

DECISION OF THE TRIBUNAL

Gender: Female

Aged: 10

Type of Reference: Placing Request

In terms of the Education (Additional Support for Learning) (Scotland) Act 2004, section 19(4A)(a), the Tribunal confirms the decision of the Education Authority, first intimated in writing on 11 July 2016, to refuse the placing request being satisfied: (i) that one or more of the grounds of refusal specified in paragraph 3(1) of Schedule 2 of the said Act exists; and (ii) that in all the circumstances it is appropriate to do so. The decision of the Tribunal is unanimous.

Introduction

1. This reference is brought by the Appellant for her daughter ("the Child"). The Child is currently a pupil in primary 6 at School A Primary School. The reference is brought in terms of Section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act") following the Respondent's refusal of a placing request for a special school, namely the School B.
2. The placing request was refused by the Respondent by its letter dated 11 July 2016, which stated:
"All of the following conditions apply in respect of this placing request:-
 - I. School B is not a public school (that is, it is not within the management of the Council),*
 - II. The Council is able to make provision for the additional support needs of [the Child] in a school other than School B, namely School A Primary School Visual Impairment Department,*

III. It is not reasonable, having regard 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 School B and School A Primary School Visual Impairment Department, to place The child in School B; and

IV. The Council offered to place [the Child] in School A Primary Visual Impairment Department and she currently attends there”

3. The Appellant asks the Tribunal to overturn the decision of the Respondent in terms of section 19(4A)(b) of the 2004 Act. She requests an order requiring the Respondent to place the Child at School B. This is resisted by the Respondent.

Procedural Background

4. Case Conference calls for this reference took place on October 2016, December 2016, and January 2017. The identity and order of witnesses was agreed in advance of the oral hearing. It was also agreed that the Tribunal would speak to the Child in person without the other parties, but in the presence of her grandfather who acted as a support. The Tribunal are very grateful to all parties for their assistance.
5. The representatives of the Appellant and Respondent lodged a joint minute prior to the oral evidence, agreeing a number of material facts which were not in dispute. Again, the Tribunal is very grateful for their efforts in this regard. The matters covered in the joint minute are reflected in the Tribunal's findings in fact.
6. An oral hearing took place over two days in January 2017. As stated above, the Tribunal spoke to the Child in person in order to assess her views on the placement request. Oral evidence was taken from the following witnesses:
 - i. Witness A, a senior educational psychologist with the Respondent;
 - ii. Witness B, Depute Head Teacher at School A Primary School;
 - iii. Witness C, Depute Head Teacher with the School B;
 - iv. Witness D, Learning Hub Manager at the School B; and

v. Witness E, Maternal Aunt of the Child.

7. Late evidence was received in this case. The Tribunal sought the views of both parties in this regard and there were no objections. In view of the nature of the late evidence and there being no objection the Tribunal allowed it to be lodged in terms of Rule 34 of the Tribunal Rules. In addition, the Tribunal requested written submissions and further evidence which was received following the oral hearing. Again neither party objected. In addition to the oral evidence of the witnesses, summarised below, the Tribunal has taken into account all of the documentary evidence and statements lodged by the parties in determining its findings in fact and in reaching its decision.

Relevant Legislation

8. Section 1 of the 2004 Act states:

“1 Additional support needs

(1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support to benefit from school education provided or to be provided for the child or young person...

(2) In subsection (1), the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

(3) In this Act, “additional support” means—

(a) in relation to [an eligible] pre-school child, a child of school age or a young person receiving school education, provision [(whether or not educational provision)] which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority [responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority] for the area to which the child or young person belongs...”

9. Section 18 of the 2004 Act states:

“18 References to Tribunal

(1) Any of the persons specified in subsection (2) may refer to a Tribunal any decision, failure or information specified in subsection (3) relating to any child

or young person for whose school education an education authority are responsible.

(2) The persons referred to in subsection (1) are—

(a) where the decision, failure or information relates to a child, the parent of the child,....

(3) The decisions, failures and information referred to in subsection (1) are—...

(da) a decision of an education authority refusing a placing request made in respect of a child or young person (including such a decision in respect of a child or young person for whose school education the authority refusing the request are not responsible)—

(i) made under sub-paragraph (1) of paragraph 2 of schedule 2 in relation to a special school, or

(ii) 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,...

...(7) Where a decision referred to in subsection [(3)(da) or (e)] in respect of a child or young person has been referred under subsection (1) to a Tribunal, a further reference under that subsection of such a decision in respect of the child or young person is not competent during the period of 12 months beginning with the day on which the last such reference of such a decision was made, unless, during that period—

(a) a review of any co-ordinated support plan prepared for the child or young person has been carried out under section 10,

(b) any such plan prepared for the child or young person has been amended pursuant to a requirement made by a Tribunal under section 19(4)(b), or

(c) where the last such reference of such a decision was made by virtue of subsection (4)(c), a co-ordinated support plan has been prepared for the child or young person.”

10. Section 19 of the 2004 Act states:

“19 Powers of Tribunal in relation to reference

(1) This section specifies the powers of a Tribunal in relation to a reference made under section 18...

...(4A) Where the reference relates to a decision referred to 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....”

11. Schedule 2 of the 2004 Act states:

“3 Circumstances in which duty does not apply

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

(f) if all of the following conditions apply, namely—

(i) the specified school is not a public school,

(ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

(ii) 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

- (iii) *the authority have offered to place the child in the school referred to in paragraph (ii)...*

12. Section 28 of the Education (Scotland) Act 1980 states:
"28 Pupils to be educated in accordance with the wishes of their parents.

(1) In the exercise and performance of their powers and duties under this Act, the Secretary of State and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents."

Summary of Oral Evidence

The Child

13. The Child told the Tribunal members about her home life. She lives with her mother and her mother's partner. She sometimes stays overnight at her aunt's house. She likes to play with her pet hamster at home. A female friend of around her age lives in her block of flats. She plays dolls with her at home or outside in a common area. She has friends at School A. She meets them at set places in the playground at break times. This arrangement works for her. She mentioned the names of four friends at school. One of her friends also has visual impairment and was described as her "BFF" ("Best Friend Forever"). She had a "buddy" who was in primary 1: she used to meet her a lot, but no longer needs to. She knows many of the other visually impaired children at School A.
14. She could not think of anything she particularly liked or disliked about School A. It is a big, busy school. She occasionally trips over chairs left out by other children. They had been told of the risk this posed, but she felt they sometimes get fed up if she reminds them. She has received training on cane use from Habilitation specialist over a period of about 6 weeks. This had helped with her grip when walking downstairs. She likes her support assistant, with whom she has worked since primary 2. The support assistant prepares the Child's work, providing a selection of questions if there are too many and working on the rest if there is time. She described this system as "quite good". She never has to sit waiting for work. She had attended a baking club at the school, but that was only available on rotation. She was unaware of other afterschool clubs, but was aware of some clubs run by School B. She used to

attend a local Brownie group, but had stopped as she felt the other children would not speak to her.

15. The Child's visit to School B was described as fabulous. She already knows some of the pupils and staff there and made a new friend during her visit. Her favourite part of the school is the parent flat: her family could stay whenever they wanted. As long as she had a toy from home, she felt she would be fine living away from her family for part of the week. She might miss cuddles from her mum. The things that she would miss from School A were her friends, her class teacher and her support assistant.

The child

16. Witness A is a Registered Senior Educational Psychologist with over 16 years' experience. He has worked for the Respondent for 12 years. He holds an Honours Degree in Psychology and a Masters Degree in Educational Psychology. His remit includes the social and emotional needs of children with visual impairment. He provides support and advice on visually impaired children from the Respondent's area who attend School A Primary School. He was involved in the placement of the child at School A. There had been reservations from the family prior to the placement, but the Child had settled and the family had appeared satisfied. An issue was raised about the Child's cognitive functioning in 2012 and Witness A had carried out a Wechsler Preschool and Primary Scale of Intelligence (WPPI) test, adapted to take account of the Child's visual impairment. The results suggested that the Child's intellectual functioning was within the expected range for her age and maturity. Her verbal reasoning was higher than average. Her processing speed was lower than average: she required slightly more time than other children of her age to process information. Overall she was operating comfortably within her age range: a mainstream placement with appropriate adaptations was appropriate. He received updates on the Child's progress once or twice a year. There was nothing he had seen which had changed his view that School A is providing appropriate educational provision for the Child. It is expected that she would transition to School C, which also had a visual impairment base.
17. Witness A became aware of the placement request for School B before a review meeting in May 2016. He could not attend the meeting, but the family did not want to change the date. He gave an initial view to the Respondent that School A was best-placed to meet the Child's educational needs. He then sought the views of the Child's family,

observed the Child in class for around an hour and spoke to the teachers involved in her education, to give a more detailed response. He prepared a report (R48 – R51), taking into account the Getting it Right for Every Child (GIRFEC) indicators, and wider issues such as social integration and emotional needs. The report confirmed his earlier opinion. He accepted that a residential placement at School B presented opportunities, but observed that there are also risks in removing her from her family and community. The Child has a degree of emotional vulnerability and had found relating to other children, as opposed to adults, difficult. Appropriate strategies had been put in place at School A and she is making progress. She is also making appropriate progress in her curricular development. There is a gap in the provision of habilitation training within School A and the Respondent's area which required to be addressed. He had not been consulted on the Child's emotional wellbeing in relation to early onset of puberty.

Witness B

18. Witness B is a Depute Head Teacher at School A Primary, where she has worked for thirteen years. She is responsible for its visual impairment base. She has post-graduate qualifications in early years and in leadership and management. She described School A as an old building, with large class rooms and class sizes, adapted for the visually impaired. Children move around the school in the same direction, using separate stairs to ascend and descend. There are wide corridors. An environmental audit took place in 2013. A further audit is overdue. Of the 512 pupils at School A, ten were on a specialist visual impairment placement. The school had dealt with a range of visual impairment, including children with no functional vision. Staff and pupils are used to, and welcoming of, visually impaired children. There were increased friendship opportunities. Teaching usually takes place in the mainstream school environment with support from the visual impairment base, which is in a separate building. There is no longer a designated habilitation specialist for the school. Its teachers could only reinforce techniques learned from specialists. Where habilitation needs are identified a request for assistance would be completed.

19. The visual impairment base at School A has ten visual impairment teachers, five of whom are braille qualified. They support pupils and provide a peripatetic service to other schools. They meet weekly and work closely with mainstream teachers on curricular targets. There are also two braille trained Additional Support Needs Assistants. One works daily with the Child. The visual impairment base could be used

for 1-2-1 teaching and has assisted learning resources. There is access to visual impairment resources at School A. Younger visually impaired children use a Perkins Braille, with its output later being transcribed. Since December 2016 the Child has had access to a Braille Note, which gives an immediate transcription onto a screen. She had received 1-2-1 training on its use and would be allowed it home when she became more familiar with it. She has access to an i-pad for magnifying text. Audiobooks are used. If unavailable, staff improvise their own recordings. A member of staff trained in braille could transcribe the Child's work. Braille materials and tactile aides could be made to order in the school.

20. Witness B had taught the Child previously. She speaks with her, and observes her, regularly in the school and playground. There are no concerns about the Child's progress. She is working at an equivalent level to the majority in her class. In literacy she is perhaps slightly behind her peers, but still at a level appropriate to her age and stage. She has taken to learning braille quickly, but could sometimes take longer reading. This was not unusual. A gradual move away from double-line spacing to single-line spacing in braille documents has increased her reading rate. She spends a period of 50 minutes around five days a week with a qualified teacher of visual impairment. Time is allocated for braille work and for walks around the local environment. The Child could learn at her own pace: the visual impairment teacher could spend time with her on a subject in class or at the visual impairment base. Comments by teachers are transcribed by staff. Work is adapted to take account of her visual impairment. A multi-agency transition team is in place for the Child's expected move to School C, which also has a visual impairment base. Witness B was confident that the Child would cope very well at School C.

21. Previously the Child had difficulty socialising with peers. When she encountered new situations, or others did not agree with her, the Child could become emotional. This has improved as she got older. The school might have been over-protective in the past. Strategies have now been put in place to encourage independence. She had received training from Habilitation specialist, a habilitation specialist, for around six weeks at the instigation of her visual impairment teacher. A safe route had been identified to allow the Child, while monitored by her Support Assistant, to meet friends at designated areas of the playground. This has boosted her self-confidence. A "turning point" was noted mid-way through primary 5. The Child has two friends she meets regularly. She is also friendly with another visually impaired girl. She had acted as a "buddy" to a primary 1 child. She sometimes meets

other children and participates in games which are adapted if necessary. She has been advised on how to reject offers to play from others without causing offence. She is included in class and has a shoulder partner. Witness B had seen the Child making her way around the school with her head held high, using her cane confidently. The Child meets her taxi driver after school. She has been taught safe routes to local shops and an off-campus building used for school assemblies with her visual impairment teacher. Work is carried out with the child in the local environment, such as checking the correct change in shops. The Child had spoken at a school assembly about her visual impairment and volunteered to do so again. PE classes are adapted to take account of the Child's visual impairment; she normally participates with the class. She had participated in a baking club, choosing a fully sighted pupil as her partner. She does not attend afterschool clubs, but these are open to all pupils. There is one trip a year for visually impaired children, including those in the peripatetic programme, and another where the visually impaired children are asked to invite a fully sighted peer. The Child appeared happy and settled at School A.

22. Witness B addressed some of the concerns raised by the Child's family. She was aware of difficulties in relation to homework. The family had been advised to spend no more than half an hour doing this; matters could be discussed with the class teacher if it were taking significantly longer. Once permitted home the Braille Note might assist. Witness B did not think that Speech and Language Therapy input is required. Although she occasionally used baby language, the Child is articulate and has a good vocabulary. Early onset puberty had not been a matter of concern. The Child and staff had coped admirably and no additional support had been required. While there are no daily updates with the Child's family, there is a good relationship with needs being discussed on the phone and at reviews. Occasionally the Child receives the braille version of a book in sections, but this is often because the whole book could be unwieldy to carry. On average the Child receives one six-week block of habilitation each academic year. Witness B accepted that she could benefit from further habilitation and the expertise available at School B. She had some concerns about how the Child would cope socially and emotionally leaving her home and the effect which this might have upon her education. She also had concerns about the peer group at School B, as some of the children there had more profound additional support needs. She thought that the Child appeared content about the prospect of going to School B.

Witness C

23. Witness C is the Deputy Head Teacher of The School B. He has twenty years' experience as a qualified teacher of visual impairment, and has worked at School C. From 1991-2011 he taught history. From 2011 -2016 he worked for the Royal National Institute for the Blind (RNIB) as an Education and Family Services Manager. He gave evidence about School B. It has twenty nine pupils, aged three to nineteen years. Seventeen are residential and thirteen have additional complex needs. Some have social and emotional difficulties such as those experienced by the Child. The school offers a full curriculum. There are twenty one teachers who have, or are working towards, visual impairment qualification. This was integral to teaching at the school. Class sizes are much smaller than School A. There is ready access to up-to-date assisted technology. There is a wide library of braille books. There is a full programme of appropriate PE activities. Social inclusion is aided through access to groups and clubs attended by sighted peers, some of which take place on school premises. There is a reciprocal arrangement with a local high school, allowing pupils to socialise with sighted peers. The school runs a café staffed by pupils. Habilitation was vitally important and integrated into the curriculum. It involved teaching children how to adapt and develop life skills. It increased independence and enhance employment prospects. Three members of staff are experts in this field. Other "soft skills" are taught, encouraging confidence rather than passive acceptance. There was little time to develop such skills in a mainstream environment. Habilitation training provided in time limited blocks was not sufficient; regular expert input was required. It appeared that the Child would now only have access to a rehabilitation specialist. This is not appropriate: they worked with older people who had lost their sight. The building at School A is not fit for purpose.

24. Pupils at School B have an individual learning programme, with occupational and assistive technology assessments and access to a multi-disciplinary team. The Child would be educated with peers at an appropriate level to her age and maturity. There would be four children in her class, one of whom had Asperger's Syndrome. Her primary learning medium would be braille and audio. Witness C had spent around three hours on a home visit in December 2016 to get to know the child and her family. She clearly required Speech and Language Therapy input. Such needs would be assessed if she attended School B and integrated into her individual learning programme. There would be a transition period to the residential placement. There is regular contact between pupils and their family and a parental flat which could be made available while the Child settled in. She would arrive late morning on a Monday and return home at around 2.30 pm on a Friday.

She would reside in one of three houses with five young people. She would be allocated a “buddy” and a key worker. She would have her own en-suite toilet and a shared living room and kitchen. Her habilitation skills would be reinforced at the residential base through the preparation of meals and similar tasks. Such input would not normally be provided at her home by the school. There are staff allocated to each of the three houses in the residential base, one of whom is on duty at night. They do not have specialist visual impairment training. There is also a qualified nurse and a senior residential care manager. Continuity of staff within the houses is maintained and a diary system used to monitor the progress and needs of pupils. Witness C confirmed that School B would be willing to admit the Child and that it was suited to meeting her educational needs.

Witness D

25. Witness D is a qualified teacher with an additional support diploma in visual impairment. Since April 2015 she has been the Learning Hub Manager at School B. She was a visual impairment teacher at School A from 2006 to 2015, working with the Child in primaries 1 – 4 for approximately one and a half hours, four days per week. The Child had a traumatic year prior to attending School A. She was bright and chatty, but had difficulties following her loss of vision. She found the busy classroom environment difficult and struggled to move around independently. She had difficulty recognising social cues and making friends. She would become upset if she struggled to do something, although this improved. It was difficult for visually impaired children to make connections without access to a peer group who understood them. There was also pressure, reflected in the Child’s school reports, to move through the curriculum quickly, rather than at the Child’s own pace. This could have a lasting effect on self-confidence. There was little room to teach habilitation and life skills. There could be delays of up to half a day in obtaining educational materials for the Child or transcribing her work. At School A there was an expectation that the needs and problems of visually impaired children were the responsibility of the visual impairment teachers. Unlike School B, it was not safe for the Child to walk around unaccompanied, denying her the opportunity to navigate independently. While at School A Witness D had considered the Child suitable for School B, but had never formally raised this. As an outreach officer for School B, she had been asked to contact people for an open day. She had contacted the Child’s mum, with whom she had a close relationship. She had not been present when the family visited School B. She had met the Child in December 2016 and on the day of the hearing. She accepted there may have

been progress, but believed the issues she had identified remained. She was confident that the Child's educational needs could be met by School B.

Witness E

26. Witness E, a qualified primary school teacher, is the sister of the Appellant and the Child's aunt. She spends time with the Child each week, assists her with homework and helps the family identify educational resources. She spoke about the Child's confidence. Where formerly she had made friends easily, she now struggles. She could not access school clubs. The Child had informed her that she is often alone during school hours and frequently not included in PE activities. The techniques in place for meeting friends had not worked. She might not have said this to others to prevent upset; she might not understand real friendship. The Child was recently prevented from participating in a school talent show, having missed the audition due to a medical appointment. She did not appear to be included in pupil councils. She was never invited to birthday parties; only four of the sixteen children invited had attended her own party. The Child's attendance at a local Brownie pack had not helped develop friendships as a family member had to remain. The relationship with the girl in her block of flats was not a friendship. The Child's speech has deteriorated markedly, with no Speech and Language intervention. The Child can become very upset or anxious about issues. She requires supervision and assistance with simple tasks. She struggles to feed herself. She demonstrates mobility issues, bumping into things even at home, and struggles with her cane skills.
27. School A is an old building with a lack of appropriate adaptations and resources: there is little tactile signage; the equipment used, such as the Perkins Braille, is out of date; it is unclear whether wall displays are accessible; there is less access to assisted technology; and there is limited access to braille literature. There are delays waiting for books and time is taken to have work transcribed before it is marked. It is difficult to catch up following medical appointments. The Child is behind where she ought to be in the curriculum. Unable to read braille, the family struggles to assist with homework. It was accepted that use of the Braille Note might assist with this, but the Child had not yet had that home. The request to move to School B was made after a conversation with Witness D with whom the family had a good relationship. Witness E was present when the Child visited School B. The Child had attended classes and seemed happy. Witness E believed that School B is best placed to meet the Child's educational needs. It could help her

develop friendships and her independent living skills. She was reassured by the degree of parental contact permitted and felt the Child would cope away from home. Witness E had not been inside the Child's classroom at School A or observed her in the school environment.

Submissions of Parties

28. On behalf of the Appellant it was submitted that the condition in Schedule 2, para. 3(1)(f)(ii) of the 2004 Act was not made out: on the evidence presented, the Respondent had not demonstrated that it could make adequate and effective provision for the Child. The condition in Schedule 2, para. 3(1)(f)(iii) was similarly not met. The evidence presented suggested that the provision available at School A did not meet the Child's needs. In contrast, School B had a wealth of experience of pupils with additional support needs, had much better facilities and had a nurturing and inclusive ethos. It could meet the Child's habilitation, curricular and social communication needs. The Child's additional support needs had to be considered in a general, all-encompassing and indeed 'holistic' way (*City of Edinburgh v. Mrs MDN* [2011] CSIH 13). This was in line with assessing needs according to the SHANARRI indicators (Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible, Included). When considered in that light, the evidence demonstrates that the Child's habilitation, social, emotional and wellbeing issues are not been addressed adequately and effectively. If the Tribunal found that the conditions in Schedule 2 paragraph 3(f) of the 2004 Act were met, it was nevertheless not appropriate in all the circumstances to uphold the Respondent's decision. The wishes of the Child's mother ought to have been taken into account by the Respondent in terms of section 28 of the 1980 Act. The public expenditure to be taken into account included that incurred by the Respondent in terms of social work and other costs (cf *Haining v Warrington Borough Council* [2014] EWCA Civ 398). A comparison of the teaching methods, environment and resources of the two schools suggested School A was unable to overcome the Child's barriers to learning and achieve her fullest potential. The correct provision at this stage of the Child's learning was critical for her future.
29. The Respondent submitted that the evidence heard by the Tribunal supported its decision. It was manifestly unreasonable for it to place the Child within School B incurring an additional cost of £29,562.34 per annum. Only limited and unspecific evidence had been provided regarding the suitability of School B to the education of the Child. There was insufficient evidence to assess any advantage to the education of

the Child in going to that school. It was unclear as to how the Appellant's witnesses had come to the conclusion that School B could provide an appropriate environment for the Child's education. No evidence had been provided by an Educational Psychologist or other qualified professional in that regard. In all of the circumstances, the Tribunal was invited to confirm the Respondent's decision.

Findings in Fact

30. The Tribunal made the following findings in fact:

- 30.1 The Child was born in November 2005, and currently resides with her mother, the Appellant, and her mother's partner;
- 30.2 The Respondent is the education authority responsible for the Child's education;
- 30.3 The Child attended School D from August 2010 until December 2010, when she was admitted to Hospital and subsequently required neurosurgical intervention;
- 30.4 The Child did not complete primary 1 at School D;
- 30.5 The Child has additional support needs in terms of the 2004 Act;
- 30.6 The Child has a visual impairment as a result of Pineal Blastoma (a tumour of the optic nerve chiasm);
- 30.7 The Child has only light perception in her left eye;
- 30.8 The Child's distance vision in her right eye is 1/30, meaning she can see one metre where a person without visual impairment can see 30 metres, and she wears glasses for long-sightedness;
- 30.9 The Child has significant difficulties with colour discrimination and depth perception, and her field of vision is limited to her right side;
- 30.10 The Child is registered blind in terms of Section 12 of the Social Work (Scotland) Act 1968, as extended by sections 1 and 2 of the Chronically Sick and Disabled Persons (Scotland) Act 1972;

- 30.11 The Child suffers from emotional vulnerability when faced with difficult or challenging situations, although this has improved in recent years;
- 30.12 The Respondent and Council A have a reciprocal arrangement whereby visually impaired children from the Respondent's local authority area who require a placement at a school with a visual impairment base are educated at School A Primary School in Council A, and similar children from Council A's education area are educated at School C in the Respondent's local authority area;
- 30.13 In 2011 the Child commenced primary 1 at School A Primary School, has attended there since that time and the Respondent is willing to provide a space at that school for her continued education;
- 30.14 School A Primary School is contained in an old building with adaptations for the visually impaired, including high visibility edging on internal and external stairs, tactile underfoot markings for internal stairs, handrails to the bottom of staircases, toilets which have been designed in consultation with visual impairment staff, and braille signage on walls and all internal and external doors;
- 30.15 School A Primary School has around 512 pupils, ten of whom are on a specialist visual impairment placement;
- 30.16 School A Primary School teaches children with a range of visual impairment, and has taught children with functional vision equivalent to, or worse than, the Child;
- 30.17 The Child is currently placed in a mainstream class of around twenty five pupils at School A Primary School, where she is assisted by a braille trained Additional Support Needs Assistant;
- 30.18 The Child spends around fifty minutes with a qualified teacher of visual impairment five days a week at School A Primary School;
- 30.19 The Child is assisted in class by a braille trained Additional Support Needs Assistants;

- 30.20 School A Primary School has a visual impairment base located in a separate building to the main school with ten teachers qualified in education support for visually impaired children, five of whom are braille qualified;
- 30.21 There are two braille trained Additional Support Needs Assistants at School A Primary School;
- 30.22 There are no designated habilitation specialists for children at School A Primary School;
- 30.23 The visual impairment base at School A Primary School can be used for 1-2-1 teaching;
- 30.24 The visual impairment base at School A Primary School provides the Child with access to assisted learning resources including a Braille Note, an i-pad, audiobooks, braille books and tactile aides:
- 30.25 The Child is progressing academically at a level appropriate to her age and stage of development;
- 30.26 The Child has a group of children whom she considers to be friends at School A Primary School;
- 30.27 School A Primary School offers afterschool clubs which are open to all pupils, as well as opportunities for visually impaired pupils to interact with sighted and partially sighted peers;
- 30.28 Following a referral by the Child's visual impairment teacher, an habilitation specialist, Habilitation specialist, visited the Child in March 2016 and subsequently carried out a six week block of habilitation training delivered at the Child's home and at School A Primary School;
- 30.29 School A Primary School provides time in the curriculum for the Child to reinforce life skills and has put strategies in place to encourage independence and develop social interaction;
- 30.30 The Child can make her way confidently around School A Primary School using designated safe-routes under the

- supervision of a sighted adult, although she can sometimes trip if objects are left in her way;
- 30.31 The Child would benefit from further specialist habilitation intervention;
- 30.32 A process of transitioning the Child from School A Primary School to School C has been put in place;
- 30.33 School C also has a visual impairment base with qualified visual impairment teachers;
- 30.34 Following a visit by the Child and her family to School B, a grant aided special School which is not a public school, the Appellant made a placing request for School B to the Respondent on 13 June 2016 and School B is willing to offer the Child a residential place;
- 30.35 School B has around twenty nine pupils, aged three to nineteen years, around seventeen of whom are on a residential placement and around thirteen of whom have additional complex needs;
- 30.36 Classes in School B have around four pupils;
- 30.37 School B has twenty one teachers who have, or are working towards, a visual impairment qualification;
- 30.38 Pupils at School B have access to multi-disciplinary specialists, including three members of staff trained in habilitation;
- 30.39 School B has experience of dealing with children with emotional difficulties and visual impairment similar to, or worse than, those experienced by the Child;
- 30.40 School B has ready access to a range of assisted learning technology including a wide range of braille books, Braille Note and Brailiant display, speech software and touch typing equipment;
- 30.41 School B offers a full curriculum to its pupils with habilitation and independent life skills integrated into its teaching;

30.42 School B offers pupils opportunities for social interaction through after-school clubs and social events with sighted pupils from nearby schools;

30.43 Residential pupils at School B are allocated to a house with around four other pupils, designated support staff and access to a qualified nurse;

30.44 Pupils at School B have regular contact with their family and separate accommodation is offered to family members who wish to visit residential pupils;

30.45 The current additional cost of educating the Child at School A Primary School to the Respondent is £11,000 per annum; and

30.46 The cost of educating the Child at a residential placement at School B is £40,562.34 per annum.

Reasons for Decision

The Respondent's ability to make provision for the Child's additional support needs

31. The Tribunal is satisfied that the educational provision available at School A is sufficient to meet the Child's additional support needs. It has taken into account the level of expertise at the school, the resources available and the progress which the Child has made while a pupil there. It accepted the evidence of Witness B and Witness A as regards the Child's academic progress. Both are clearly qualified to express a view on this matter. The reports and most of the documentation which the Tribunal has considered are consistent with the account which they gave of a child who was achieving at an appropriate level to her age. The results of Witness A's WPPI test, while adapted for visual impairment and of some age, lend some objective support to that view. There was no real evidence to substantiate the claim that the Child is not fulfilling her academic potential. Having spoken to the Child the Tribunal does not accept the evidence of Witness C that she obviously required Speech and Language Therapy. Again it preferred the evidence of Witness A and Witness B, who have greater knowledge of the Child.

32. The Tribunal accepts that the Child has faced difficulties interacting with her peers and making friends. It further accepts that she can, at times, appear emotionally vulnerable, particularly when faced with novel situations. However, it accepts the evidence of Witness B that there have been recent signs of improvement in both regards due to strategies implemented at the school. It found Witness B to be credible and reliable in her account of the Child's interaction with other pupils, particularly the two friends with whom she meets regularly and her visually impaired friend. Moreover, this account was consistent with that provided by the Child to the Tribunal of her friends at school. The Tribunal did not find the evidence of the Appellant's witnesses to be reliable in this regard, primarily as they had not actually observed the Child in the playground at the school. It has reached a similar view as regards the letter from the Child's General Practitioner (T16 – T19). It has considered the suggestion that the Child might not understand friendship, as was asserted by her family. However, it does not accept that suggestion. Friendship may mean different things to different individuals, but it does not seem wise to subject that term to too esoteric a consideration in the context of an eleven year old child: the Tribunal is willing to accept that the children with whom she meets regularly, talks and plays are her friends. It accepts that these friendships may not endure as the Child moves to School C. However, it would not be unusual for a Child transitioning to secondary school to discontinue old friendships while forging new ones. What is more important, in the Tribunal's view, is that there is clear evidence of the Child developing skills in social interaction to support this transition.
33. The Tribunal has taken account of the Child having been denied the opportunity to audition for and participate in a school talent show. It accepts that this might have been handled better by School A, and was upsetting for the Child. However, of itself, it does not suggest that the Child is isolated in the school environment. It accepts the evidence of Witness B concerning the interactions which have taken place with other children. The suggestion by the Child's aunt that other pupils who approached the Child to play may have been asked to do so by teachers in order to allow her to practise her response did not seem credible to the Tribunal. As discussed further below, the Tribunal accepts that there is room for improvement in the provision of habilitation training at School A. Nevertheless, the Child has received training in this regard and the evidence of those who have observed her within the school, particularly Witness B, suggests that it has helped and that she is coping well in the school environment. The Child herself intimated that the provision of safe routes within the school had worked quite well.

The respective suitability and respective costs of the Schools

34. There are clearly elements of School B's educational provision which are more suitable to meet the Child's additional support needs. The staff to pupil ratio is obviously better at School B. There was consistent evidence, and the Tribunal accepts, that the Child could benefit from greater habilitation training in order to develop her independent living skills to increase her self-confidence. The lack of any habilitation experts working for the Respondent is not ideal, and the Tribunal hopes that the Respondent adheres to the undertaking given by the Respondent's Health and Social Care Partnership to consider this in a review of best practice. Such training appears limited at School A to six weekly blocks following a referral by staff to an external agency. Time is made to reinforce these skills both within the school and the local community. At School B there is greater provision: such training is integrated into the curriculum and three members of staff are specialists in this area. Children at both schools have daily access to visual impairment teachers, albeit the mainstream teachers at School A are not so qualified. Both schools offer opportunities for visually impaired pupils to interact socially with both visually impaired and fully sighted peers.
35. The building wherein School B is situated is better adapted to children that are visually impaired. However, the Tribunal did not accept the assertion made by Witness C that School A might be suitable for such children only if they were "to pull it down and start again". The adaptations made to School A, spoken to in evidence by Witness B, and evidenced by photographs subsequently submitted, suggest an environment which is suitable for those who are visually impaired. The Tribunal is strengthened in its view in this regard by the fact that the school has catered for students with visual impairment to the same degree as the Child in the past. Both schools provide access to a range of assistive learning resources. While there may be access to a greater number of such resources at School B, the Tribunal does not consider that the Child is materially disadvantaged by the resources which have been made available to her at School A. It considers that the provision of the Braille Note in particular will facilitate her learning at school and, when made available, at home. It does not accept that the Child is being denied access to core materials, or that there were notable delays in her receiving her work.

36. The Tribunal does not consider that the allocation of a residential placement at School B is suitable to the particular circumstances of the Child. It acknowledges the opportunity which the placement would give to reinforce habilitation skills, as well as the provision which is made for contact between pupils and their families. Nevertheless, it considers that there are risks associated with such a placement. It accepts the evidence that the child still has emotional vulnerabilities, particularly when faced with challenging situations. She is close not only to her mother, but also her grandparents and aunt, who sees her nearly every day. Her family provide a loving and nurturing environment. She also has a good relationship with staff and pupils at School A which has taken some time to develop. The Tribunal agrees with the opinion of Witness B and Witness A that there are clear risks in removing the Child from that environment and from her local community. It takes account of the Child's description of School B as "fabulous" and that she herself said she would cope. However, it also notes in the balance the factors which she felt she would miss in a residential placement: cuddles from her mum; her class teacher; her support assistant; and her friends.
37. The respective costs of educating the Child at the two schools was a matter of agreement between the parties. It would cost the Respondent £29,562.34 more per annum to educate the Child at School B. The Tribunal considers that this is a very substantial sum.
38. Having regard to the respective costs and respective suitability of the provision of the additional support needs of the child in both schools, the Tribunal does not consider that it is reasonable to place the Child in School B. While it has identified some aspects of School B as more suitable, most notably the physical environment, the class sizes and the integration of habilitation and life skills into the curriculum, this has to be balanced with the removal of the Child from her family and community and environment to a residential placement and the risks associated with that in respect of this particular child. Of relevance here is the progress which the Child has made with sighted and non-sighted peers as well as the attachment which she feels towards her teachers and assistant at School A. It also must be considered in light of the expertise and resources which are available at School A. A comparison of the two schools does not of itself lead to a clear conclusion that the Child would necessarily be better placed at School B. That then must be considered in light of the additional costs in sending the Child to that school. Taking all these factors into account the Tribunal is satisfied that the Respondent was entitled to reject the placement request.

Appropriateness in all the circumstances

39. The Tribunal considers that it is appropriate in all the circumstances to uphold the decision of the Respondent. It has taken into account the duty of the Respondent to have regard to the principle that children should be educated in accordance with the wishes of their parents “so far as is compatible with....the avoidance of unreasonable public expenditure”. While the Respondent’s decision letter does not make express reference to this requirement, the Tribunal is satisfied that it has had due regard to this principle in considering the placing request. Those wishes, and the reasons for them, were clearly set out in the placing request itself (R6 – R8). However, the duty to have regard to those wishes does not equate to an obligation to adhere to them. In particular, in this case it has to be balanced against the interests of the Child in terms of her welfare and emotional wellbeing. The Tribunal has taken into account the academic, social and emotional progress which the Child has made at School A, particularly in the last year. She appears settled and happy, has developed friendships and is interacting with her peers. Having considered all of the evidence, the Tribunal does not consider that it is appropriate to remove her from that environment at such an important stage in her development.

Coda

40. As should appear clear from the above, the Tribunal does have some concern about the level of habilitation input which the Child receives. Given the evidence which we heard about the impact of such training, the fact that it has been identified as a need by one of her visual support teachers, and the fact that the Respondents’ own witnesses recognised this as an area for improvement, the Tribunal is surprised that the Respondent does not employ any habilitation specialists and that the Child does not have access to such a specialist as a matter of course. It considers that more regular input from such a specialist would benefit the Child. As previously highlighted, it hopes the Respondent adheres to its commitment to review the provision of such training in early course.