

DECISION OF THE TRIBUNAL

Gender: Female

Aged: 6

Type of Reference: Provision of CSP

1. Reference

This Reference was received on December 2016. It is brought by the Appellant in terms of Section 18(3)(d)(ia) of the Education (Additional Support for Learning)(Scotland) Act 2004, as amended (the “Act”) on the basis that the Education Authority (“the Respondent”) has failed to make arrangements for the provision of the additional support that is included in the child’s Co-ordinated Support Plan (“CSP”).

2. Decision of the Tribunal

The Tribunal upholds the Reference and finds that the Respondent has failed, in terms of section 18(3)(d)(ia) of the Education (Additional Support for Learning)(Scotland) Act 2004, as amended, on the basis of a failure of the Respondent to make arrangements for the provision of the additional support specified in the child’s Co-ordinated Support Plan in respect that the Respondent failed to make provision for respite for a period of 2.5 hours at the weekend during school time.

3. Preliminary Issues

A Conference Call was held on 24th February 2017. At that time the Respondent accepted that, for a variety of reasons, the respite detailed within the CSP had not always taken place. The Respondent also advised that a review of the CSP had taken place and a likely outcome was that the requirement for respite would be removed. As a formal

decision had not yet been issued it was agreed by the parties that it would be appropriate to continue matters. A further Conference Call was held on 10th March 2017. At that time the Respondent advised that they considered that the requirements for a CSP were no longer met and that it was likely that the CSP would be discontinued. However, they wished to arrange a meeting and invite the Appellant and his wife to contribute to the meeting before formally issuing any decision. Parties were agreed that matters should proceed to a hearing and that, in the circumstances, it would be appropriate that this should take the form of a “paper hearing”. With regards to taking the views of the child, The Child, there was a motion on behalf of the Appellant that the formal taking of her views should be dispensed with. This was on the basis that, having regard to the fact that the Reference was on a legal matter only, her views would have a limited impact on the final decision. There was no opposition to this. A Direction dated 10th March 2017 was issued inviting the parties to put their request to dispense with an oral hearing in writing (which was duly done), thereafter directing that in terms of Section 26 (2)(d) of the Additional Support Needs Tribunals for Scotland (Practice and Procedure) Rules 2006 this Reference shall be decided without the necessity of an oral hearing and on the basis of written submissions and papers in the Bundle and setting out a timescale for written Submissions to be lodged, with a time for response by the parties to the other’s Submissions.

4. Evidence

Documentary evidence was produced and formed T1 – T40 and R1 – R58 of the Bundle. Written Submissions formed A1 and R59-61 of the Bundle. No oral evidence was heard.

5. Findings in Fact Relevant to the Reference

The Tribunal makes the following findings in fact :-

- 1) The Child (the child), was born in 2010. She resides with her parents, her father (the Appellant) and her mother.
- 2) The child presently attends at School A
- 3) The Respondents are the Education Authority who are responsible for her school education.
- 4) The child has a Co-ordinated Support Plan, created on 16th May 2016, with a review date of 15th May 2017. The CSP forms T13 - T21 and R3 – R11 of the Bundle.

- 5) There is a description in the child's CSP of the factors which give rise to her additional support needs. She was assessed and diagnosed with Autism Spectrum Disorder and Hyperactivity in 2014. These conditions have led to a delay in development of her communication skills. She has also been diagnosed with a sleep disorder, which is associated with her Autism. She has very poor attention span and can easily become overwhelmed. Due to her Autism and hyperactivity the child has a number of behaviour and sensory issues which require a dedicated and comprehensive care plan to ensure her health, safety and wellbeing. Some behavioural issues result from sleep deprivation, sensory issues, and others are characteristic of Autism. At the time of preparation of the CSP the child was being assessed for ADHD as well as for learning difficulties. The child requires support with most day to day tasks such as dressing, eating and toileting.
- 6) The child finds difficulty interacting with children and adults, especially during play and structured activities, due to communication difficulties. She will engage in parallel play for short periods but does not routinely interact with peers.
- 7) There are two Educational Objectives identified in the child's CSP, one of which is for the child to become increasingly able to feel comfortable with various adults and communicate with them.
- 8) An additional support required to achieve this objective is identified within the CSP as-
- **Childcare @Home going into family home to provide respite on a regular basis i.e. 2.5 hours at the weekend in school time and 12.5 hours per week during the holidays which will bring another person into the child's life which will promote communication and social interactions.**
- 9) The persons identified in the CSP as providing the additional support are Social Work/Child Care@Home staff. ChildCare@Home are otherwise known as Flexible Childcare Services.
- 10) Respite care has been provided to the child for the requisite number of hours during the school holiday periods.

- 11) Respite care has not been provided to the child at the weekend during school times.
- 12) The Appellant and his wife had been seeking respite care through the authority for some time, with discussions regarding respite care commencing in late 2014.
- 13) On 8th June 2014 a referral was sent to the organisation Cornerstone Star Carers, for them to provide respite care. On 17th June 2015 Cornerstone advised that they had a worker who can provide the service. On 8th July 2015 Cornerstone advised that they no longer had a member of staff available but they do have someone else. On 18th August 2015 Cornerstone advised that an introductory visit between the worker and the family had taken place. On 30th September 2015 advised that they have no staff to provide the service.
- 14) On 3rd April 2016 after the allocation of a new Social Worker the Appellant and his wife agreed for Social Work to look at other services due to the failing of Cornerstone.
- 15) On 29th March 2016 Flexible Childcare Services and the Social Worker met with the Appellant and his wife and made arrangements for respite to commence.
- 16) There was thereafter some confusion between the child's parents and Flexible Childcare as to what level of respite care had been agreed at the meeting on 29th March 2016.
- 17) The Appellant has lodged 8 complaints against the Respondents over a period, both before and after the commencement of the CSP, regarding the level of service provided and the failure to secure respite provision. There has been an acceptance on the part of the Respondents that the Appellant's complaints were justified.
- 18) The principal difficulty with the provision of respite care has been the inability of the care providers in securing a member of staff willing to provide the respite care on a Saturday.
- 19) The Respondents have lodged in evidence a Child/Young Person Assessment prepared by a Social Worker. In that report, at R50 it is stated "Social Work have requested a review of the CSP due to the specific difficulties in recruiting a personal assistant to provide

respite for The Child at weekends. Alternative measures such as weekend groups were offered to meet this need but declined by the parents.”

20) At R49 it is stated “It should be acknowledged that weekend respite was an assessed need in an assessment completed in April 2015 but without this assessed need being provided, Parents have managed The Child with no welfare concerns coming to Social Work’s attention. This indicates that The Child does not require this service as Parents have been able to support The Child to a high standard as evidenced in this assessment.”

6. Reasons for Decision

An assessment was carried out and completed in April 2015 which informed the CSP prepared for the child, The Child. It was identified in that CSP that The Child had difficulty interacting with children and adults. There were only two educational objectives identified in the CSP; one of which was for the child to become comfortable with various adults and to be able to communicate with them. The description under the heading “Additional Support Required” identified the benefit from Childcare @Home staff providing respite as “bring another person into The Child’s life which will promote communication and social interactions”. It therefore indicates that the respite detailed in the CSP was for the benefit of the child rather than her parents.

It is accepted by the Respondents that while respite was provided for the stated number of hours during school holidays, respite has never been provided at the weekend during school time. They identified that this was due to Social Work being unable to identify a commissioned service willing and able to provide the respite care.

The review of the CSP was brought about at the request of the Social Work Department because of their difficulty in recruiting a personal assistant to provide respite for the child at weekends, not because there had been any identified change in The Child’s needs in this area.

At a review meeting on 27th January 2017 information was available from Social Work, Speech and Language and Education. The Report from Social Work stated that although respite would be of help to the child, there was no educational benefit in its provision. However, it is noted that in the section headed up “Summary and Analysis” the writer of the report states that he does not feel, in his professional remit as a social worker, he is best placed to analyse the effectiveness or appropriateness of The Child’s current educational provisions. It is clear from the report that the view of Social Work was that the respite

was being provided for the benefit of the Appellant and his wife, rather than to meet the educational objective as set out in the CSP. The recommendation by Social Work that respite at the weekends during school times is no longer required is based on the fact that no welfare concerns have been raised with them regarding the ability of the Appellant and his wife to care for and provide for and support the child during school times. However, there is no assessment provided which would indicate that the identified needs for the respite at the weekends, that is, the additional support required to meet the educational objective, is no longer appropriate or required. Accordingly, the Tribunal finds that there has been a failure, in terms of section 18(3)(d)(ia) of the Education (Additional Support for Learning)(Scotland) Act 2004, as amended, by the Respondents to make arrangements for the provision of the additional support specified in the child's Co-ordinated Support Plan in respect that the Respondent failed to make provision for respite for a period of 2.5 hours at the weekend during school time.

7. Tribunal's Decision on Remedy

Having made a determination that there has been a failure by the Respondents, the Submissions on behalf of the Appellant seek that the Tribunal make an order for the Respondents to arrange respite in accordance with the child's CSP. The Tribunal would normally have no difficulty with making an order in these terms.

However, in the Submissions for the Respondents it is stated firstly that by email dated 11th March 2017 the Appellant formally withdrew his consent for the child's school to have involvement with the authority's Social Work Service. This included any communication or sharing of data by the school with any professionals involved with the Service; any consultations between the staff of the school and the Service; any allowance of visits or assessments in relation to the child. The email apparently also withdrew the Appellant's consent for the school to communicate with any other function or service, other than Speech and Language, in relation to the child without the Appellant's express written consent. The Tribunal has not been provided with a copy of the said email. However, if the Appellant has issued instructions in these terms it does make it difficult for the school to engage with the Respondents or services engaged by them to make arrangements to provide the stated respite or to assess the effectiveness of the same.

Secondly, the Submissions for the Respondent disclose that following a further review hearing on 27th March 2017, attended by the Appellant and his wife, a decision was taken to terminate the child's CSP. It is

stated on behalf of the Respondents that the child's CSP is now closed. The Appellant's representative was given the opportunity, following upon receipt of the Submissions for the Respondents, to comment upon the same. In the absence of any challenge to this information being correct the Tribunal requires to accept this information as being factually correct.

In light of the discontinuation of the child's CSP there would be appear to be no locus for the Tribunal to make any order. It may be that the Appellant will seek to pursue matters further, but this may require a separate Reference and is beyond the scope of this Reference. Accordingly, the Tribunal refrains from making any formal order.