

DECISION OF THE TRIBUNAL

Reference: D_18_01_2016

Gender: Male

Aged: 11

Type of Reference: CSP Not Required Disputed

1. Reference The appellant “The Appellant” lodged a reference under section 18 (3) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the Act”) against a decision of (“the authority”).

The reference was in respect of the decision dated 15 December 2014 where the authority determined that The Child (born 2004) did not require a Coordinated Support Plan.

2. Summary of the Decision The Tribunal overturns the decision of the authority and requires the authority to prepare a Coordinated Support Plan within twelve weeks of this date.

3. Findings of Fact

1. The Child is aged eleven, his date of birth is 20 June 2004. He lives with his mother, father and younger sister. He has a close and very supportive family.
2. The Child has a specific speech and language disorder; phonological speech difficulties; pragmatic language impairment; sensory difficulties; difficulties in peer interaction; dysphonia;

reduced auditory memory; toe walker; and fine motor dyspraxia. His primary problem is pragmatic language impairment.

3. He attends paediatrician Dr O annually. He has been assessed as not being on the Autistic Spectrum. It is intended to carry out a further assessment when he is at S3 level in secondary school.
4. He has been assessed by an Occupational Therapist. He has been provided with an appropriate sized chair and table. He is facilitated to develop IT and keyboard skills. He has been assessed for ICT support. He uses a netbook for extended writing tasks. Strategies have been put in place and advice given to home and school. There is no ongoing OT support.
5. He engages in regular exercises at home and school, stretching and to help his core strength, on advice from physiotherapy. At times he has a block of sessions with a physiotherapist.
6. He has been assessed by an Educational Psychologist. A review of his Cognitive Abilities Profile was carried out in October 2015, informed by discussions with his class teacher and observation of The Child in class. The Educational Psychologist is involved in Independent Education Plan (IEP) reviews.
7. There is on-going Speech and Language Therapy support, on a consultancy model to School A.
8. The Child has a range of strengths and difficulties. He has specific difficulties with language processing, understanding of non-literal concepts, pragmatic skills and peer interaction. He experiences difficulty with developing his literacy skills; with his working memory; developing his numeracy skills; with his processing speed. He has difficulties with attention, and he has coordination and sensory difficulties.
9. Persons with pragmatic language impairment have problems in social understanding: they lack empathy and do not understand the effects of their behaviour on others. The condition emerges more clearly in the later years of primary school when peers become more sophisticated social communicators, and the gap between

other children and those with pragmatic language impairment widens.

10. The Child has general cognitive ability in the low average range. His verbal comprehension and perceptual reasoning abilities are in the average range. His general working memory abilities are in the low average range, and general processing speed abilities are in the low average range.
11. An independent advocacy worker met with The Child to take his views for the Tribunal. He did not have any views on the need for a Coordinated Support Plan, and was not sure what it was.
12. The Child was referred to Speech and Language Therapy in 2007 with concerns about his delayed expressive and receptive language skills. He was allocated a nursery placement in Nursery School A, in the education authority's intensive provision for children with speech, language and communication (SLC) needs. He was placed in the authority's primary level specialist provision for SLC at Primary School B where he spent primary one and most of primary two. He spent Friday mornings at School A.
13. The Child commenced full-time at School A at the start of primary 3. He is now in P7. He is due to start secondary school in August 2016. The school for the catchment area of his home is High School A.
14. No enhanced transition planning has been yet put in place for The Child, despite a recommendation by an independent adjudicator that this should start in P6. A meeting of the Additional Support Needs Forum will be attended by Witness D, Head Teacher of School A in February 2016 to look at The Child's needs and current additional support. All P7 pupils have transition days at secondary school, and The Child will have as many transition days as staff consider he needs.
15. A Speech and Language Therapist is available on a consultative basis to School A. She has known The Child since April/May 2014 when he attended a social skills group run by her at a Medical Centre. He had two assessment appointments with her and a

colleague in September 2014. She attended an Individualised Education Plan (IEP) meeting at school in September 2014, and met with Witness E, then the School A Support for Learning Teacher, in October 2014. She prepared an Additional Support for Learning (ASL) profile of The Child in December 2014. She attended the school to observe The Child on 1 September 2015.

16. In March 2015 Speech and Language Therapist was unable to attend meeting at the school to consider a Child and Young Person's Multi-Agency Plan. She asked that a draft copy of the plan be sent to her. This was not done. She telephoned the school on three occasions to seek updates, but messages left by her were not returned.
17. She is in contact with the present Support for Learning Teacher at School A, and is planning to assist her in a social skills group to take place within the school.
18. Witness E, The Child's class teacher, has not sought advice from Speech and Language Therapist during the P7 year. She saw her when she was in school observing The Child on 1 September 2015.
19. There was an alleged incident involving The Child in school in early September 2015 when police and social work were involved under child protection procedures.
20. The leadership of School A did not contact or seek advice from Speech and Language Therapist although it would be expected they would have been aware that The Child's pragmatic language impairment and difficulties with social understanding may have been a factor in any involvement he may have had in the matter.
21. The Child is naïve and immature, more innocent than his peers. The gap between The Child's pragmatic language skills and that of his peers is widening as the other children develop at a rapid rate.
22. The Child needs support to become more self-aware and to adapt to different situations. He has difficulties in peer groups and in social setting with his peers. In one to one situations with an adult, The Child's social skills are better.

23. In class, The Child is well-supported by Witness E. She makes sure that he understands and concentrates on the task at hand. His behaviour is good. He is involved in group work and working with a partner. He contributes to the class discussions. He is working at “level 2 developing” within the Curriculum for Excellence. Most children would be expected to achieve “level 2 consolidating” by the end of P7.
24. School A were unable to produce any objective assessments of The Child’s educational progress. No clear measurable targets have been put in place to assist in assessing his progress.
25. On objective testing by Witness B, independent Speech and Language Therapist, The Child had not progressed in pragmatic language skills between May 2015 and January 2016. He had tested The Child using the TOPL -2 test of pragmatic language in May 2015 and again in January. The Child scored age equivalent 6 years and 6 months, described in the manual as “poor” and significantly below average. The gap between The Child and his own age peers is increasing.
26. The Child requires provision from SALT to support him in his school education. This support is currently offered by Speech and Language Therapist on a consultative basis, but the school have not taken advantage of this provision.
27. In particular, with The Child’s imminent transition to secondary school, there is a requirement for SALT to provide direct support to The Child, to advise and support his Support for Learning Teacher in planning social skills sessions, to advise and be engaged in transition planning for secondary school. There is a requirement to provide on-going advice, training and modelling to all members of staff who will be involved with The Child to ensure appropriate intervention to suit The Child’s needs.
28. The Child requires significant additional support from SALT.
29. Advice will require to be taken from physiotherapy and Occupational Therapy, in particular with transition to secondary school. The Educational Psychologist will require to be involved in

the transition. Further IT assessment may be required. Dr O will continue to be involved and it is noted that a further assessment will be carried out when The Child is in S3. Although the support is on-going and will be required from time to time, the amount, having regard to the frequency, intensity, duration and nature of the support, is not significant.

30. The Child requires a Coordinated Support Plan.

4 Reasons for the Decision

1. The Tribunal considered all the evidence indicated above and were satisfied that there was sufficient evidence available to the Tribunal to reach a fair decision on the reference.
2. This reference was heard alongside a reference to the Tribunal with regard to a Placing Request, under Tribunal reference R/15/0012. The decision in that case forms an annex to this decision. The documents produced by both the appellant and the respondent in that case were considered by us in reaching our decision, as well as the documents number .
3. The issue in this reference was whether or not The Child satisfied the terms of section 2 of the Act and required a co-ordinated support plan (“a CSP”).
4. Section 2 (1) provides that a child requires a plan (a CSP) for the provision of additional support if:
 - “ (a) *an education authority are responsible for the school education of the child ...,*
 - (b) *the child ... has additional support needs arising from –*
 - (i) *one or more complex factors, or*
 - (ii) *multiple factors,*
 - (c) *those needs are likely to continue for more than a year, and*
 - (d) *those needs require significant additional support to be provided –*

(i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or

(ii) by one of more appropriate agencies (within the meaning of section 23(2) as well as by the education authority themselves.

(2) For the purposes of subsection (1) –

(a) a factor is a complex factor if it has or is likely to have a significant adverse effect on the school education of the child ...,

(b) multiple factors are factors which –

(i) are not by themselves complex factors, but

(ii) taken together, have or are likely to have a significant adverse effect on the school education of the child ...”

4. It was accepted by the authority that they were responsible for The Child's school education, that he has additional support needs arising from one or more complex factors and that these are likely to continue for more than a year. The requirements of section 2(1) (a) (b) and (c) are met.
5. What was in dispute was whether or not subsection (d) (i) or (ii) was satisfied, that The Child's needs required additional support to be provided by the authority in the exercise of any of their functions apart from education, or by one or more appropriate agency. Section 23(2) provides that appropriate agencies include any Health Board.
6. The issue in this case was whether the support provided to The Child from NHS Speech and Language Therapy (SALT) service could be considered as "significant additional support". The Child also has support from other agencies, in particular the NHS paediatrician, physiotherapy, Occupational Therapy and the authority Educational Psychologist.
7. The Tribunal had regard to the Code of Practice in terms of section 19(7) of the 2004 Act. We also had regard to the decision of the Inner House in JT v Stirling Council 2007 S.C. 783.

8. The Tribunal were informed by the report and the oral evidence from Witness A, Psychologist, as to The Child's cognitive abilities. We were also informed by the evidence of his class teacher, Witness E, the head-teacher Witness D, and Educational Psychologist Witness F, and, in particular by the evidence of The Appellant.
9. We heard considerable evidence from Witness B, independent Speech and Language Therapist, who had met with The Child on around seven occasions between May 2015 and January 2016. He had seen him at home over a number of weeks in 2015, and had observed him at school and in the playground. He had met with him again shortly before the hearing. He had undertaken a large number of tests to inform his assessment of The Child's needs. He had produced a report and a supplementary report.
10. In particular Witness B was critical of the consultative model used by the authority and the NHS SALT. He was of the opinion that The Child needed direct intensive Speech and Language Therapy from a qualified therapist. He supported a school placement where there would be teaching within an environment catering for the needs of young people with Speech Language and Communication Needs.
11. Speech and Language Therapist did not consider that direct one to one sessions with a Speech and Language Therapist would assist The Child. A one to one session with The Child discussing social situations with an adult could not be transferred by him to a peer group social situation. She thought the SALT advice should be embedded within his home and school life, with the teachers and learning assistants supporting The Child throughout the school day in natural situations, where The Child could develop in his natural environment.
12. We took particular account of The Appellant's evidence of the difficulties that The Child had had, and her concerns about how these were managed by the school.

13. It was of serious concern that to date the school had not instigated clear and measurable targets for The Child. Whilst his current class teacher is able to support him well, there is little objective evidence of her assessment of his progress.
14. Although the support provided by Speech and Language Therapist is of a consultative model, her intention was, as set out in the assessment prepared by her and A colleague on 7 October 2014 *“we would envisage working closely with parents and our education colleagues to ensure a smooth and successful transition into high school education”*.
15. Apart from visits to the school on 27 October 2014 and 1 September 2015, there was no evidence of close working between SALT and school since that assessment was prepared: most recently there has been one meeting with the Support for Learning Teacher and Speech and Language Therapist in December 2015.
16. We would have expected at the very least that some consultation with Speech and Language Therapist would have taken place in respect of the alleged incident which occurred in September 2015.
17. It is of also of particular note that Speech and Language Therapist was not invited to the IEP meeting which took place on 12 December 2015.
18. There is therefore a major requirement for coordination between the school and SALT in respect of the provision of additional support for The Child.
19. We carefully considered whether the additional support needed from SALT for The Child can be described as significant having regard to the extent of the support required.
20. We accepted the opinion of Witness B, which was not opposed by Speech and Language Therapist that there was a need for planning between teacher and SALT to integrate pragmatic language targets. This will be quite substantial with the forthcoming transition to

secondary school with the different subject teachers, and to ensure that all staff who will be involved with The Child are appropriately trained and advised on his needs.

21. We concluded that for The Child to be supported in the transition, it is likely that he will need some intensive support from SALT, most likely in a group if Speech and Language Therapist does not consider one to one is appropriate. This is likely to be required on a frequent basis for some considerable time over the period of transition and into the early years of secondary school.

22. We considered The Child requires significant additional support from SALT. The provisions of section 2(1)(d)(ii) are met.

23. A Coordinated Support Plan is required.