authorities are the additional costs to be incurred by them if the child went to the proposed school. It was for that reason that it was important to confirm that the authority would now (as at the date of hearing) require to engage another additional needs assistant in order to provide the 2:1 support which they state is required. Consequently that cost to the authority of engaging another additional needs assistant would be up to £18,759.

137. We took the view that it was relevant to consider respective transport costs, which was not disputed by either party. The authority had added £380 per week in respect of annual transport costs for the travel to School A, although in this case The Appellant stated that she would take The Child to school on a Monday and collect him on Friday. Nevertheless, we accepted that the local authority did have a statutory obligation to pay transport costs should that situation change, and that could amount to £14,820 per annum. The cost of the journey to School B was calculated by the authority to cost a maximum of £475 per week. Over 39 weeks, the total cost would be £37,284.

Overall assessment

138. We looked at the respective suitability and respective costs, but we were aware that the legal test requires us to consider these factors in the round, that

is the Tribunal must consider whether the extra cost of providing for the child's ASN is reasonable, given the difference is suitability of provision.

139. We have taken the view that, viewed in the round, School A cannot be said to be more suitable and that conclusion relates particularly to the impact which attending school on a residential basis will have on The Child.

140. However, even if we are wrong to take account of the impact on The Child of living away from his family (and his mum in particular), in assessing the respective suitability question, we were of the view that while it could then be said that School A is on balance more suitable, we do not consider that the degree to which it could be said to be more suitable outweighs the additional costs to the authority of at least around £100,000 per annum.

The mainstreaming duty

141. The authority had initially stated that they were also relying on Schedule 2, paragraph 3(1)(g), that placing the child in the school would breach s15(1) of the Standards in Scotland's Schools Act 2000. However, no submissions were made in support of this ground and therefore we assumed that the authority is no longer relying on it. In any event, we accepted Solicitor for Appellant's submission that what is on offer at School B is not properly categorised as 'mainstream'.

Second stage

142. Where we conclude, as in this case, that one of the grounds of refusal is satisfied, we are required, if we are to reject the reference and confirm the decision of the authority, to be satisfied that in all of the circumstances it is appropriate to do so.

143. In regard to this question, Solicitor for Appellant argued that it was not appropriate to reject the reference because it was clear from the evidence that the SHANARRI indicators were not being addressed by current actions or proposals, and that School A provided an ideal environment. We were of the view that these factors had all been taken into account in our determination of respective suitability and cost.

144. If it is not appropriate for us to take into account the impact of The Child living away from his family and the local community when assessing respective suitability, we nevertheless were of the view that it was a valid factor for us to take into account when considering overall whether it was appropriate to confirm the authority's decision, and clearly we were of the view that it supported a conclusion that the authority's decision was appropriate.

145. We agreed with Solicitor for Appellant that it was appropriate to take into account the views of both The Appellant and Father. However, she argued

that Father's views should be given little weight, because he was not the primary carer and had taken little interest in The Child's education to date, evidenced by his failure to attend key meetings, and the fact that he had not visited School C or School B. She argued that his concerns only related to location not suitability, which she argued is not indicative of having The Child's best interests at heart.

146. As discussed above we did not accept that submission. We considered that Father's motivations were genuine and that he had a legitimate concern that The Child would, as the authority put, it be "institutionalised".

147. As discussed above, The Appellant has very strong views in relation to the suitability of School A and the unsuitability of School B, evidenced by her decision to home school, which we have no doubt is at considerable sacrifice to herself. We were of course aware of the concerns that had been raised by some parents, although we have concluded that School B is able to meet The Child's needs and is suitable, and we have taken account of the interventions by the MSP, the reports of Education Scotland and the improvement plans.

148. Ultimately, we agreed with Solicitor for Appellant that it was appropriate for us to give more weight to the views of The Appellant given that she has the primary care responsibility for The Child. However, as discussed above, we were of the view that The Appellant was not objective in her assessment of the question of what was appropriate for The Child, for perfectly understandable reasons. While we have concluded that School A is in some respects more suitable, on balance we have concluded that in all the circumstances, applying the legal tests, that the authority's decision to refuse the placing request is appropriate.

149. While we accepted that The Appellant had a number of serious concerns about what was proposed for The Child, especially in light of the concerns expressed by other parents and by Witness E, and that she wants what she believes is best for him, our task is to assess the evidence which we have heard and to apply the legal tests, which we find are met.

Concluding remarks

150. While we have confirmed the decision of the authority after careful consideration of all the circumstances, we consider that the council has done itself a great disservice by refusing to permit Witness E to attend the provisions on offer at School B. By doing so, they failed to give Witness E the opportunity to see for himself what was available and to speak to the staff, which would have ensured that he was better informed. In turn that may have given The Appellant greater confidence in the provisions that are available for The Child at School B.

151. We were also of the view that the council could and should have set out reasons for their decision at the COG (at least following the reconsideration). This may have gone some way to reassuring The Appellant at least about the process followed in coming to the view that School B was the most suitable provision for The Child.

152. We had no doubt whatsoever that The Appellant has The Child's best interests at heart. We have no doubt too that this hearing served to particularly focus the authority's attention on The Child's needs. We noted that the authority is offering to work constructively with her. We believe that it is in the best interest of all parties, and especially The Child, to do so. We trust that The Appellant will give The Child the opportunity to attend the provision available, not least given the improvements that have been made, so that any decision which she makes in regard to future schooling for The Child is informed by the extent to which The Child progresses there.