



DECISION OF THE TRIBUNAL

Reference

1. This Reference, made by application on October 2016 (T1-11), is made under s.18(1) and 18(3)(d) of the Education (Additional Support for Learning)(Scotland) Act 2004 ('the 2004 Act').

Decision of the Tribunal

2. The Tribunal requires the Respondent to make the following additions to the wording of The Child's current CSP (T12-23) and that a fresh, amended CSP is produced and made available to the Appellant, all by August 2017:

(a) Add: "Scribe to be provided as required".

(b) Add: "Specialist VI teacher to visit termly to review The Child".

(c) Add: "Specialist VI teacher to visit termly to review provision for The Child in the classroom".

(d) Add: "OT to review/advise on toileting provision each term".

(e) Add: "OT to provide forward planning for resources as The Child grows/needs change".

(f) Add: "OT to work with and provide specialist training".

(g) Add the following at page 5 of the CSP at R94 after "PE staff plan the curriculum and consider reasonable adjustments" in the 'Additional Support Required' column:

"The Child is to be provided with support to make regular scheduled toilet visits to the toilet facility in the school (or any other such facility as is deemed by the school to be suitable for The Child's use), in accordance with his timetabled slots for such visits. Two Student Support Assistants should accompany and assist The Child on any such visit."

(h) Add the following text as a bullet point at the foot of page 5 of the CSP at R94 in the 'Additional Support Required' column:

“PEEP staff training and refresher training to be provided at regular intervals.”

(i) Add the following text as the next bullet point below the text to be added at (h), above:

“Work with The Child to ensure he is comfortable with PEEP procedure.”

(j) Add the following at page 8 of the CSP at R97 as an additional bullet point in the 'Additional Support Required' column after the bullet point starting “Indirect intervention..”:

“Physiotherapy to provide regular support and advice to school staff involved in handling The Child on how best to physically handle him as he moves from one piece of equipment to another during the course of his school day.”

(k) Add the following as an additional bullet point to be inserted after change (j) above:

“Physiotherapy to work with and provide specialist training to relevant members of staff.”

3. Additions (a)-(f) above are changes the Respondent has agreed to make, and those changes should be made in the places where the green text appears in the annotated CSP at R90-101. The location of the remaining additions are specified. We should add that we did consider the Respondent's argument that the changes in (a)-(f) (being changes the Respondent agreed to make) could be made without the Tribunal requiring them. While we do not doubt the Respondent's intention to make those changes, we feel that it is appropriate (not to mention cleaner) to require these changes to be made alongside other changes which were disputed.

Preliminary/Procedural Matters

4. A hearing took place over 3 days in 2017. The Appellant seeks certain changes to The Child's current CSP. The hearing in this case was consolidated with the hearing in a disability discrimination claim. A separate decision has been issued in connection with that claim. The issues and evidence were similar for both cases. A number of conference calls between the parties and the Convener took place, and Directions were issued to regulate the procedure (dated January (T30-32); April (T33-35); April (T36); June (T38-39)).

5. Following the hearing, written submissions were directed (see the Direction at T38-39). These submissions were delivered by the deadline set for those (see Appellants' submissions at A274-284; Respondent's submissions at R104-119). The Tribunal panel deliberated on July 2017, the first available date due to holiday commitments, reaching a final decision. Thereafter, these reasons were prepared, and this document represents the final decision with reasons.

6. In addition to the witnesses mentioned above, the panel met with The Child on May 2017 and spent around an hour with him at the hearing venue taking his views on a range of issues relevant to this reference. This meeting took place with the consent of the parties, and only the three panel members and The Child were present. The Appellant provided in an e-mail of April 2017 (at the Convener's request) some helpful information in order to assist with making relevant conversation with The Child during our meeting with him (A260). The meeting was audio recorded and a note summarising the main points was prepared by the panel member who agreed to take a note of what was discussed. That note is at T40-42. Following the meeting with The Child, a summary of the main points discussed was read out to the parties. The note at T40-42 was made available to the parties once prepared (following the hearing date on May, prior to the final hearing date).

7. The panel found The Child to be articulate, intelligent, pleasant, engaging and helpful. He answered all questions put to him. His answers were detailed. The views expressed by him were very helpful to us in reaching a decision on a number of the issues, and we refer to his views at various points below.

8. The Appellant expressed some considerable surprise at the high level of engagement The Child demonstrated during his meeting with the panel. We note that the Advocacy Worker was unable, despite several visits, to obtain any views from The Child (see her report at T37). There is no obvious explanation as to why he felt unable to share his views with the Advocacy Worker. At the end of the final day of the hearing, the Appellant asked about The Child's capacity to state his views. She also refers to capacity in her submissions, seeking the tribunal's views (A282) and referring to The Child's Mandate at A247. We are of the view (as we confirmed orally to the Appellant at the hearing) that there is no doubt in our minds that The Child has the capacity to state his views; he did so very clearly, fully and helpfully during our conversation. There is no doubt whatsoever in our minds that The Child has full capacity to state his views on the issues raised in this reference. In our view, those views, having been expressed so clearly, fully and honestly, deserve to be respected. The Mandate at A247 is, in our view, not relevant to this question since it relates to dealings with the school, not the Tribunal. In any event, the Appellant was very supportive of the idea of The Child speaking to the Tribunal, describing such a meeting as "essential" and providing advice on subject areas The Child might be interested in during any such conversation (A260). At no point prior to the panel's meeting with The Child did the Appellant suggest that she had doubts about his capacity to state his views.

9. It is clear that the burden of proof in CSP cases is on the Appellant, since the Appellant is seeking a decision requiring the Respondent to make amendments to the CSP/to take action following non-implementation. The usual rule that a party who seeks a remedy bears the burden of proof in relation to it applies, in our view, here.

Summary of Evidence and Proceedings

10. The bundle consists of: pages T1-42 (Tribunal papers), pages A1-284 (Appellants' papers) and pages R1-119 (Respondent's papers). We took into account all of the information in the bundle in reaching our decision. This numbering includes some documentation which arrived close to or at the hearing from both parties (and one generated by the Tribunal). We allowed all of that documentation to be lodged since it was all, on the face of it, relevant to the issues we had to decide. This documentation has been numbered in the bundle as follows:

- (a) Tribunal directions as follows: January, T30-32; April, T33-35 (renumbered); April, T36; June, T38-39;
- (b) Letter from Partners in Advocacy dated March 2017– T37;
- (c) Summary of ASNTS panel meeting with The Child on May 2017 – T40-42;
- (d) E-mail of April 2017 from the Appellant to the Convener re meeting with The Child – A260;
- (e) Series of e-mails between Witness B, Witness E, Witness C, (A) and (E) regarding visual impairment provision for The Child dated August 2016, November 2016 and February 2017 (a number of e-mails on the latter date) – A261-266;
- (f) Letter from Appellant to Convener dated 8th May 2017 enclosing items (j)-(m) below - A267;
- (g) Statement of Child's Father – A268-269;
- (h) RGK Wheelchairs Ltd. Quotation dated April 2017 – A270-271;
- (i) Eye prescription for The Child dated April 2016 – A272;
- (j) NHS Optical Voucher and Patient's Statement dated April 2017- A273;
- (k) Copy of The Child's current CSP dated July 2016 with agreed changes marked in green type and proposed but disputed changes marked in red type – R90-R101; and
- (l) E-mail from Witness E to Witness B and RB solicitor dated May 2017 attaching an e-mail from Witness E to the Appellant dated November 2016 - R102-103.

11. Oral evidence was led from the witnesses listed above over three days, followed by written submissions. Written witness statements (precognitions) of the witnesses who gave evidence for the Responsible Body were directed and were provided (R64-89). The oral evidence given by each of those witnesses did not deviate in any material way from the content of their statements. The Appellant was represented for part of these proceedings by (D), solicitor. However, the Appellant decided to dispense with (D) services before the start of the hearing. The Appellant relied on (D) Case Statement (AC1-9). However, following (D) departure as the Appellant's representative, the Appellant indicated that she had a number of changes to make to (D) Case Statement. Those changes are outlined in the Appellant's e-mail of April 2017 (A243-245, the relevant changes for this claim at A243-244). While unusual, we are mindful of our duty as part of the overriding objective in the Tribunal rules, to ensure so far as practicable that parties are on an equal footing procedurally and are able to participate fully in the proceedings (rule 3(2)(c)). We are therefore content to allow the Case Statement at AC1-9 to be treated as amended in line with the Appellant's changes set out at A243-244. We should add that, again in line with our duties under rule 3 of the Tribunal rules, we allowed the Appellant considerable latitude in presenting her case, for example in lodging documents late and in her cross-examination of witnesses as well as in her own oral evidence.

12. In framing our Findings in Fact (below) we drew upon the Respondent's proposed findings which were set out in detail, but making some amendments to the content of those findings, as appropriate.

The submissions of the parties

13. RB Solicitor urged us to make no amendments to The Child's current CSP. She indicated that the Respondent had already agreed to make certain amendments (in green in the CSP at R90-101) and given this undertaking to do so, no order to make these amendments should be issued. She also argued that the disputed amendments (those proposed by the Appellant and marked in red at R90-101) should not be made. The Respondent's arguments are set out in full in its written submissions (R104-119).

14. The Appellant used a mixture of arguments made by her former lawyer, (D), and her own arguments and sought all of the amendments (both those in green and in red) as marked on the CSP at R90-101. She argued that these were necessary and justified by the evidence available. Although the Appellant set out her main arguments in her written submissions (A274-284), since she was unrepresented we were careful to check all other documents in the bundle where points were made by the Appellant. Where any point which was relevant to any proposed amendment was made anywhere in the bundle, we considered it. We have addressed most of the Appellant's points in our discussion of each of her amendment requests below. However, there are a few general points made in the Appellant's submissions which we will deal with here. Although the Appellant split her written submissions between this claim and the associated CSP reference, many of the points are relevant to both and so we address all relevant points in both decisions.

15. Firstly, at A279-281, the Appellant lists a range of topics upon which she claims the Respondent did not produce evidence. However, in our view ample evidence was produced by the Respondent to meet each of the CSP amendments proposed by the Appellant. Our task is to consider those proposed amendments. We do not have general jurisdiction to review all aspects of The Child's education, we may only (in a reference such as this) consider proposed CSP amendments. We note that 445 pages of information was made available here and that the bundle was substantial. We do not feel that there was any information missing which was required in order to enable us to reach a decision in this case.

16. At A280 the Appellant suggests that outside agencies must wait for the school to contact them before intervening and that it is not reasonable to expect The Child to be able to raise concerns before action is taken. Even were we to accept that The Child has been negatively impacted by this system (and we see no evidence to suggest that he has) we do not feel that we can amend The Child's CSP in a way which would resolve this issue. This system is in place for all children.

17. At A282, the Appellant argues that SSNs should not question The Child about equipment and that any issues should be raised with parents immediately. There is no proposed CSP amendment to deal with these concerns. Even if there were, we would not have required additions to the CSP of this nature. We disagree with both points the Appellant makes. In our view, it is perfectly acceptable for a school to discuss equipment with a child who has the capacity to state views on such issues. There is no doubt at all that The Child has that capacity. On communicating any issues regarding equipment to parents immediately, in our view this is simply not practicable. We have no doubt that there are regular issues around the use of equipment for The Child and for other children. Many such issues will be resolved by

staff there and then. Any significant issues requiring parental input would, no doubt, be communicated. The communication of all issues would place an intolerable burden on the school and distract staff away from providing The Child and other children with an education.

18. The Appellant asserts that RB witnesses were 'neither credible or reliable' (A282). In our view all of the Respondent's witnesses as well as the Appellant's witness were entirely credible and reliable. They gave their evidence in a straightforward and professional manner. At A282, the Appellant suggests that some of the Respondent's witnesses were 'evasive'. We disagree. The Appellant goes onto say that Witness D's evidence on the incident on October 2016 is not backed up by the 2nd SSN. There is no evidence about what the 2nd SSN's account of that incident was (we assume that is the point the Appellant is making) but not every witness needs to be brought and in any event we regard Witness D's account of that incident to be credible and reliable.

19. The Appellant suggests (A282) that the evidence of the RB witnesses 'was not backed up by any documented evidence in the case bundle'. We disagree. We refer at numerous points below to parts of the case bundle to substantiate many of the points made by the witnesses.

20. At A283, the Appellant requests that the Tribunal formally monitors the Respondents decisions and directions. The Tribunal has no power to do so.

Findings in Fact

21. The Child is a fourteen year old boy who resides with his parents, and his older sister. The family resides. The Child was born on July 2002. He has an older brother who does not reside in the family home.

22. The Child is a pupil at School A. The Child completed his third year of secondary school education during academic year 2016-17.

23. The Child has additional support needs ('ASN') as defined in s.1 of the 2004 Act. These needs arise from multiple and complex factors. He has quadriplegic cerebral palsy with total body involvement, his legs being more affected than his arms, resulting in significant physical difficulties and limitations. Specifically, his lower limbs, hand function, eating and drinking are affected. He has a visual impairment secondary to periventricular white matter pathology (PVL) (brain damage since birth) which affects his vision. He is registered blind/partially sighted. He was diagnosed with aspergers syndrome in 2008. He has a chronic bowel condition and bladder control issues and requires toileting support. He suffers from mild asthma.

24. The Child has a CSP prepared by the Respondent and reviewed annually. It details The Child's educational objectives, the additional support required to meet those objectives (including equipment to be provided) and the persons providing that support. The CSP was last reviewed in November 2017. The current version of his CSP is one dated July 2016 (T12-23).

25. The Child is an intelligent boy who is doing well academically at school. He is currently studying Maths, English, Spanish, French, Drama and Chemistry. His tracking reports indicate that he is making good or very good progress in all subjects. In addition he has periods of PE and RE each week.

26. The Child has additional sessions on his timetable. He has a session on his standing frame between 8.30 and 8.55 each morning. He has a period of trike each day. He currently has a maths tuition session once a week although this is a short term arrangement. He has physiotherapy once per fortnight at school and leaves school each Monday at 2.05 for a physiotherapy session at home. The Child uses a wheelchair throughout the school day and is transferred to a bambach chair for English and Maths lessons.

27. The Child requires to be supported by a school support assistant ('SSA') at all times during the school day and requires two SSAs for all manual handling including transfers to trike, bambach chair, standing frame and for toileting. At the request of the Appellant, the number of SSAs involved in providing support to The Child was reduced. Currently there are three main SSAs involved over the course of the week, with 2 additional SSAs providing a small amount of cover during staff breaks. All SSAs who are involved with The Child are known to him.

[paragraphs 28-31 have been removed for reasons of confidentiality]

32. The Child is supported in class by a SSA at all times. SSAs scribe for The Child, when required, usually in maths and sometimes in other subjects. At other times The Child is able to carry out his schoolwork on the laptop provided for his use. He sits at the front of the class so that he can see the backboard. He uses an adjustable desk. He sometimes has access to an acrobat camera which can be used to enlarge text. He uses glasses when he has difficulty seeing the board. In the event that the acrobat camera were set up in advance in class, he usually prefers to use that equipment rather than his glasses.

33. In September or October 2016 Witness E brought a Sony camera and iPad to the school and demonstrated same to The Child and his father. The Child tried out the equipment. Following this meeting, Witness E assisted the Appellant with a grant application to obtain the Sony camera and iPad for home use.

34. A teacher from the VI Unit based at School B visits The Child at school at least once a term to assess use of equipment, classroom placement and ensure The Child is fully supported in relation to his vision. A short report is issued after each visit, the latest dated February 2017 (R34).

35. On March 2017, CALL Scotland carried out an assessment at the school to establish if the Respondent is providing the most effective technology to support The Child. The Appellant had requested this assessment which was arranged by the Respondent. The conclusion reached by CALL Scotland was that The Child is being well supported at school and they did not recommend significant changes (R42-46 for their report). They recommended trialling a smaller keyboard, making the most of adobe acrobat software and exploring dedicated maths and science software to enable The Child to work independently without a scribe. These trials are underway.

36. The Child has considerable difficulty with handwriting and this is unlikely to improve. He has a period of handwriting practice in his timetable although this is currently used for maths tuition.

37. The Respondent has recently revised the Personal Emergency Evacuation Plan (PEEP – at R35-38) for The Child and staff training takes place regularly, particularly in relation to use of the EVAC chair.

38. An Occupational Therapist (OT) visits The Child at school once a term to monitor use of equipment, handwriting progress, height and position of bambach chair and desks. During these visits, The Child is observed by the OT in class. The OT also assesses the toilet facilities and use of same, although not necessarily each term. A detailed report is issued following these visits, the last dated March 2017 (R31-33).

39. The Physiotherapist attends the school once a fortnight to give physiotherapy to The Child.

40. The OT and Physiotherapist provide training to staff, when required.

41. When school trips for The Child's year group or class are arranged the Respondent makes provision for The Child to attend, should he wish to. This includes the provision of two SSAs to support him during the trip. A trip was scheduled to [a fairground] in June 2017 and The Child was invited to attend. Prior to the trip, the Appellant indicated that The Child would not attend. The Child did not wish to attend the trip to [a fairground] due to the travel distance involved and since he would have to wake up early in the morning to attend. An alternative trip has been arranged to the cinema for those who do not go to [the fairground], including The Child.

42. The Respondent has not facilitated trips by The Child to local shops during lunchtimes due to concern over the hazards identified in relation to such trips. Pupils who leave school at lunchtime are not supervised

43. The Child is encouraged to drink during the school day. He does not present as dehydrated during the school day.

44. CSP meetings are attended by Parents, Head teacher, member of staff from VI unit, OT, Physiotherapist, speech and language therapist, dietician, Inclusion Manager. Regular ASP meetings also take place. The Child is invited to join these meetings and comment.

Reasons for Decision

45. The Appellant argues that certain amendments should be made to The Child's CSP. In addition she argues that The Child's CSP is not being implemented. We will deal with each in turn. We should make it clear that in this reference, our task is not to conduct a review of The Child's education in general; we are only permitted to consider evidence and argument related to proposed changes to the CSP.

(A) CSP Content

46. RB Solicitor in her submissions deals with each of the proposed amendments. We will deal with each in the order she adopts. Before doing so, we should say a few words about the nature and purpose of a CSP. It is, of course, a statutory document, required in certain circumstances under the 2004 Act. The duty to prepare a CSP is found in s.9 of the Act. The basic contents of a CSP are outlined in s.9(2) of the Act. Further detail on what should be included in a CSP, as well as a prescribed format for the document, is set out in regulations (The Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005, SSI 2005/518 (as amended)). It is clear that the current CSP is in the correct format and that the essentials set out in s.9(2) are there. The CSP is designed to be a year-long document, requiring a review annually, at least (s.10(2) of the 2004 Act). However,

the 2004 Act allows the Tribunal to require an education authority to amend the information in a CSP as it considers appropriate (s.19(4)(b) of the 2004 Act). This is a wide power, and it is clear that the Tribunal is expected to examine the contents of the CSP to ensure that they are appropriate, and if not to require amendment. In doing so, the Tribunal must have regard to the 2004 Act Code of Practice (*Supporting Children's Learning, Code of Practice, 2010*, referred to from now on as 'the Code'). Chapter 5 of the Code provides guidance on CSPs.

47. On the content of a CSP, the Code makes it clear that the educational objectives should be specific enough to enable progress to be monitored (para 59 on page 94 of the Code).

48. On the additional support to be specified in a CSP, the Code again refers to the need for sufficient specification, requiring the terms to be 'clear and specific' and wherever possible 'quantified'. Some examples of statements which are too vague as well as some which are specific enough are provided (see para 61 on page 95 of the Code).

49. On the persons to provide the support, the Code is clear that names should not be provided, rather that the agencies or professions should be specified (para 62, page 95 of the Code).

50. The Code refers to other parts of the CSP but we need not discuss those given the changes sought in this reference. It is with these guidelines in mind (as well as the terms of the 2004 Act) that we come to consider each proposed change.

Proposed change 1: Toileting arrangements

51. The Appellant seeks the addition of the words "Toileting plan to be adhered to" under the 'Additional Support Required' column of the CSP. The evidence is clear around the fact that a toileting plan is in place for The Child. Witness C indicated in her evidence (see her statement at R78) that a new toileting procedure was introduced in August 2016. This is at R7-8 in the bundle. This procedure, as well as what is contained in that document, involved inserting scheduled toilet visits to a dedicated facility in the school into The Child's timetable (R47). These toilet breaks were adjusted following Christmas 2016 (see Witness C e-mail of December 2016 on this at R53-53). Witness C further explained in her evidence that the plan involves taking The Child to the toilet on each of these toilet breaks, and that on each occasion, The Child is accompanied by two School Support Assistants (R78). Witness D is an SSA who is sometimes involved in The Child's care assists, as part of her role, in taking him to the toilet. In the context of an incident on October 2016 (an incident which is described in the Findings in Fact above for completeness but which we will deal with in our decision on the associated disability discrimination claim) she describes how she deals with The Child during a visit to the toilet (R87-88). Witness F (The Child's OT) also explains her involvement in overseeing The Child's toileting needs (see her statement at R65 and 66-67).

52. There is no evidence to suggest that the plan devised by the Respondent has not been being adhered to. The Child himself in his meeting with the panel indicated that he is happy with the toileting arrangements at the school and that it is 'working very well' (T42). He indicated that an unscheduled toilet trip does not normally happen and that the existing scheduled visits meet his day to day needs (again, T42). The Appellant expressed concern that the toilet which The Child uses would, depending on the lesson he is in, be some distance away from The Child's location, causing

disruption to his schooling due to the length of time it would take him to travel from his class to the toilet. However, there is no evidence to suggest that this has been a problem, and The Child himself indicated to the panel that he could, if such a situation arose, use one of the nearby disabled toilets. In all of the circumstances, there is no evidence to suggest that the toileting plan is not being implemented. The Appellant suggests in her submissions that the lack of a changing places toilet facility means that the school is not equipped to deal with The Child's needs. We do not accept this – all of the evidence suggests that the facilities, plans and practices currently in place are adequate for The Child's toileting needs. We therefore refuse the request to make the addition sought.

53. Having said all of this, we note that the CSP as currently framed makes no reference to toileting in the 'Additional Support Required' column. The Respondent concedes in its written submissions (R109) that The Child requires appropriate toileting facilities and arrangements in order to meet his educational objectives. In our view, this means that provision for those facilities and arrangements should be made in the 'Additional Support Required' section of the CSP. Bearing in mind our observations above on the guidance in the Code and the examples of good and bad entries in this column (para 61 on page 95), we take the view that the following wording in the 'Additional Support Required' section of the CSP should be added and so we require that the Respondent makes this addition:

“The Child is to be provided with support to make regular scheduled toilet visits to the toilet facility in the school (or any other such facility as is deemed by the school to be suitable for The Child's use), in accordance with his timetabled slots for such visits. Two Student Support Assistants should accompany and assist The Child on any such visit.”

54. Although this wording does not provide for unscheduled visits, the CSP is a plan designed not for every eventuality, but for the support which would ordinarily be required. The addition required is different to the one sought, but the 2004 Act does not restrict the Tribunal's power to amend the CSP content in any way; indeed, as noted above, the power is to require such amendment as the Tribunal considers appropriate. The above amendment simply reflects the current practice on toileting, which we feel is adequate, and so this amendment to the CSP is appropriate.

Proposed change 2: Facilitated friendship groups/circle of friends

55. The addition proposed is to add to the 'Additional Support Required' section the words: 'Facilitated friendship group "circle of friends"'. We take it that the Appellant is suggesting that arrangements should be made for the provision of such a group. There was no evidence to suggest that The Child's education is detrimentally affected by lack of a friendship group. The main opportunity to benefit from being in the company of friends is at lunchtime. The Child himself did not express any concerns about lack of contact with peers at lunchtime. He has lunch in an area of the school known as (S) where he is accompanied by staff at all times. He indicated that he knows a number of people in school with whom he chats, including during lunch. Further, The Child did not express a strong view in favour of joining peers during visits to the local shops during lunchtime (a subject we return to below). This further suggests a level of satisfaction with opportunities to interact with peers. Even if there had been evidence of dissatisfaction with friendship opportunities, there was no evidence available on how such opportunities could be created. Witness B in his evidence doubted the usefulness of such measures in relation to a child of The Child's age, and he is an experienced teaching professional. Also, we need to bear in mind the need for specificity around the wording of a CSP, and we would struggle to

formulate such wording. We therefore decline to require any amendment to the wording of the CSP in this area.

Proposed change 3: Maths tuition

56. The Appellant suggests the addition of the following wording under the 'Additional Support Required' section of the CSP:

"2 hours 1:1 maths tuition to be provided by the additional support for learning department weekly."

The Appellant raises a concern that The Child may have been missing out on Maths tuition in order to attend physiotherapy for three years, and that this lost time can be made up with such additional tuition (see her submissions at A281).

57. Witness C explains that The Child currently receives a period of 1:1 maths tuition per week which was introduced to make up for missed time in the maths class caused by absence to attend physiotherapy sessions. This arrangement is intended as a temporary one, to enable The Child to catch up (see her statement at R81). Witness C is clear that The Child is progressing well on Maths and that no further provision is necessary. The Child did not raise any concerns about Maths in his conversation with the panel. In addition, his progress on the subject is noted to be good. His Maths teachers noted in his Tracking Reports from November 2016 and February 2017 that The Child "Always works conscientiously", "Always behaves well" and that he is "Making very good progress" (R29 and R30). These views appear to be shared by the three Maths teachers who were involved in completing those reports. In the absence of any evidence of a need for such provision over a longer period, we decline to make the amendment sought.

Proposed change 4: Named support staff

58. The Appellant proposes the following additions to the CSP in the 'Persons providing the additional support' section:

"Named ASNs to be contracted for extra-curricular activities, lunchtime and school trips."

"Key ASNA staff to be named within CSP to ensure continuity of care, predictability, comfort for The Child."

59. The first amendment is only directed at the naming of ASNs and so we will deal with that only here. We will return to school trips and lunchtime trips separately. The second proposed amendment is a request for certain key staff members to be named. The Appellant was clear in voicing her concern about the need for continuity of care for The Child. She argued that where SSAs dealing with The Child were not named, this could lead to some SSAs who were not familiar with The Child providing support for him and that this would be detrimental to him, since it would hamper predictability and comfort. In our view, there is no case for the naming of individuals in The Child's CSP. Indeed, the Code specifically advises against the inclusion of named individuals in any CSP (para 62 on page 95). While the Code is advisory only and we need not follow it, we are clear that, in this instance we should. The reason given in the Code for this advice is that while personnel may change, the additional support needed may not.

60. In our view, naming individuals in the CSP for any purpose would not be sensible and may well be to The Child's detriment. If names were specified for particular kinds of support, this would mean that when that named individual is not available (due to illness, for example), the education authority would not be able to comply with the terms of the CSP. The CSP requires to be specific in its terms, but also flexible enough to ensure that necessary day to day changes in the logistics of providing care can be accommodated. As the Code suggests, the importance of the CSP lies in specifying the type of support required and who in general terms should provide it, not the individuals who are to provide it. As currently drafted, the list of professionals in the CSP is comprehensive and no amendment is required. While we accept that continuity of care is important, complete continuity cannot be guaranteed. Further, there is no evidence of any difficulties over continuity of care for The Child. Witness C in her evidence explains the reasons for the pool of five SSAs, with three of them offering the main support (see her statement at R79). She indicates that she is unaware of The Child being unhappy with those who provide support. In his discussion with the panel, The Child confirmed that he gets on 'very well' with all support staff and he indicated that he was not concerned when support staff members rotate. It is clear to us, then, that there is no continuity issue in this area. For all of these reasons, we therefore decline require these proposed amendments.

Proposed change 5: Number of support staff

61. The Appellant wishes the following text to be added to the 'Additional Support Required' column of the CSP:

"No more than 2 full time members of staff to deal with handling and personal care."

62. This proposal is again motivated by the Appellant's desire to see continuity of care. While such a desire is perfectly understandable, limiting the number of support staff is not required, nor is it in The Child's interests. As we indicate above, the staffing complement is explained by Witness C in her evidence. There is no suggestion of any difficulties around the number of staff involved in The Child's care, and The Child himself expresses that he is content with the staffing arrangements. There is no evidence to support the need for such an amendment and so we decline to require the Respondent to make the requested change. We should add that in the original change made by the Appellant to (D) Case Statement she refers to 'Identify no more than four Full Time members' (A244). However, the Appellant made it clear during a conference call with the Convener that this was an error and she meant to refer to two full time staff members. The wording of the proposed change above therefore correctly reflects the Appellant's desired change.

Proposed change 6: Daily tick list

63. The Appellant seeks the following addition to the 'Additional Support Required' section of The Child's CSP:

"Daily tick list to be completed daily."

At the root of the desire for this amendment are concerns over channels of communication between the Appellant and the school, concerns raised in the Appellant's submissions at A281-282 and A283.

64. This relates to the Appellant's desire for a list (prepared by her) of information she wishes the school to provide every day. The proposed list is at A63. The

evidence suggests that there are established channels of communication in place, namely the home/school diary completed by the SSAs (referred to by Witness B and Witness C, R73 and R81 respectively) and regular e-mail communication between the Appellant and the school, with facility for telephone calls in the event of an urgent need to be in touch. The Appellant complains of communication problems, and yet it is clear from the bundle that the Appellant is in very regular communication with the school on a broad range of issues affecting The Child. In our view, a 'tick list' of compulsory information to be provided by the school would not be an appropriate way to regulate communication. It seems to us that the school staff are best placed to decide what information is essential for passing onto parents. A 'tick list' of the kind sought to be introduced by the Appellant would, in our view, be very likely to lead to unnecessary paperwork being completed by school staff. This is particularly clear when one considers the level of detail the Appellant would seek in response to such a list (see the proposed list at A63). Even if the use of such a list was, in principle, appropriate, there is a lack of evidence suggesting that the number and range of communication channels between the Appellant and the school require to be improved. We therefore decline to require the suggested change. The quality of the communication between the Appellant and the school is a different issue, one which we return to below.

Proposed change 7: Cognitive behavioural therapy (CBT)

65. The Appellant proposes that the CSP is amended by referring to a need for the provision of CBT, in the 'Additional Support Required' section. As Witness B points out in his statement (R74) there is no evidence from a relevant health professional to suggest that The Child needs or would benefit from CBT. In the absence of such evidence or a referral to explore this further, there is no basis at all for including a need for such therapy in the CSP. We note also that The Child was discharged by CAMHS in March 2016 with no treatment required (see the letter from (Doctor) at A58-60, last paragraph on A60). The Appellant argues that The Child suffers from acute anxiety/depression (A274 and A280) but there is no evidence to support this. We therefore decline to require this addition. We should add that although the Appellant does not suggest an addition to the CSP around youth counselling, in her evidence she did suggest that she was under the impression that this is something that should be organised through the school. However, this appears not to be the case from (Doctor)'s letter of March 2016 (A58-60) where he indicates (A60, penultimate paragraph) that the Appellant was encouraged to contact Youth Counselling Services direct if such a service is to be accessed. It is clear to us from this that no responsibility lies with the school for arranging youth counselling and so it would not be appropriate for this to be referred to in the CSP.

Proposed change 8: Hydrotherapy

66. A similar request has been made by the Appellant for the provision of hydrotherapy to be added to the CSP. Again, there is no relevant health professional evidence to support the need for such support. Witness A did indicate that hydrotherapy might be of use to someone with The Child's conditions. However, as with any health service input into the educational objectives of a child, a proper assessment and recommendation would be required before it could be said that such support is needed and should therefore be provided for in a CSP. The Appellant in her submissions at A280 suggests fortnightly hydrotherapy sessions in a Hydrotherapy Suite. This suggestion is new and we cannot consider it at this late

stage in the case. In any event, this suggestion could not be incorporated into the CSP due again to lack of an assessment and recommendation around hydrotherapy generally. In the absence of such material, we decline to require reference to be made in the CSP to hydrotherapy.

Proposed change 9: Varied diet

67. The Appellant suggests the following addition after the words 'the day' on line 3 of the bullet point at the foot of the 'Additional Support Required' column on page 9 of the CSP (R98):

“...and encourage The Child to have a varied diet...”

68. This addition is proposed in a section of the CSP dealing with hydration, not diet. However, in principle if we were minded to include a reference to a varied diet, we could require its inclusion elsewhere in the Plan. We do not feel that such an addition would be necessary or appropriate. There is no evidence to support the need for The Child to be provided with dietary guidance. It seems to us that The Child is more than capable of making sensible dietary choices. He is an intelligent and capable boy. In his discussion with the panel, he referred to the availability of a choice of foods on the menu and that he liked to have different things on different days depending on what is available and how he feels (T41). It seems to us that The Child has a sensible approach to eating. In any event, there is no suggestion in the evidence that The Child does not eat a varied diet or that there is any other problem with his intake of food at school. No additional support, then, is required in this area and we therefore decline to require the suggested addition.

Proposed change 10: Daily living tuition/life skills

69. The Appellant proposes the addition of the following text to the 'Additional Support Required' section of the CSP:

“1 hour 1:1 daily living tuition to be provided by the additional support for learning department weekly.”

70. She also suggests that the following is added: “Provision of life skills”.

71. The Appellant has not indicated what kind of tuition or input she envisages would flow from the addition of this wording or who would provide it. Witness B suggests that this might be a reference to lunchtime outings, but this is something we deal with below as a separate point. It is for the Appellant to specify the nature of the additional support she is seeking to provide for in her proposed amendments. It is also for the Appellant to lead evidence (or to point to available evidence) to support her assertion that any support is necessary. Since the Appellant has done neither, we do not feel that it is appropriate to require this addition to the CSP. We refer to our comments above on the burden of proof.

Proposed change 11: Personal Emergency Evacuation Plan (PEEP)

72. The Appellant argues for some changes around this plan and its operation. Such a plan is in place for The Child (R35-38). The purpose of the PEEP is explained clearly on the first page of the document at R35. The Appellant did not seek to criticise the PEEP as such but she proposes two additions to the CSP, in the 'Additional Support Required' column:

“Monthly PEEP training of staff”

and

“Work with The Child to ensure he is comfortable with PEEP procedure.”

73. The Respondent concedes that the CSP should be amended to state: “PEEP training of staff” but opposes any alternative wording in relation to the PEEP. The Appellant indicated that there is one member of staff named on the PEEP who has a medical condition which means that he would not be able to take part in evacuating The Child in the event of an emergency. However, no evidence was available to support that statement and this was contradicted by evidence from Witness C. Even if such evidence were available, this problem would not be resolved by either of the above amendments. The Appellant did not lead any evidence which would support her argument that monthly training is required.

74. Having said this, the amendment suggested by the Respondent is precisely the kind of wording disapproved of in the Code. One example of a bad CSP statement cited there is: “speech and language therapy as required” (Code, para 61, page 95) since it is not clear and specific. On the other hand, there was little by way of evidence about what kind of training should be provided and at which interval. It seems to us that the following wording would be preferable, and we require that it is added:

“PEEP staff training and refresher training to be provided at regular intervals.”

75. It seems to us on reading the PEEP that it is a complex and detailed document setting out a full description on how The Child should be evacuated in an emergency. Regular training to refresh the memory of those involved in implementing it around the content of the PEEP and how it operates seems to us to be essential if it is to be properly followed in an emergency.

76. On the second of the two proposed amendments, it seems to us that the addition of this wording is necessary. We accept fully that The Child should not be involved directly in practice evacuations. That does not mean that he should be entirely left out of involvement in the PEEP. The Respondent indicates that training is provided by Witness A in relation to getting in and out of the chair. However, we feel that an obligation to work with The Child in a general sense in relation to the PEEP is necessary. It seems to us that the inevitable distress caused by an emergency evacuation could be alleviated if The Child is familiar and comfortable with the terms and processes surrounding the PEEP. While the wording proposed is a little vague, we feel it is appropriate as it leaves some flexibility around how the work with The Child is to be carried out.

Proposed change 12: Specialist habilitation services

77. The Appellant proposes an addition to the wording of the CSP in the section on ‘Visual Impairment Support’ under the ‘Additional Support Required’ column, namely:

“Specialist Habilitation services to be provided by VI, (U).”

78. Witness E, Head of the Visual Impairment Service for the Respondent discusses habilitation services in his statement (R84-85), and indicates that this is not something offered by his service (based at (U) and instead is something which is

provided by the Respondent's Social Work department. He indicates that he has advised the Appellant of this and that a referral to the Social Work department would lead to an assessment of The Child's mobility needs. There is no evidence to suggest that such a referral has taken place or that any such assessment has taken place. There is therefore no evidential basis for the need for such support for The Child. It may be that he would benefit from such support but we cannot speculate about that in the absence of any evidence. In any event, Witness E is clear in his evidence that the VI service would not provide such support. For these reasons, we decline to require the addition sought.

Proposed change 13: Equipment – Sony Camera and iPad

79. The Appellant seeks to make a change to the list of equipment for The Child as set out on page 10 of the annotated CSP (R99). She asks the tribunal to add, after 'ICT equipment' at the third bullet point some text, namely:

“..- replace acrobat camera with iPad, clamp and Sony camera.”

80. In addition, in her submissions, the Appellant (at A281) questions whether enough work has been done around the testing of suitability of VI equipment, about the ability of SSNs to assess The Child's vision, about the VI assessment of The Child's needs and about 'VI Holistic services'.

81. There is a disagreement between Witness E and the Appellant's husband about the outcome of a meeting attended by both and by The Child in September or October 2016. Witness E is of the clear recollection that the outcome was that The Child and Child's father agreed that having tested a Sony Camera and iPad that the then current equipment (a laptop with an Acrobat camera) was better than a Sony Camera and iPad for classroom use by The Child. Witness E's account is that an application for funding for a Sony camera and iPad was agreed for The Child's use at home, and Witness E was of the view that this equipment was appropriate for home use. Child's father, who did not give oral evidence but who provided a written statement (R268-269) (and who attended for most of the oral evidence as the Appellant's supporter) had a different recollection of the outcome of the meeting. He explains at A278 that he had formed the impression that the group attending the meeting had agreed that the Sony camera and iPad would be the best solution for use at school.

82. We take the view that it is not necessary to resolve the question of whose recollection of the outcome of the meeting is correct. Witness E's evidence to the Tribunal was in line with his statement that (irrespective of what was agreed at the meeting) the Acrobat camera and laptop are appropriate for The Child's needs. Witness E indicated that a reference was made to a specialist software organisation CALL Scotland. That organisation produced an Assessment Report dated April 2017 (R42-46) setting out a full and detailed survey of the technological support in place for The Child at school. The report recommends no significant changes to the technological provision for The Child in school and suggests some small gradual changes. Given the terms of this report, it is clear to us that the technological support in place for The Child is adequate. There is no suggestion from Witness E or in the CALL Scotland report that any current equipment needs to be replaced. Further, The Child himself expressed a view against the use of an iPad in class, saying that he could not think of how it would be useful in the classroom. He described the Acrobat camera as being 'very useful'. In all of the circumstances, there is no evidence, from The Child himself or from those skilled in VI/technological equipment to support the replacement of equipment as being desirable. We therefore decline to require the

amendment sought. We do suggest, however, in comments below, that the Respondent reviews its practice on access to the Acrobat camera. We should add that given any lack of evidence about difficulties with The Child's VI provision, there is no basis in the evidence for the Appellant's concerns raised in submissions at A281, as summarised above.

Proposed change 14: VI communication with parents

83. The Appellant suggests the following addition to the 'Additional Support Required' part of the CSP:

“Specialist VI teacher to communicate termly with The Child's parents to ensure collaborative approach to VI.”.

84. There is no evidence to suggest that communication between VI staff and The Child's parents is an issue which should be addressed in the CSP. The evidence suggests that where required, a line of communication exists. For example, Witness E met with The Child and his father to test and discuss The Child's equipment needs (see Witness E's statement at R84). In any event, as Witness E explains, the VI service is provided to the school, not directly to the pupils. He indicates that direct routine communication between the VI service and parents is not standard practice and that the practice is to rely on the school to communicate with the parents of pupils. In our view this is a perfectly sensible practice. We can see how difficulties might emerge if there were more than one point of contact with parents about a child's educational needs. In a case such as this where The Child has multiple professionals from outwith the school having an input into supporting him, it is sensible not to have multiple channels of communication in place with the parents. It seems good practice to have a single channel, namely the school. This avoids additional work and reduces the risk of confusion. There is no evidence or reasoning to suggest that this practice should be changed, and any such change routed through the CSP would require a change in the VI unit's usual practice, which would not be reasonable and is certainly not required. We therefore decline to require the addition sought.

Proposed change 15: Equipment – sports wheelchair

85. The Appellant proposes a further amendment to the equipment list on page 10 of the annotated CSP (R99), namely the addition of the word 'replace' after the mention of 'Sports wheelchair' on the list. Her argument is that The Child has outgrown his current sports wheelchair. We are not convinced that it would be appropriate to provide in the CSP for replacement of equipment already listed there; the CSP states that a sports wheelchair is to be provided and one has been provided. The question of whether a replacement one is necessary is not something we feel should be specifically addressed in the CSP. In any event, as Witness B indicated in his evidence (his statement at R75) the usual course of action would be a recommendation from the physiotherapist for a replacement and such a recommendation has not been made to the school. Witness A in her oral evidence indicated that a new sports wheelchair would not be available on NHS funding but would need to be funded through charity funds. It is clear from her letter of support at A232 that Witness A takes the view that The Child has outgrown his sports wheelchair and that a replacement one would be beneficial to him.

86. However, in the absence of evidence that a recommendation has been made to the school, in our view it would not be appropriate to specify the need for such a replacement in The Child's CSP. In other words, the education authority has not been given an opportunity to consider a request for this replacement equipment. It seems to us that a way forward in this matter would be for Witness A, if she feels that such a step is justified, to make a formal recommendation to the school to consider a replacement sports wheelchair as equipment needed in connection with his education. Witness B in his statement (at R75) indicates that any such recommendation will be considered. In the meantime, however, we decline to require the amendment sought.

Proposed change 16: Staff training by physiotherapist

87. The Appellant proposes that the following words are added to the end of an agreed amendment which provides: 'Physiotherapy to work with and provide specialist training':

“...to 4 key identified people to assist The Child particularly in relation to moving and handling, termly.”

88. We have rejected another amendment in which the Appellant seeks the naming of staff members in the CSP (above) and the same reasoning applies here. We therefore decline to do so here.

89. On the remainder of the proposed addition, in our view such wording is unnecessary. It is clear to us that Witness A is providing support to staff at the school, and this support (along with the support provided to The Child at home) is outlined in Witness A's report at A234-235. We note that her schedule with The Child at school was changed at the Appellant's request. Witness A did not indicate in her written report or her oral evidence that any further support than that being provided and as specified in the current CSP is required. We note the detailed text on physiotherapy provision which already exists in the CSP. On the addition of the word 'termly' from Witness A's report at A234, her pattern of visits was to attend school for a standing frame review fortnightly. It is clear also from that report that such attendances involve working with support staff on moving and handling. It would not be appropriate, therefore, to restrict the wording to 'termly'. It may well be that the Appellant is referring to training specifically here, but given the nature of the advice provided by Witness A, it is clear that such advice to staff could, on any of her fortnightly visits, constitute training. Regular ongoing monitoring and advice such as that being provided seems to us to be appropriate, and no formal termly requirement to provide training is needed, nor is it recommended.

90. Having said this, it is clear from Witness A's evidence that there have been difficulties in handling The Child as he moves between various pieces of equipment. She has raised concerns about his mobility, and indeed made a referral to a specialist for a spinal opinion (A231), and a further request for an orthopaedic opinion (A233), both in March this year. We note that despite the detailed physiotherapy entry in the CSP, there is no reference to support for staff in the area of physical handling of The Child. Given the emphasis on this in Witness A's reports (see her comments on the standing frame at A233) it seems to us important for there to be wording in the CSP directed to the support required in this area. We therefore require the Respondent to add the following to the Physiotherapy part of the CSP (page 8 of the annotated copy at R97):

“Physiotherapy to provide regular support and advice to school staff involved in handling The Child on how best to physically handle him as he moves from one piece of equipment to another during the course of his school day.”

91. We also require the addition of the words “to relevant members of staff” to the end of the agreed addition on physiotherapy support so that that addition reads:

“Physiotherapy to work with and provide specialist training to relevant members of staff.”

This addition improves the wording sought to be inserted.

Proposed change 17: Handwriting

92. The Respondent has agreed to add the text “Scribe to be provided as required” to the ‘Additional Support Required’ part of the CSP. The Appellant proposes the addition of the following text to the “Additional Support Required” part of the CSP in her amendments to (D) original Case Statement (A244):

“Support functional handwriting practise”

93. Witness F in her evidence explains the position with The Child’s handwriting (see her statement at R67-68). On the scribe, Witness C indicates that a scribe supports The Child in Maths and in other subjects when needed (see her statement at R81). Witness F notes that The Child works well with his scribe, clearly articulating what he needs (see her statement at R69). It seems to us that the agreed amendment “Scribe to be provided as required” while vague is, in this instance, appropriate given that it seems that The Child uses a scribe in Maths but also, intermittently, in other subjects.

94. On the related issue of handwriting practice, we do not feel that an amendment to cover this is required in the CSP. Witness F is clear in her evidence that handwriting is not the best way forward for The Child to record information in connection with his schooling. She refers to the use of appropriate IT as the best such method. Sizing and spacing are noted as the main issues, and it is clear that Witness F has taken on board the Appellant’s concerns in this area and has made some practical suggestions (see her statement on all of this at R67-68). The Child himself did not raise handwriting or scribing as issues in his meeting with the panel.

Proposed change 18: Lunchtime trips

95. As indicated above, the relevant proposed amendment is related to the availability of named ASNs (SSAs). However, in fairness to the Appellant, we have considered whether an amendment to the CSP specifically to provide for the facility for lunchtime trips out of the school for The Child would be desirable. The Appellant’s position is that The Child could visit the local shops, as many of his peers do at lunchtime. The Respondent’s view is that the education authority does not have responsibility for pupils who leave the school grounds during their lunch hour; this is free time. We have decided against including any text on this point in the CSP. It is clear that if The Child were to take such a trip, he would have to be accompanied by members of staff. While this could be organised, especially given that The Child is accompanied by staff members during his lunch break anyway, in our view there are too many uncertainties for us to specify the need for such visits in The Child’s CSP. A risk assessment of the route would require to take place, and there may be timing

problems in getting The Child to the shops and back and allowing him to eat lunch all during the lunch break period.

96. In any event (and more importantly) The Child himself appeared not to be keen on such a facility when he spoke with the panel. While he did express the view that it might be nice to take such a trip once in a while, he also said that he couldn't see the point in doing so and that he wasn't bothered that he did not take such trips. He also referred to time constraints. It is clear to us that there is no strong desire on The Child's part for these trips. In addition, we have to bear in mind that the purpose of the CSP is to identify additional support required to meet a child's educational objectives. While the Appellant may wish to explore the possibility of such trips with the Respondent (taking into account The Child's views as a crucial factor in any such discussions) this is not a matter which is appropriate for inclusion in a CSP. We should add that we are not convinced that the Respondent's views on the nature of an education authority's responsibilities towards children during lunchtime is correct, but that is not a matter we require to explore to reach a decision in this case.

Proposed change 19: School trips

97. Again, although the change proposed relates to named ASNs (SSAs), in fairness to the Appellant we have considered whether an amendment to the CSP making provision in relation to school trips is required. The Respondent argues that reference to school trips should not be made in the CSP since some are not related to educational objectives and each trip requires to be taken on a case by case basis. Witness C confirms in her statement (R81) that The Child's needs are taken into account in relation to any proposed trip. The Appellant raised concerns about a trip planned to [the fairground] in June 2017. She indicated that there was no information from the school about arrangements for The Child to attend and that had such information been made available, he would have been able to make an informed choice about whether or not to attend. Witness C notes in her statement that the Appellant indicated that The Child did not wish to attend. The Child himself indicated to the panel that he did not wish to attend this trip due to the distance involved and the need to get up early to travel there. We note that The Child did not refer in his reasons to any concerns over support arrangements. A substitute trip to the cinema was offered to pupils who had not attended [the fairground].

98. It seems to us that The Child simply did not wish to attend the [fairground] trip. He made that clear in our discussion with him, along with his reasons. There was no other evidence about concerns around support for The Child on school trips. In our view, the nature of the support required for The Child will depend on the trip itself. In these circumstances, we think it would be very difficult to formulate meaningful and specific wording to be included in the CSP around support. No such wording was suggested by the Appellant or (D). We therefore decline to require any changes to the CSP in this area.

Proposed change 20 – Homework

99. Although the Appellant does not propose a specific change here, homework did feature in the evidence, and the Appellant refers to homework being 'overwhelming' for The Child (A281), so in fairness to the Appellant, we have considered whether an amendment to the CSP in this area is merited. The Respondent deals with this issue in written submissions under the maths tuition point (see R109-110). The Appellant indicated that The Child struggles with homework and becomes distressed. However, The Child himself seemed relaxed about homework when he spoke with the panel (see T41). He explained that he goes to the teacher if he has any problems with

homework and that the homework is as expected. Whenever he is unable to complete homework, he provides a reason and the teachers are usually reasonable about it. We note that any problems with homework do not appear to be impacting on The Child's good academic progress (see his positive Tracking Reports at R29-30). Overall then we cannot identify any need for support in this area which might be reflected in the CSP. We therefore do not require the addition of any text to the CSP in this area.

(B) Implementation of CSP

100. (D) in her Case Statement at A220-221 sets out instances which, it is argued, represent failures to implement the CSP under s.18(3)(d)(ia) of the 2004 Act.

101. On the implementation arguments at A220-221, some are too vague to be sustained. In particular, the reference to failure to approach The Child's disabilities in a holistic manner (A220, para 12). We agree with the Respondent's point that there is no specification to this claim. We cannot therefore sustain this argument.

102. On PEEP planning, again this lacks specification (A221, para 13). This paragraph simply states that the planning is not implemented, there is no detail on how this is the case. In any event, it is clear to us that the PEEP planning is in place. We comment on this above, and require the CSP to be amended in this area. Looking to the current content in the CSP (R94), there was no evidence from anyone to suggest that the support specified there (mainly around the plans and how they will be implemented and around training) is not in place. We cannot therefore sustain the view that this part of the CSP is not being implemented.

103. On VI support, the Appellant argues that there is no implementation (A221, para 14). However, only one example is provided, which is around the non-availability of certain equipment. However, the Appellant in her changes to (D) Case Statement removes that reference (A244) replacing it with a reference to the Sony camera, iPad and clamp. We have dealt with the Sony camera and iPad equipment issue above. This leaves a general assertion about non-implementation of the VI parts of the CSP. This is simply not supported by the evidence. We note above the agreed changes to this section of the CSP (R95, green text) and we have dealt with the proposed amendments (red text, R95). Looking to the black text at R95 (the CSP content in this area prior to amendment), it is clear from the evidence of Witness E and from the CALL Scotland Assessment Report (R42-46) that the terms of the CSP are being implemented. We cannot therefore sustain the view that this part of the CSP is not being implemented.

104. The Appellant argues that occupational therapy is 'lacking' and that healthcare implications are not taken into account throughout the day, having a negative impact on The Child's ability to access the curriculum (A221, para 15). The Appellant in her changes to the Case Statement adds that monitoring whole time, class time and contents of the curriculum is essential. In our view, it is clear that The Child is receiving adequate OT support and that the CSP content in this area is being implemented. That content is outlined in detail at R96, the black text being relevant (green text representing agreed changes since this reference was made). As the Respondent has noted, there is little specification about which parts of the CSP content are not being implemented. Nevertheless, having examined that content and taking account of the evidence of Witness F, we can see no implementation issues. Witness F outlines in detail in her statement (R64-69) the support being provided. That evidence covers the areas of support identified in the CSP. On the Appellant's additions, there is no evidence to support the need for whole time monitoring and it is

clear that Witness F's input includes aspects of The Child's curriculum. We cannot therefore sustain the view that this part of the CSP is not being implemented.

105. Finally on implementation, the Appellant alleges that there is a failure to encourage fluid intake. Further, it is argued that there is no monitoring of fluid intake or communication of such monitoring to The Child's parents (see the Appellant's submissions at A282). The relevant part of the CSP is at R98 under 'Community dietician'. SSAs are required to encourage fluid intake throughout the day. Again, the evidence suggests that this support is being provided. Witness D indicates that The Child is always encouraged to drink fluids (see her statement at R89). There is no evidence to contradict this. The Child himself was clearly aware of the need for hydration when he was asked about this by the panel (T41). He indicated that he is allowed to take Irn Bru in a cup attached to his wheelchair into class. This is further evidence of provision being made for regular fluid intake. We cannot therefore sustain the view that this part of the CSP is not being implemented. There is an obligation in the CSP to report that back to parents on fluid intake (via the diary). There is no evidence to suggest that this system is not being followed. Again, as with content arguments, the burden of proof is on the Appellant to establish non-implementation.

106. The Appellant in her written submissions directed us to two previous decisions of the Tribunal which she asked us to consider, namely those with the following reference numbers: ASNTS/DDC and ASNTS/R. These relate to an implementation reference and a disability discrimination claim in which the present Appellant was the Appellant/Claimant. These cases, both from 2013, related to provision for The Child during guitar club, an extra-curricular activity The Child attended at that time. In our view, these cases are not relevant to the issues in this case. There is no evidence to suggest that The Child still attends guitar club, and there is no provision for such attendance in his current CSP. The fact that the Tribunal has found against the Respondent in connection with implementing The Child's CSP on a previous occasion is not, of itself, relevant to a CSP implementation argument in a later case such as this one where the issues are different. We therefore did not place any weight on these previous decisions.

Further comments

107. Although not part of our formal decision reasons, we have three observations we would like to make which arise out of this case, and which we hope might be of some assistance to The Child and the parties.

108. Firstly, on the Acrobat camera, The Child indicated to the panel that he would probably use this equipment more often and in preference to his glasses, if it was set up in advance of class more often. He felt that the school's default position was that he would use his glasses. We did not feel that we should make an amendment to the CSP about this, but we would recommend that the school reviews its practice in this area, assuming that The Child continues to be of the view expressed to the panel. It may be that the equipment could be set up in advance of The Child's classes more often than is currently the case.

[paragraph 109 is removed for reasons of confidentiality]

110. Finally, we wish to commend the Respondent and the school for its efforts and work in making The Child's education as comfortable and productive as possible. We have required the making of some changes to the CSP, but these changes all simply

reflect practice already underway in the school. It is clear to us that enormous efforts have been made and continue to be made for The Child and that as a result his school experience is a very positive one.