DECISION OF THE TRIBUNAL

Background

(1) The **appellant** is mother of **the child**. Together the appellant and the authority are referred to as **the parties**.

(2) The appellant was represented by a solicitor. The authority was represented by a solicitor. The appellant made a placement request in terms of paragraph 2(2)(a) of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) by letter dated 3 November 2016 requesting the authority to place the child in School A (**School A**). The authority refused that request by letter dated 21 December 2016 (page T11 of the papers before the Tribunal) on the basis that the duty of the authority to meet the fees and other necessary costs of the child's attendance at School A, did not apply by virtue of paragraph 3(1)(f) of schedule 2 to the 2004 Act. The authority's decision refusing the placing request is a decision specified in section 18(3)(da)(ii) of the 2004 Act. The appellant is a person specified in section 18(2)(a) of the 2004 Act. In terms of section 18(1) of the 2004 Act, the appellant referred the decision of the authority to the Tribunal by notice of reference dated 20 February 2017.

(3) This reference now falls to be determined.

1. Procedural history

(1) Case conferences took place by telephone on 2 June and 11 August 2017. Both case conferences took place between the convener and the representatives of the parties.

(2) Directions were made by the convener on 2 June, 7 August, 9 August, 24 August and 13 September 2017.

(3) The reference proceeded to an oral hearing on August 2017.

2. Preliminary matters

(1) At the beginning of the hearing the convener explained the procedure which the Tribunal proposed to adopt in the hearing, which the parties accepted.

(2) Thereafter, the appellant sought to lodge a number of documents and there being no opposition by the authority and the Tribunal being satisfied that in all the circumstances it was fair and just to do so, the Tribunal allowed those documents to be lodged.

(3) The day before the hearing, the authority submitted witness statements. These had been submitted late. There being no opposition by the appellant, the Tribunal, being satisfied in all the circumstances that it was fair and just to do so, accepted the witness statements as lodged.

3. Further procedure

(1) The witness statement of Witness B set out Witness B's evidence in chief in respect of the respective costs of the child attending School A and School B (**School B**) (where the child is currently placed).

(2) Paragraph 18 of Witness B's witness statement set out her evidence in chief in respect of the costs of School A and School B. Given that the evidence about costs had been made available to the Tribunal and to the appellant only on the afternoon of 21 August 2017; given that the authority – despite being asked to make absolutely clear its position with regard to a potential argument about costs at the case conference on 2 June 2017 and subsequently in an email in advance of the case conference which took place on 11 August 2017 – only explained that it would wish to make an argument on the basis of costs by email sent at 11:38 am on 11 August 2017; and given that in cross-examination and on questioning by the Tribunal questions arose as to the basis of the calculation of the costs set out in Witness B's witness statement, the Tribunal after discussion with the parties' representatives, decided to allow a period of time for the authority, if so advised, to lodge a supplementary witness statement by Witness B addressing the matter of costs and for the authority to lodge along with that witness statement any submissions it wished to make on that evidence. The Tribunal explained it would thereafter allow a further period of time for the appellant to consider any such supplementary witness statement and to lodge submissions in respect of that supplementary witness statement and to request any such further procedure as the appellant thought appropriate.

(3) On 24 August 2017, the convener made a direction requiring the appellant, if so advised, to lodge said supplementary witness statement, and along with it any

submissions, no later than 31 August 2017 and requiring the appellant to lodge any submissions on said supplementary witness statement no later than 7 September 2017.

(4) On 11 September 2017, at the request of the parties' representatives, the convener made a direction requiring the parties to lodge written submissions no later than 5:00 pm on 13 September 2017. Parties lodged written submissions on 13 September 2017.

4. Documentary evidence and witnesses

(1) The Tribunal had before it a bundle of papers comprising papers numbered T1 to T31, A1 to A139 and R1 to R187.

(2) The Tribunal heard oral evidence from **Witness A**, Principal Educational Psychologist for the authority; **Witness B**, Learning Support Manager employed by the authority; **Witness C**, school teacher at School B; the **appellant**; and **Witness D**, a consultant in public health with NHS and half-sister of the child.

5. The child's views

The child's views were obtained by a children & young person's advocacy worker, and set out in a report for the Tribunal dated 21 August 2017, being one of the documents referred to above which was lodged at the beginning of the hearing by the appellant. The Tribunal had regard to those views.

6. Relevant statutory provisions

(1) The principal relevant statutory provisions which the reference concerned are noted below.

Education (Additional Support for Learning) (Scotland) Act 2004

(2) Section 4 of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) provides that:

> **"4 Duties of education authority in relation to children and young persons for whom they are responsible**
> "(1) Every education authority must–
> (a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make

adequate and efficient provision for such additional support as is required by that child or young person, and

(b) make appropriate arrangements for keeping under consideration–

(i) the additional support needs of, and

(ii) the adequacy of the additional support provided for,

each such child and young person.

(2) Subsection (1)(a) does not require an education authority to do anything which–

(a) they do not otherwise have power to do, or

(b) would result in unreasonable public expenditure being incurred."

(3) Paragraph 2(2) of schedule 2 to the 2004 Act provides that–

"2 Duty to comply with placing requests

…

(2) Where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being–

(a) a special school the managers of which are willing to admit the child,

(b) a school in England, Wales or Northern Ireland the managers of which are willing to admit the child and which is a school making provision wholly or mainly for children (or as the case may be young persons) having additional support needs, or

(c) a school at which education is provided in pursuance of arrangements entered into under section 35 of the 2000 Act,

it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school."

(4) Paragraph 3(1)(f) of schedule 2 to the 2004 Act provides–

"3 Circumstances in which duty does not apply

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

…

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

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

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

(iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and

(iv) the authority have offered to place the child in the school referred to in paragraph (ii) …"

(5) Section 19(4A) of the 2004 Act provides–

"19 Powers of Tribunal in relation to reference

(4A) Where the reference relates to a decision referred to in subsection (3)(da) of that section the Tribunal may–

(a) confirm the decision if satisfied that–

(i) one or more grounds of refusal specified in paragraph 3(1) or (3) of schedule 2 exists or exist, and

(ii) in all the circumstances it is appropriate to do so,

(b) overturn the decision and require the education authority to–

(i) place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and

(ii) make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require."

7. Matters in Dispute

(1) The ground of refusal relied upon by the authority in its letter of 21 December 2016 refusing the placement request and maintained before the Tribunal is that set out at

paragraph 3(1)(f) of schedule 2 to the 2004 Act. It was a matter of agreement between the parties before the Tribunal that conditions (i) and (iv) of the ground of refusal set out at paragraph 3(1)(f) of schedule 2 to the 2004 Act applied.

(2) The dispute between the parties was whether conditions (ii) and (iii) applied. Those conditions are:

> (ii) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
>
> (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school.

(3) It was a matter of agreement between the parties that the onus was on the authority to satisfy the Tribunal that conditions (ii) and (iii) set out in the preceding paragraph applied as at the date of the hearing before the Tribunal.

(4) In short, it was a matter of agreement that to maintain the ground of refusal it was for the authority to satisfy the Tribunal that:

> (ii) the authority are able to make provision for the additional support needs of the child in School B, and
>
> (iii) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and in School B, to place the child in School A.

8. Findings in fact

(1) The child is a 14 year old boy born 2003. He lives with his parents, the appellant and her husband.

(2) The child has global developmental delay, drug resistant epilepsy, communication difficulties, very limited vocabulary with no writing or reading skills, autistic tendencies, and very limited independent living skills requiring assistance with basic tasks. As a result of

the child's drug resistant epilepsy, he has frequent major and prolonged seizures. The child has seizures on an almost daily basis and requires medication to be administered to manage those seizures. The child has additional support needs in terms of section 1 of the 2004 Act.

(3) The child requires 1:1 support in order to meet his physical and educational additional support needs.

(4) The child requires to be closely monitored at all times. At home, precautions have to be made to keep the garden gate and house doors locked to prevent the child from wandering away from home. On more than one occasion the child has been able to do so, but has been recovered and brought back home.

(5) The child would benefit from *inter alia* being taught by a teacher with training in and experience of teaching children with complex additional support needs; from educational engagement in ways which encourage him to vocalise and communicate; from educational engagements in ways which encourage him to develop life skills such as dressing; and from exposure to a wider peer group of children of his own age, development and capabilities with whom to interact.

(6) The child's most up to date co-ordinated support plan is contained in the child assessment plan document (at pages A148 to A180 of the papers) dated 17 January 2017. It sets out the educational objectives for the child. Those objectives have not altered significantly in approximately two years.

(7) The child attends School B. School B is an additional support needs educational unit for children with additional support needs. It provides education for between six and eight children at any one time, the children being from a variety of age groups from pre-school to 18 years. As well as the child, there is one child who is three years older, one child who is the same age, one child who is a year younger and four children who are under 10. None of the children at School B are fully verbal for their age.

(8) School B has one school teacher and eight learning support auxiliaries. The current school teacher at School B, Witness C, has been in post since August 2016. Witness C is a qualified school teacher. Prior to taking up this post, Witness C had only very limited experience of teaching a number of children with additional support needs, having had supply teaching experience with additional support needs children. Witness C has no

specialist qualifications in respect of teaching children with additional support needs. Six of the learning support auxiliaries at School B are full-time and two are part-time.

(9) School B comprises two classrooms and a number of other areas. Teaching and provision of support to pupils attending School B takes place across each of these areas at different points throughout the school day. At certain points throughout the school week, the entire pupil population of School B comes together for teaching support and group activities.

(10) Witness C, as well as being the sole school teacher at School B, has responsibilities for the administration of School B and for overseeing the work of the learning support auxiliaries.

(11) The child is collected from his home each school day morning by minibus and taken to School B or, if he has been in respite care the previous evening, the respite care staff will take the child to School B. At the end of the school day, the child will be taken to his home by minibus with one of his parents collecting him from the bus or, alternatively, if he is attending respite care that evening, the minibus will take him there.

(12) The school day at School B commences at 9:00 am and ends at 2:45 pm. Lunchtime is from 12 noon until 1:30 pm. There is a break from 10:30 until 11:00 am.

(13) A number of the learning support auxiliaries were involved in transporting pupils at School B from their homes or respite care to school and back again. This caused severe problems as it added significantly to the responsibilities of support auxiliaries, significantly reduced the already limited time which Witness C had to brief, de-brief and instruct the support auxiliaries, and meant that staff were not available at the school to welcome children as they arrived. This issue of support auxiliaries transporting pupils has not yet fully been resolved. Transport is unreliable. On occasion, the transport which is due to collect the child at 8:45 am to have him at school for 9:00 am does not arrive at the child's home until 9:00 am. On occasion, the transport has not appeared at all.

(14) The child is provided with respite care in the form of 3 three-hour sessions each week, on Tuesday 3:00pm to 6:00 pm, Thursday 3:00 pm to 6:00 pm and Saturday 10:00 am to 1:00 pm in term time, with an additional three-hour session per week during school holidays. The child attends Action for Children outreach during term time and during these sessions he will watch a DVD or go for a walk if the weather is good, being given a snack

or a drink. The child also has two overnight respite stays per calendar month, also run by Action for Children. In addition, there are a total of 21 nights floating respite available throughout the year. The respite package which was agreed in November 2015 had not been put in place by April 2016 despite the fact that it was noted that the child's family were reaching the point of not being able to cope.

(15) The child requires to be supervised at all times, both at home and at school, due to his medical needs and lack of a sense of danger.

(16) School A is a specialist school for children with a wide range of additional support needs. School A offers a highly structured environment and consistency of approach. It offers a specialised and bespoke educational programme for each pupil tailored to their individual needs. School A provides a residential teaching environment with a cohort of pupils significantly larger than that at School B, with a broader range of abilities and verbalisation. It is able to provide education in a broad sense to the child in a residential setting, offering a combination of school education and community life and structure and access to a wide range of therapies which would facilitate the child's communication and development of independent living skills. School A is a specialist provision for children who have a wide range of additional support needs. It offers a highly structured environment and consistency of approach. It offers a specialised and bespoke educational programme for each pupil, tailored to their individual needs. School B cannot make the same specialist level of provision which School A provides.

(17) By a letter dated 2 November 2016 (at page T13 of the papers), School A thanked the appellant and her husband for attending at the school with the child for a visit/interview on Thursday, 20 October 2016 and informed the appellant that the school's admissions and review committee thought the child would be a suitable candidate for School A.

(18) The appellant made a request for the child to be placed at School A School, Aberdeen. That request was refused by the authority on 21 December 2016 (see page T11 of the papers).

(19) Witness A and Witness B attend School B on occasion as required, to observe pupils, carry out assessments and the like. They are not based at School B and do not spend most of their time there.

(20) School B has two classrooms and a number of different areas in which the children are educated and spend their time. Witness C, the sole school teacher at School B, does not have dedicated administrative support. At appointment in August 2016, Witness C had limited experience of teaching children with additional support needs and was not provided by the authority with training to equip her for her role at School B. Witness C required to undertake her own researches and identify modes of training which she thought would assist her. Witness C was employed on a temporary basis until Christmas 2016. During the Christmas holidays, she was asked to return and she taught until Easter 2017. During the Easter holidays, she was asked to return and she taught up until the summer holidays in 2017. Witness C has been asked to return after the school summer holidays. Witness C still does not have a full-time contract with the authority. On taking up post at School B in August 2016, the atmosphere was chaotic, staff demoralised and distressed with a lack of systems in place to ensure the efficient and effective running of School B.

(21) The authority has not provided Witness C with training or sufficient support in carrying out her role at School B.

(22) The child attends the School C for approximately one hour each week for a music session with children from School B and with children from the School C itself.

(23) School B is not a school in its own right, but is a learning unit.

(24) Witness C is the sole school teacher at School B responsible for six full-time and two part-time support auxiliaries and the education of eight children, all with additional support needs, across a wide range of ages. Witness C has extremely limited contact with the child as a teacher as a result of the physical environment, absences from school on school business, teaching other children, dealing with behavioural matters and carrying out administrative duties.

(25) The child verbalises most effectively when he is engaged and active, for example when he is swimming. The child is taken swimming two days a week, on Monday and Tuesday mornings. The child attends whole school events at various points in the school week, in particular on Fridays when generally the whole day is given over to whole school activities including external visits and singing. The child has access to speech and language therapists, approximately 30 minutes in each week.

(26) The child has made limited progress over recent years. An objective since 2009 has been for the child to hang his coat on a coat peg, but as yet he is not able to do so unassisted. The child is not able to dress himself.

(27) The child is very active and, given the opportunity, would flee and he requires to be in a structured environment at all times so that he does not have the opportunity to do so. The focus of the child's education is on promoting speech and language and in developing independence so far as possible. The child requires input not only from teaching staff, but from health professionals. The child has drug resistant epilepsy with frequent major and prolonged seizures. He has seizures on an almost daily basis and requires medication to be administered to manage the risk associated with those seizures. He requires 1:1 support to manage this. The child has no sense of danger.

(28) The child is provided with an iPad at school but is not permitted to take it home. His parents provide him with an old iPad at home, which he uses to watch and rewind and re-watch YouTube videos. The child's co-ordinated support plan dated January 2017 identifies that he should be provided with the use of an iPad with a Pictello app. A Pictello app promotes communication skills. The child has not yet been provided with this app.

(29) The child has a communication book which he should use but does not. The purpose of using the book is to improve his ability to communicate with people with whom he is unfamiliar. Use of this book is not pursued with the child by staff at School B. The support auxiliaries at School B are trained in Picture Exchange Communication System (**PECS**). It is important that this system is used, as it facilitates communication between the child and people with whom he is not familiar (i.e. people other than family members and School B staff). It is intended that PECS should be used regularly throughout the course of the day to facilitate the child's communication. This does not happen.

(30) The child would be likely to benefit from exposure to a larger group of same age peers of similar abilities. Such exposure would be likely to encourage interaction and communication by the child.

(31) The cost of placing the child at School A on the basis that he would reside there during term time only is approximately £155,544.

(32) The cost of placing the child at School B is approximately £103,436.

9. Reasons for the decision

Is the authority able to make provision for the additional support needs of the child in School B?

(1) At the hearing, the authority offered to satisfy the Tribunal that it is able to make provision for the additional support needs of the child in School B.

(2) The Tribunal was not satisfied that the authority is able to make provision for the additional support needs of the child in School B.

(3) The Tribunal carefully considered the evidence before it, in particular the witness statements and oral evidence of Witness A, Principal Educational Psychologist for the authority; Witness B, Learning Support Manager employed by the authority; and Witness C, school teacher at School B.

(4) The Tribunal noted the involvement of Witness A and Witness B with School B and with the child. Neither Witness A nor Witness B are based at School B. They do not spend all, or the majority, of their time at School B. Witness C, being the sole school teacher at School B, does spend the majority of her time there. It appeared to the Tribunal that the most pertinent evidence was the evidence of Witness C concerning the day to day experience at School B. The Tribunal found Witness C to be candid, open, honest and straightforward in her evidence. The Tribunal was of the view that Witness C is a competent and thoughtful school teacher doing her best in trying and difficult circumstances. The Tribunal makes no criticism of Witness C and makes clear that any statement in this decision which might be construed as a criticism of Witness C is not intended as such. It is a criticism of the authority.

(5) The Tribunal was concerned by the short school day at School B which, as agreed by the parties in their Minute of Agreement, runs from 9:00 am until 3:00 pm with a lunch break from 12 noon until 1:30 pm and a morning break from 10:30 am until 11:00 am. The Tribunal noted from documentary evidence before it (for example at pages R138 ff.) that the timetable for the school day ends at 2:45 pm and the period from 9:00 am until 9:30 am is essentially for the children to be welcomed, remove their coats and so on and be settled. While the Tribunal appreciated that pupils will learn and gain experience during periods such as the 30 minute morning break and the 90 minute lunch period, nevertheless it appeared to the Tribunal that the school experience offered to pupils at

School B each day is very short. Ms Witness B accepted that the school day at School B was short and not in line with national expectations.

(6) The Tribunal was concerned that School B has only a single school teacher who is responsible for the provision of education and support direct by herself and through eight learning support auxiliaries (six full-time, and two part-time) to up to eight children, all with additional support needs across a broad range of ages from pre-school to 18 years old across a physical environment comprising two classrooms and other areas used for educating and supporting the pupils, and indeed outwith School B (such as swimming, which takes place each week).

(7) The Tribunal noted that Witness C was appointed to her role at School B in August 2016. Witness C is a qualified school teacher with a BA Hons. degree in English. She took up her post at School B in August 2016 on a temporary basis. Witness C advised that she has worked full-time at School B since then, but on a piecemeal basis, having worked up until Christmas 2016 and, on being asked to come back, working up until Easter and then, having been asked to come back, working up until the summer holidays of 2017, thereafter having been asked to come back Witness C advised that she is in the process of agreeing a full-time contract with the authority. The Tribunal was concerned that this piecemeal approach to the provision of the single teacher at School B was unsatisfactory, over a prolonged period of time, in terms of the provision of teaching, leadership at School B, administrative planning and the provision of support to the learning support auxiliaries at School B.

(8) The Tribunal was concerned that Witness C, who has no specialist qualifications in respect of teaching children with additional support needs and only a small amount of supply teaching experience of teaching children with additional support needs, has been put in place at School B as the sole teacher overseeing eight learning support auxiliaries without being provided by the authority with specific relevant training or adequate support. Witness C informed the Tribunal that she felt unsupported and was not provided with continuing professional development relevant to her role. Witness C explained that on taking up the post at School B, she was not provided with any specialist or tailored training for the role which she was undertaking on a temporary basis. Witness C explained that she herself had arranged to undertake a module of a Masters degree in inclusive practice. Witness C explained that she herself had found a book on intensive interaction, a

significant learning technique for children with additional support needs, as she was not familiar with it. As well as buying the book, Witness C sought advice from the speech and language therapist. This appeared to the Tribunal to indicate a significant failure on the part of the authority in providing appropriate training and support for Witness C.

(9) Witness C explained that when she took up her post at School B, the learning support auxiliaries were acting as escorts for the travel of pupils to and from School B. This added significantly to their responsibilities and she found that the staff were distressed. The consequence of the learning support auxiliaries being involved in transporting pupils to and from School B was that staff were not available to welcome children into the school and there was no time for Witness C to have discussions with those staff as to the requirements to be met each day in respect of the pupils. Witness C advised that while in 2017 she has arranged for separate escort staff, the issue is not yet resolved and she still does not have sufficient time to brief, debrief and instruct the auxiliary staff. The Tribunal was concerned by the ongoing difficulties of the single school teacher at School B being able to engage appropriately and effectively with the learning support auxiliaries, who are vital in providing the necessary support to pupils at School B on a daily basis. Witness C explained that when she commenced working at School B in August 2016, she found School B to be chaotic, with a lack of systems in place for its efficient and effective running, and explained that she required to put together timetables and learning logs and home school diaries for the pupils. Witness C explained that School B is not a school but rather, she thought, was a standalone unit, and her understanding was that the child's catchment school was the School C although she explained that when she made enquiries there, the School C did not appear able to identify the child on its roll.

(10) Witness C explained that she has extremely limited contact with the child as a teacher, given the physical working environment she is working in (across two classrooms and various other areas used by pupils); her having to deal with behavioural issues with other pupils in the course of each day; and her administrative responsibilities. The Tribunal was concerned by the limited contact the child has with a school teacher in School B. The Tribunal was concerned that Witness C, as the sole school teacher at School B and with responsibility for eight learning support auxiliaries, is not provided with dedicated administrative support to assist her.

(11) Witness C explained that the child in fact communicates well with staff without using either his communication book or PECS. She explained that the child understands what the staff say and that they are able to understand him. Witness C explained that the importance of using PECS with the child is that this is a means by which he would be able to communicate with people who are not familiar with him and with whom he is not familiar (e.g. people other than the School B staff). Witness C explained that due to the issues of staff resources and the demands on staff in dealing with other pupils throughout the course of the school day, they simply do not have the time or opportunity to pursue the use of PECS, particularly at lunchtime, as much as in her view they should or would wish to. Witness C explained that the child is reluctant to use his communication book, and again this is not pursued with him. This failure appeared to the Tribunal to be particularly significant given the aim of developing the child's potential to live as independently as possible and the importance to that aim of the child being able to communicate with people who may be unfamiliar with him. This failure also appeared particularly significant given that in the child's co-ordinated support plan (at page A170 of the papers) additional support required was identified as "Those in his environment will model good practice, provide varied opportunities and will model use of his communication book" in respect of the child's Language & Communication objective.

(12) Witness C explained that after taking up her post at School B and pursuing the matter with the authority's IT department, she was able to obtain iPads for pupils. However, the iPad made available to the child – which is a standard iPad – is not used as a communication aid, but is used for the purposes of taking photographs and for engaging with the child only in matters of recall. The child is not able to use the iPad provided in school unaided. The iPad is not made available to the child to take home and he has a separate iPad at home, provided by his family, which he uses to do such things as watching videos uploaded to YouTube. The Tribunal was concerned that the iPad provided for the use of the child in school is not being used as a communication aid, particularly in light of the fact that in the child's co-ordinated support plan dated 17 January 2017 (at page A171 of the papers) additional support required included "Provision and use of iPad with Pictello app to be programmed to allow [the child] to press to give some news or to independently look at favourite books. To be used at least 3 times a week" in respect of the Language & Communication educational objective. The Tribunal was concerned to

note that the child had not been provided with the Pictello app by the time of the hearing and there was no indication given when, or if, this app would be made available.

(13) The Tribunal was concerned to note that, despite dressing himself being an objective for the child since he started at School B, the appellant had noted (at page A211 of the papers before the Tribunal) that little progress had been made with regard to this objective. The Tribunal was concerned not only by the lack of progress, but by the apparent lack of effort to accelerate progress with regard to that objective by, for example, the effective linking of that objective with an incentive for the child to meet it.

(14) The Tribunal was concerned to note that, despite it being noted in a letter of 13 January 2009 by the paediatric occupational therapist that "[the child] should be encouraged to hang up his jacket and the school will consider the placement of his hook to determine whether an alternative location may make it any easier e.g. end of row" (at page A112 of the papers), the learning logs at pages A220 to A239 of the of the papers covering 2016 indicate that this is something which the child is not yet able to do independently. While Witness A commented that this task was not particularly motivating for any child, it is nevertheless concerning that such a basic task was identified so long ago and so little progress has been made in the time since then towards achieving it or in identifying some factor to motivate the child to achieve this objective.

(15) The Tribunal was concerned to note that on 22 June 2017 (at page A111 of the papers before the Tribunal) the speech and language therapists had identified that the child may benefit from a setting with a greater number of same age peers of similar level to encourage his interaction and communication skills, but there was little evidence before the Tribunal that that possibility had been pursued or that it was likely to be acted upon.

(16) The Tribunal was concerned to note that in the CSP (at page A171 of the papers) additional support required included "Referral for assessment for Music Therapy sessions" for Language & Communication educational objective but that, despite the fact that the CSP was dated 17 January 2017, no music therapy was in place at the time of the Tribunal hearing and there was no indication when this therapy would be made available.

(17) The Tribunal was concerned to note from the email of 22 April 2016 from Team Leader Children and Families (at page A293 of the papers) that the respite package signed off in November 2015 had not been progressed by that date, despite the fact that it was noted in that email that there was a genuine possibility of the child's family reaching a

point of not being able to cope. While the Tribunal noted that the respite package in place at the time of the Tribunal hearing was accepted as adequate by the appellant, against the background of the matters referred to above this example of delay in providing a resource as important as the respite package indicated failures of communication and effecting action within the authority.

(18) This sense of failures of communication and effecting action within the authority was heightened by the email correspondence in December 2016 at pages A214 to A215 of the papers in which Social worker, social worker, states that she does not know who the lead professional for the child is, and the reply indicating that Social worker will herself become the lead professional states "Need to review this process once completed as it is clearly not how it should be. Too many separate plans and assessments".

(19) In light of the foregoing, given that the principal structure by which the authority seeks to meet the child's additional support needs is his placement at School B, the Tribunal was not satisfied that the authority is able to make provision (see section 4(1)(b)(ii) of the 2004 Act) in respect of the child's additional support needs and, with no evidence from the authority as to how it proposes to do so – whether by providing training for the class teacher, additional resources (in particular so that the use of PECS can be pursued with the child in an appropriate and structured fashion, further improvements to transport arrangements, provision of a Pictello app for the child, improved use of iPad to facilitate communication in school and allowing the iPad to be taken home, or securing a music therapist, for example – the Tribunal was not satisfied that the authority is able, or will be able in the foreseeable future, to meet the child's additional support needs at School B.

Is it not reasonable, having regard to the respective suitability of the provision for the additional support needs of the child in School A and in School B to place the child in School A?

(20) At the hearing, the authority offered to satisfy the Tribunal that it was not reasonable, having regard to the respective suitability of the provision for additional support needs of the child in School A and in School B, to place the child in School A.

(21) The Tribunal was not satisfied that it was not reasonable, having regard to the respective suitability of the provision for additioinal support needs of the child in School A and in School B, to place the child in School A.

(22) In its final written submission, the authority stated at paragraph 22:

> "Witness A and Witness B accepted that School A would be able to offer adequate provision for [the child] in respect of his ASN. Witness C accepted that the therapies on offer there would support his education. It is not submitted on behalf of the Authority that School A could not meet [the child's] ASN."

(23) In its final written submission, at the end of paragraph 24, the authority stated:

> "…School B cannot make the same specialist level of provision which School A provides, but it must be borne in mind that the extent of the Authority's duty is to make adequate provision, which it does, or at least is able to do, at School B."

(24) The Tribunal was satisfied that School A would be a suitable and reasonable placement for the child in terms of accommodation, curriculum, staffing, therapies, teaching and ethos. School A is a respected institution with well qualified staff, medical support available to pupils on campus, and offering a wide range of therapies that may be of benefit in engaging the child in communication and developing, so far as possible, independent living skills.

(25) The authority maintained that it was not reasonable to place the child at School A because to do so would separate him from his family, separate him from his local community and separate him from his established peer group at School B and the School C.

(26) In considering whether the condition at paragraph 3(1)(f)(iii) applied, even if the Tribunal had been persuaded that there was significant force in respect of each of these three separation factors (which it was not), the Tribunal would still have found that this condition does not apply. The reason for that is that the appellant appeared to the Tribunal to be an intelligent, sensible, caring mother who wished to do only what she reasonably assessed was best in the child's educational and developmental interests. The Tribunal was satisfied that the appellant had properly considered the issues of separation of the child from his family, local community and peer group and, having considered those issues and weighed them (along with the staff, staffing arrangements, medical support, range of therapies, curriculum and the range of the student body available at School A and at School B), it was still entirely reasonable for the appellant to have the child placed at School A.

(27) With regard to the child's separation from his family, the Tribunal noted the terms of the report referred to in paragraph 6 (the child's views) above setting out the child's views on various matters. In particular, the Tribunal noted from that report that the child enjoys the time he spends in respite care and feels happy, relaxed and safe during those respite sessions and that he has got used to and settled into overnight respite weekends very quickly and very happily and that such experience might help him if he were to live away from home. The Tribunal noted that in her oral evidence Witness A stated that she thought that the advocacy report was a very accurate report, capturing the child really well and confirming some of her own views.

(28) The evidence before the Tribunal was that the appellant's intention was that the child would come back at the end of each term and that the appellant and her husband would visit him at School A during term time. The Tribunal also noted the evidence of Witness D that she and her husband and their two sons – the child's cousins – live only an hour's journey from School A. Witness D explained that the child and her sons have a loving relationship. In current circumstances, they see one another only a few times a year, but Witness D stated that it would be much easier for her and her family to visit the child if he were at School A.

(29) With regard to the child's separation from his local community, the appellant was quite clear that the child was either in the care of School B, in the care of her and her husband or in the care of the respite service. Given the child's development, it appeared to the Tribunal that maintaining links with the local community was not a significant reason to prevent the child being placed at School A. The Tribunal was satisfied that if the child was placed in School A, he would continue to be seen from time to time by officials of the authority and that when in the future, if the child is to return full-time, appropriate arrangements to effect that transfer would be able to be made timeously, just as the authority would make arrangements for any other child with similar developmental issues and support needs. These points had been accepted by Witness A.

(30) With regard to the child's separation from his established peer group at School B and the School C, the Tribunal again noted the statement in the letter of 22 June 2017 (at page A111 of the papers) from the speech and language therapist that:

> "It is possible that [the child] may benefit from a setting with a greater number of same age peers of a similar level to encourage his interaction and communication skills."

(31) On the one hand, at School B the child has access to a very limited group of children of his own age, development and capabilities with whom to interact. One of the advantages, as the Tribunal understood it, that the appellant perceives in the child being placed at School A is that he would have access to a larger peer group with whom to interact. It appeared to the Tribunal that the appellant's reasonable hope and expectation was that exposure to a larger peer group would encourage the child to vocalise and so would lead to improvement in his communication skills and allow him the opportunity to develop interpersonal and independent living skills to a greater degree than he is able to do at School B. With regard to the School C, the Tribunal noted that the child has only very limited attendance there.

(32) For the foregoing reasons, the Tribunal was not satisfied that it is not reasonable, having regard to the suitability of the provision for the additional support needs of the child in School A and in School B, to place the child in School A.

Is it not reasonable, having regard to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and in School B to place the child in School A?

(33) At the hearing, the authority offered to satisfy the Tribunal that it was not reasonable, having regard to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and in School B, to place the child in School A.

(34) The Tribunal was not satisfied that it was not reasonable, having regard to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and in School B, to place the child in School A.

(35) It appeared to the Tribunal that in the course of these proceedings the authority took a somewhat casual approach to the issue of costs as between School A and School B. At paragraph 17 of the authority's response (at page R3 of the papers) the authority stated:

"…The Authority did not refuse the Appellant's placing request on the ground of cost (in that placing [the child] at School A School would incur unreasonable public expenditure or otherwise)."

(36) This matter was raised at the case conference on 2 June 2017. The note of the case conference prepared by the convener records:

"17. I asked that the minute of agreed facts should address the cost of placing the child at School A School. Solicitor for the authority referred to paragraph 17 of the response (at page R3 of the papers) which indicates that cost was not a ground for refusing the placing request.

18. I asked Solicitor for the authority to take instructions on this matter. I wished to be certain that in terms of condition (iv) of paragraph 3(1)(f) of schedule 2 to the 2004 Act – which concerns considerations of the reasonableness of the respective suitability *and* the respective cost of School A School and School B Learning Centre – that the Tribunal need only turn its mind to the matter of suitability and need not have regard at all to the matter of cost. If that is the case then we should all be absolutely clear on that. If that is not the case then the Tribunal will require the minute of agreement to address the issue, amongst others, of the respective cost (including necessary incidental expenses) of School A School and School B Learning Centre" (italics as in original text).

(37) On 9 August 2017, Solicitor for the authority wrote to the Tribunal's Administration via email stating:

"In relation to paragraph 18 of the note of the case conference call on 2 June 2017 the Respondent does not argue that the placement at School A would be unreasonable on the ground of respective costs (including necessary incidental expenses) as between School A and School B Learning Centre. The Respondent believes that the child's needs would be better met at School B Learning Centre and therefore the placing request was refused on the ground of suitability (not cost)."

(38) Shortly before a case conference scheduled to take place at noon on 11 August 2017, Solicitor for the authority again wrote to the Tribunal's Administration via email (the penultimate sentence of which appears to make clear that if – as the Tribunal now has – the Tribunal finds that the child's needs are not being met at School B, then the authority

would not argue that, on grounds of cost, it would be unreasonable to place him at School A) stating:

> "In advance of the case conference at 12 pm, I have been instructed to clarify the Respondent's position in relation to point 1 of my email below. The Respondent's primary argument is that the child's needs are met at School B Learning Centre and that placement at School A School would not be suitable, and therefore it is not reasonable to grant the placing request regardless of cost. If the Tribunal were to decide that the child's needs were not being met at School B then the Respondent would not argue that, on grounds of cost, it would be unreasonable to place him at School A. However, if the Tribunal were to consider that both schools were suitable, then the Respondent would argue that, on the ground of the costs of the respective schools, it would not be reasonable for the child to be placed at School A."

(39) The witness statement of Witness B, which made reference to costs of the child attending School A at paragraph 18 of the statement (at page R184 of the papers) was lodged with the Tribunal's Administration in the afternoon prior to the hearing. When asked about the figure at paragraph 18 of her witness statement that the basic cost of school fees would be approximately £140,000 per year and how that figure had been reached, Witness B replied that she had asked colleagues what the approximate cost was. Witness B conceded that the cost referred to in her witness statement was generic and not specific to the child in this case. For that reason, the Tribunal allowed a period after the hearing for the authority to lodge a supplementary witness statement, if so advised, and any submissions it wished to make on the content of that witness statement, and thereafter a further period for the appellant to make submissions on the content of that supplementary witness statement and to request any further procedure thought necessary.

(40) A supplementary witness statement was lodged. The appellant made written submissions on the content of the supplementary witness statement. The appellant did not request any further procedure.

(41) At paragraph 18 of her original witness statement, Witness B estimated the costs of placing the child at School A at in excess of £170,000 a year, while estimating the costs at School B as £35,058 per year.

(42) The position set out in Witness B's supplementary witness statement in summary is that the cost of placement of the child at School A for term time only would be £155,544 per year (and the appellant indicated that her intention was that the child would attend School A only during term time), with the cost at School B being £103,436 per year While the difference between placing the child at School A instead of School B is significant, being a little over £50,000 a year, that figure is substantially lower than the apparent difference in costs between placing the child at School A and School B as indicated at paragraph 18 of Witness B's original witness statement.

(43) Given the stage of the child's development, his age, the stage the child has reached in his secondary education, the limited progress he has made to date and the importance to the child's family, the society in which he will live in future and any authority which in the future may have responsibility for some, or all, aspects of his care, that the child has the opportunity to make the best possible progress in his educational development (in a broad sense), the Tribunal is not satisfied that it is not reasonable, having regard to the respective costs (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and in School B, to place the child in School A.

10. Decision

(1) For the reasons given above, the Tribunal is not satisfied:

- in terms of paragraph 3(1)(f)(ii) of schedule 2 to the 2004 Act that the authority are able to make provision for the additional support needs of the child at School B
- in terms of paragraph 3(1)(f)(iii) of schedule 2 to the 2004 Act that it is not reasonable, having regard both to the respective suitability and the respective costs (including necessary incidental expenses) of the provision for the additional support needs of the child in School A and in School B, to place the child in School A.

(2) The decision of the Tribunal was unanimous.

11. Disposal

(1) In terms of section 19(4A)(b) of the 2004 Act, the Tribunal overturns the decision of the authority of 21 December 2016 refusing the appellant's placing request and requires the education authority to place the child in School A no later than January 2018.

(2) The Tribunal was not invited in terms of section 19(4A)(b)(ii) of the 2004 Act to require the authority to make such amendments to the child's co-ordinated support plan as the Tribunal may require. The Tribunal makes no such requirement.