

## **DECISION OF THE TRIBUNAL**

### **Reference**

The reference is brought by the Appellant for her daughter, ("the child") in terms of Section 18(3) of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the Act") on the basis of a refusal of a placing request for a specialist base within a mainstream school, ("the specified school"). The placing request was resisted by the Respondent (firstly) on the grounds specified in, schedule 2 paragraph 3 (1) (g) of the Act, that placing the child in the school would breach the requirement in Section 15 (1) of the Standards in Scotland's Schools Act ("the 2000 Act). The requirement in Section 15 (1) of the 2000 Act being commonly referred to as the presumption of mainstream. The request was also rejected on the ground specified in schedule 2 paragraph 3(1) (b) of the Act, that the education normally provided at the specified school is not suited to the age, ability or aptitude of the child.

### **1. The Decision**

The appeal is refused and the decision of the Respondent is therefore confirmed in terms of section 19(4A) (a) of the Act.

### **2. Preliminary Issues**

Two conference calls took place prior to the hearing, the notes for both of which are in the bundle. An independent advocacy report was obtained on the views of the child and is also included in the bundle. Given the child's age and disabilities she was only able to express a very basic view of her current school although the opinion also made useful observations of how the child behaved within the school.

### **3. Findings in Fact**

Parties' agents submitted draft findings in fact, many of them were agreed. In coming to our decision we found the following facts established.

1. The Appellant is the mother of the child.
  2. The child is five years old and lives with her parents.
  3. The child has a diagnosis of Autistic Spectrum Disorder (ASD) with associated language and communication difficulties, sensory issues, difficulties with fine and gross motor skills and social interactions.
  4. The child required significant support on a one-to-one basis throughout nursery in order to make progress with her learning.
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5. Some aspects of the child's learning are at the level of a 2-3 year old child.
  6. The child has significant difficulties with social interactions and is delayed in her play.
  7. The child has significant sensory difficulties and requires an adapted sensory environment in order to learn.
  8. Too much sensory stimulation can be overwhelming for the child.
  9. The child has limited awareness of danger and abilities to keep herself safe.
  10. The child's fine and gross motor skills are significantly delayed.
  11. The child is not yet toilet trained and wears a nappy throughout the day. She requires to be changed during school hours.
  12. The child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning (Scotland) Act 2004.
  13. The Respondent as Education Authority is well aware of the child's needs.
  14. The child attended Nursery A, a mainstream nursery provision, until June 2017.
  15. The child's TAC (Team Around the Child) made a placing request for the child to attend the specified school) on 2 December 2016. The specified school is for pupils who have additional learning needs. The placing request also specified the Enhanced Provision Unit at School B ("the EPU") as an alternative.
  16. On 11 January 2017, the Respondent's PSRG ("Pupil Support Resources Group") refused the placing request and judged the child as being suitable for an Enhanced Provision Unit. The PSRG consists of Council officers working in the field of additional support needs, senior teachers, education psychologists and health professionals. PSRG meetings have access to relevant documentation about the child who they are considering.
  17. The Appellant appealed the PSRG's decision on 16 February 2017. The appeal was considered by a freshly convened PSRG. The PSRG refused the appeal on 27 March 2017 and the Respondent offered the child a place at the EPU by letter dated 18 April 2017.
  18. The Respondent reconsidered the decisions of both PSRGs by holding an extraordinary PSRG on 8 May 2017. The extraordinary PSRG upheld the decision of both previous PSRGs and confirmed the Respondent's decision to refuse the placing request in respect of the specified school, and offer a place at the EPU.
  19. The Appellant made a placing request in respect of the mainstream Primary One class at School A Primary School. The Respondent granted the placing request. Since August 2017 the child has attended the mainstream Primary One class at School A Primary School. She currently attends for half days.
  20. The EPU is located within the buildings of the mainstream school at School B. There is a place available for the child at the EPU. The authority wants the child to attend the EPU.
  21. The main purpose of the EPU is to provide education suited to the additional support needs of its pupils, selected for attendance at the EPU by reason of their additional support needs.
  22. The EPU is a special school in terms of Section 29(1) of the Educational (Additional Support for Learning) (Scotland) Act 2004.
  23. The Appellant is a teacher in the specified school.
  24. The specified school primarily provides for children with autistic spectrum disorders who also have other significant barriers to learning.
  25. There are currently five children in the Primary One class within the specified school.
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26. There is space for the child to attend the specified school.
  27. The specified school has communication and sensory supports embedded in the environment.
  28. Children who attend the specified school can work towards a gradual transition to mainstream activities and classes where they have the capability to do so.
  29. The teachers and support for learning assistants within the specified school have specialist knowledge of ASD and ASD specific strategies and support.
  30. The specified school has a dedicated sensory area with resources to meet the sensory needs of children with ASD.
  31. The specified school is a special school in terms of Section 29(1) of the Educational (Additional Support for Learning) (Scotland) Act 2004.
  32. The EPU provides support for children with a range of additional support needs.
  33. There are two full time equivalent teachers and three support staff in the EPU. All staff within the EPU have specific training in working with children with ASD.
  34. There are two EPU classes; they are roughly split according to age. There are currently five children in the younger class one of whom is of Primary One age.
  35. The EPU has integrated support by a Speech and Language Therapist who comes every week to advise staff and/ or work with pupils within the EPU.
  36. The EPU takes advice from Occupational Therapists where appropriate to ensure that needs are met.
  37. Children placed within the EPU all have additional support needs arising from a variety of circumstances, including speech and language communication disorders and ASD. Three children within the younger class have ASD.
  38. Children placed in the EPU are enrolled in their equivalent mainstream class.
  39. The EPU supports children in accessing mainstream education.
  40. The Education provided in the EPU is highly individualised to meet individual pupil's needs.
  41. There is a sensory area within the EPU.
  42. Within the EPU, access to mainstream classes and the mainstream curriculum is judged on the basis of each child's individual needs, ability and aptitude.
  43. The child can benefit from access to mainstream education.
  44. There are always at least 2 adults within a class in the EPU and the playground is always supervised by at least 2 adults.
  45. Every year adjustments are made to the environment of the EPU depending on the particular needs of the pupils who are to attend.
  46. No transition process to the EPU was undertaken as the Appellant did not wish to proceed with the EPU as an option while this process was underway.
  47. A bespoke transition package can be put in place for the child if her transition to the EPU is confirmed.
  48. The EPU is suited to the child's age, ability and aptitude.
  49. The child's attendance at the EPU would not be incompatible with the provision of efficient education for the children with whom the child would be educated.
  50. The specified school is not suited to the child's ability and aptitude. The specified school does not meet all of the child's identified needs.
  51. The specified school does not provide as much access to the mainstream curriculum classes and peers as the EPU. The specified school does not place the same priority as the EPU upon children within the specified school accessing the mainstream curriculum, classes and peers.
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#### **4. Reasons for Decision**

In reaching our decision we took into account the evidence of the witnesses and the documents in the bundle. Both parties were represented with submissions substantially submitted in writing but supplemented orally.

Witness statements or reports were provided from each of the witnesses and are contained in the bundle. Accordingly the evidence provided by each witness is only very broadly described below:

Witness A is the acting Service Manager for Individual & Additional Support Needs at The authority. A statement from Witness A is at R72-77 in the bundle. Witness A gave evidence as to the provision for children within the authority's Enhanced Provision Units and the specified school as well as the process by which the placing request was considered. He chaired the PSRG that first considered the placing request.

Witness B is currently the acting principal teacher in charge of additional support provision at School B as well as being an Enhanced Provision teacher at the said school. A statement from Witness B is at R89-91 in the bundle. She gave evidence as to the provision for pupils within the EPU, the support generally available to pupils within the provision, the transition process normally undertaken before a pupil attends the resource and adjustments that might be made should the child attend the provision.

Witness C is the Head of Education at The authority and his statement is at R78-80 in the bundle. He gave evidence regarding an extraordinary PSRG that he chaired which considered the request on a third occasion.

Witness D is an Independent Speech and Language Therapist who gave evidence in relation to an assessment she completed in relation to the child dated 29 August 2017 (A85-96).

Witness E is a Chartered Education Psychologist who gave evidence in relation to an Education Psychology Report she completed in relation to the child dated 25 August 2017 (A58-72).

The Appellant gave evidence relating to the child's needs, her concerns regarding the EPU and the reasons why she considered the specified school to be suitable for the child. Statements from the Appellant prepared for the Tribunal are at A4-9 and A44-55 in the bundle.

Also of some significance was an Education Psychologist's Report prepared by M, Education Psychologist, The authority, dated 2 June 2017. It had been planned that M would give evidence but due to personal circumstances she was unable to attend.

We found all witnesses to be credible but in relation to the detail of the education that is provided at the EPU we considered the evidence of Witness B to be more reliable. Similarly in relation to the provision and composition of both the specified school and the

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EPU we considered the evidence of Witness A and Witness C who have management responsibilities for the provisions and a management overview of the needs of the children who attend both provisions to be more reliable than the Appellant's. The Appellant had a more limited knowledge of the EPU and, although teacher in the specified school, she did not have the management overview of the provision that the said witnesses have.

We also record that we were particularly impressed with Witness B and Witness E. Witness B came across as having a drive to ensure the programme of education and environment for the child were suitable to enable the child to progress should she to attend the EPU. Witness E came across as having an enthusiasm for ensuring the child has the best possible provision while fairly acknowledging the credibility of the Respondent's psychologist's report.

There is a somewhat unusual history to this reference. A request was made for the child to attend the specified school on 2 December 2016. The specified school being a special school for children with additional support needs. As an alternative (although in the Appellant's submission only because she was told she had to have a "plan B") the EPU was also specified in the placing request. The placing request for the specified school was rejected, with the respondent's position being that the child should attend an Enhanced Provision Unit within one of their primary schools, with School B's EPU ("the EPU") being the parents' preferred option of the Respondents' Enhanced Provision Units. It appears to have been always accepted by both parties that a placement at a mainstream school would not be suitable for the child. However at the conference call on 14 July 2017 parties advised that pending the outcome of the reference the child would attend School A Primary mainstream school following another placing request made by the Appellant. The Appellant's Solicitor subsequently confirmed that the child would remain at said mainstream school if the reference was not successful. However prior to the Tribunal hearing the Appellant changed her mind and indicated that if the reference was not successful then the child would attend an alternative provision which might be School B EPU and that she would definitely not remain at School A Primary School. The Respondent's position remained at the Tribunal that a place at an EPU was the most appropriate for the child, rather than a mainstream school, and that they had only granted the placing request on the basis that they did not consider they had grounds to refuse it. Nevertheless it did appear that the current placement at School A Primary mainstream school was not working with, for example, the child being distressed at attending and her attendance being restricted to mornings.

We mention all the above to illustrate that this reference is not a straightforward placing request reference where part of the exercise (if grounds for refusal are established) normally involves a comparison between the suitability of the specified school and the nominated school. We will return to this point later when considering all the circumstances.

The parts of the schedule 2 of the Act that the Tribunal required to consider are:-

**Paragraph 2(1)**

*"Where the parent of a child having additional support needs makes a request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly."*

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### **Paragraph 3(1)**

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

*(b) if the education normally provided at the specified school is not suited to the age, ability or aptitude of the child...*

*(g) if, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act.”*

The “2000 Act” being the Standards in Scotland's Schools etc. Act 2000, section 15 of which provides:-

*“15 Requirement that education be provided in mainstream schools*

*(1) Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection*

*(3) below arises in relation to the child provide it in a school other than a special school...*

*(3) The circumstances are, that to provide education for the child in a school other than a special school—*

*(a) would not be suited to the ability or aptitude of the child;*

*(b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or*

*(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,*

*and it shall be presumed that those circumstances arise only exceptionally.*

*(4) If one of the circumstances mentioned in subsection (3) above arises, the authority may provide education for the child in question in a school other than a special school; but they shall not do so without taking into account the views of the child and of the child's parents in that regard.*

### **Schedule 2 Paragraph 3(1) (g) – Presumption of Mainstream**

Towards the end of her submissions the Solicitor for the Appellant argued that it was not competent for the Respondent to rely on the presumption of mainstream as the authority was not proposing a mainstream education for the child, but rather a placement in a special school. In doing so she relied on the provisions of section 29 (1) of the 2004 Act which states that “special school” means-

(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school,

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the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class (or as the case may be) unit by reason of those needs.”

The Respondent did not accept that the EPU is a special school, arguing that it is a mainstream school, although the Respondent did accept that the EPU is a unit that provides support for children with a range of additional support needs. Authority representative argued that the pupils in an EPU tend to spend a significant proportion of their time in mainstream classes or in activities with their mainstream peers where appropriate, such as mixing with them at breaks and lunch (per the evidence of Witness A) and that almost half of the pupils in EPUs spent 50% or more of their timetabled days in mainstream classes (Witness C).

Authority representative referred the Tribunal to a previous reference dated 4 August 2014, which he suggested had similar facts to the present reference and was, accordingly, persuasive, as support for his position. In that reference the Tribunal was considering an additional learning needs (ALN) provision located within separate accommodation in a mainstream school. He quoted a passage from the said decision which he considered supported the proposition that the ALN unit in that reference which was located within separate accommodation within a mainstream school and the EPU in this reference (the facts he submitted being similar) were not special schools.

We agree with the said Tribunal when they stated that the “question of whether the child is attending, or proposed to attend, a mainstream provision must be determined by looking at the facts of the placement”. The facts in the said reference differed materially to this reference in the sense that the child in that reference would attend the substantive mainstream school for large parts of the timetable, whereas in the present reference the clear evidence was it was unlikely there would be much initial attendance in the mainstream provision. Witness B gave evidence that access to mainstream classes and the mainstream curriculum is judged on the basis of each individual child’s needs, ability and aptitude and if the child were to join the EPU she would join a group of children who spend the majority of their time in the EPU.

All the evidence we heard and read about the EPU demonstrates that its main purpose was to provide education suited to the additional support needs of its pupils, selected for attendance at the EPU by reason of their additional support needs. The education provision within the EPU is entirely for children with additional support needs. There were no pupils who did not have support needs within the unit, the unit comprising children with autistic spectrum disorder (ASD), global learning difficulties, those requiring a high level of nurture and children with communication difficulties. Witness B indicated that the curriculum in the EPU is different from that of School B Primary as it is adjusted for the needs of the specific children, although it does adhere to the curriculum for excellence. The Guidance produced by the authority makes it explicitly clear at R47 that children are selected for enhanced provision based on their additional support needs and Witness B was similarly very clear in her evidence that the education provided in the EPU was highly individualised according to the pupils’ needs. Witness A stated that the enhanced provision is a “specialist unit designed to enable pupils who have significant additional support needs to access the mainstream curriculum and where appropriate their mainstream classes, whilst retaining an appropriate level of staff support.” Witness A

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indicated that only where appropriate would children access mainstream classes. The authority's position on this had been inconsistent with the second PSRG (R41) seemingly viewing enhanced provision as not being mainstream.

Accordingly, while we recognise the principles of mainstreaming including educating children within mainstream schools so far as possible is clearly applied by the Respondent, and we recognise the education benefits the Respondent is trying to achieve in recommending an EPU, the strict reading of the legislation means we cannot find this ground to be upheld. In our view the said EPU is a special within the meaning of the 2004 Act and the Respondent's proposal is that she attend that special school. While the said guidance states, as did witnesses, that a purpose of an EPU is to enable pupils to access mainstream curriculum and classes, we do not consider this purpose alters our view that the EPU meets the statutory definition of a special school. Consequently we accepted the Solicitor for the Appellant's submission that the Respondent is not entitled to rely on the presumption of mainstream.

To be clear we are not suggesting that all pupils who attend an EPU for some of the time could not be said to be attending mainstream school, that must depend on the particular circumstances and the degree to which the pupil attends the mainstream provision.

Having concluded that the Respondent is not entitled to rely on this ground we do not require to consider the various exceptions to the presumption of mainstream applying. Nevertheless we record that neither party was of the view that the child should attend a substantive mainstream provision (notwithstanding the child being placed in one at the request of the Appellant). Regarding a mainstream school not being suited to the ability or aptitude of the child, our view naturally follows our finding that the EPU is a special school. The child requires an individualised programme suited to her particular needs and the school where the Respondent considered the required provision could be provided is a special school. Regarding the suggestion that there would be disruption to other children's education were the child to be placed in mainstream education, we note that there was some evidence of disruption in her current mainstream placement but we fully accept the submissions of Authority representative where he states "the authority does not...consider that this means [the child] may disrupt other pupils at the EPU...there is a much higher level of adult support within an Enhanced Provision unit, and a lower number of pupils, than in a mainstream primary class. [The child] would be within an environment which has been adapted for her needs. In the event of distress, [the child] could be taken away to one of the sensory rooms...or the break out area. [The child] would have a greater level of support available to her in an Enhanced Provision unit than she currently does in the mainstream primary one class". All as per the evidence of Witness B. Finally regarding Appellant solicitor's suggestion that unreasonable public expenditure would be incurred which would not normally be incurred, we were only provided with average costs per child for each of the provisions rather than any additional cost due to the child attending. There was no evidence before us that would entitle us to come to a view that there would be unreasonable public expenditure.

### **Unsuitability – paragraph 3 (1)(b) of the 2004 Act**

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The second ground upon which the Respondent sought to rely was that the specified school is unsuited to the ability or aptitude of the child. It was not suggested that it was unsuited to her age.

In relation to this ground it is clear that the Respondent considered very carefully whether the specified school was suited to the ability or aptitude of the child. There was some evidence that in November 2016 (T28) that some local authority staff considered the specified school did meet the child's needs. There was also support for this from the second PSRG. However that was not the ultimate view of the authority and in this regard it is noteworthy that three separate PSRG meetings considered the placing request. The PSRG meetings consist of Council officers working in the field of additional support needs, senior teachers, education psychologists and health professionals. They have access to relevant documentation about the child.

The first PSRG meeting took place on 11 January 2017 and did not determine to offer a place at the specified school. Evidence for Witness A who chaired the first PSRG was that the PSRG members scored the specified school and that for the Respondent to offer a placement at a particular provision the score would normally have to be above 8. The score for the specified school was 5.8. The score is not a final position but informs the decision. Witness A gave evidence that the said PSRG concluded that a placement at School A was not a suitable placement.

The second PSRG gave the specified school a significantly higher score above 8, but did not offer a place on the basis the enhanced provision scoring higher and accordingly was "more suitable".

Witness C in his evidence explained why the Respondent took the unusual step of having a third PSRG (which they called the extraordinary PSRG) look at the matter which was to do with the profile of the matter, the fact a reference was being made to the Tribunal and a concern that the composition of the second PSRG was smaller in number and less experienced than the first PSRG. The third or extraordinary PSRG concluded, among other things, that the child's "abilities and aptitudes indicate her needs are not a match on the basis of respective suitability for" the specified school.

We record this history as it illustrates that consideration of the suitability of the specified school for the child was not a straightforward process for the Respondent and the ultimate view was only taken after a long process where there were different views- albeit officers of the Respondent were consistent in viewing an enhanced provision as the most appropriate option. We also record that we were very impressed with the openness of the Respondent's decision making process.

Similarly for us considering this ground for refusal has not been straightforward. We do not think granting the placing request would result, as is sometimes the case, in some harm being sustained by the child. Indeed it was clear that the specified school could meet many of the child's needs, such as an individualised curriculum delivered by well trained staff with specific resources to assist in relation to her sensory needs. Further, M stated that in theory the specified school could meet the child's needs.

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We considered from all the evidence of both parties that the specified school would probably deliver a reasonable education for the child. However is providing a reasonable education for a child enough when a more appropriate placement has been offered that is far more suited to the child's needs and will provide clear opportunities that the child would not enjoy at the specified school?

Accordingly we considered what the child would miss out on were the placing request to be granted and whether those factors were sufficient for us to reach the conclusion that the specified school is unsuited to the child's ability or aptitude. To be explicitly clear we did not, in considering whether this ground applied, compare the respective suitability of the specified school and School B EPU, but we did consider it to be entirely relevant to consider the provision the child should receive to reach her potential and whether that was available within the specified school.

In this regard we accepted the submissions by Authority representative and the evidence of the Respondent's witnesses. It is clear to us from, among other things, Witness A's evidence that the specified school is designed for children with additional support needs, arising from significant social and communication difficulties along with another significant barrier to learning. Children in the specified school tend to have more significant barriers than those in enhanced provision. It was clear from all the witnesses, including the Appellant herself who indicated the problem with the EPU was the priority it gives to mainstream education, that accessing mainstream was less of a priority for children placed in the specified school. While the Appellant argued that the child was not suited, at the moment, for any mainstream provision, her base barriers (as the Appellant put it) being required to be addressed before considering any mainstream provision, this did not match the evidence as to the child's abilities or, frankly, align with the Appellant's decision to have the child placed in a mainstream provision from August 2017. The child had attended a mainstream nursery provision and while our view is that the current mainstream placement is not successful, the Advocacy Statement at T80-T85 clearly showed that the child could benefit from aspects of mainstream schooling.

In terms of the profile of the children who attend the specified school we prefer the evidence of Witness A, who has a clear overview of the provision for additional support needs within The authority area to the evidence of the Appellant as a teacher within the specified school. It was clear from her evidence that while she had an understanding of the profile of the pupils she taught, she relied on what others told her as to the overall profile of the school. Evidence was presented from Witness A and Witness C that children placed within the specified school have additional barriers to learning beyond ASD and a number of those pupils were not verbal. By way of contrast we heard no evidence that the child has additional barriers to learning and the child has no diagnosed learning disability.

While parties disputed the degree to which pupils within the specified school did access mainstream education, it was clear that it was substantially less than at an EPU. It was extremely rare for pupils to transfer from the specified school to a mainstream secondary school. Indeed M stated at R86 that there is no presumption in favour of integration into mainstream at the specified school.

Accordingly it seemed that were the child to be placed in the specified school it would not be a priority for the school to integrate her into mainstream and any integration would be

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more limited and much further away for the child than the Respondent considered appropriate. Consequently we considered whether not prioritising access to mainstream is material to the child's education. The starting point in considering this for us was the ethos behind the presumption of mainstream which is articulated in the Scottish Executive Education Circular 3/2002 which was quoted to us:-

"The intention behind the new duty is to establish the right of all children and young persons to be educated alongside their peers in mainstream schools unless there are good reasons for not doing so. It is based on the premise that there is benefit to all children when the inclusion of pupils with additional support needs with their peers is properly prepared, well supported and takes place in mainstream schools with a positive ethos"

Consequently it seemed to us that the ethos behind the presumption was that (as the Tribunal stated in the reference we were referred to) as far as possible a child is to be educated in a mainstream provision. Accordingly our starting point was that, unless there is a good reason otherwise, the child should not have her opportunity of accessing mainstream education substantially curtailed. As well as her experience at nursery and in her current placement we considered what the evidence said in relation to the child's suitability for inclusion in a mainstream environment. The statement of M notes that the child benefits from interacting with her peers and has made progress in a nursery class where children have a variety of social and communication needs. Witness E repeatedly emphasised how similar her findings were to M's and she noted that carefully managed access to mainstream classes and peers could be of benefit to the child. Witness E also considered that the child could access mainstream provision but in a fully supported way. Witness B gave very clear evidence that the process would be carefully managed and is individualised according to the needs of the child. The evidence of Witness C was that the final PSRG which considered the child's needs considered that the child would benefit from being around mainstream pupils and from mainstream education provision. Witness A confirmed in his oral evidence that the Respondent had deemed the EPU to be a "very good match" for the child's needs because it provided an environment where she could access mainstream in a pro-social learning environment and in small group settings (which would help her engage with others) as well as being taught life skills and have her toileting needs taken care of. M considered the child would benefit from contact with her peers in mainstream classes, who provide positive role models.

Appellant solicitor made a contrary submission that the child does not have the ability to access a mainstream environment at present. We do not consider this submission is supported by the evidence. There was no evidence that would entitle us to agree with that submission, none of the professionals involved suggested to us that the child does not have the ability to benefit from mainstream provision, what was stressed repeatedly was the importance of the process of integration, it being individualised, fully supported, and taken at an appropriate pace.

Accordingly we considered placing the child in the specified school would be detrimental to the child achieving her potential as she would be placed in a provision for children with greater needs. She would not be given the same opportunities to access mainstream provision as she is entitled to expect. Therefore we conclude that specified school is not suited to her ability and aptitude.

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## **The circumstances**

Having determined that one of the grounds for refusing the placing request applies, we then have to determine in accordance with section 19 (4A) (a)(ii) of the Act whether in all the circumstances it is appropriate to confirm the decision of the Respondent.

As stated above we have concluded that the specified school is not suited to the child's ability or aptitude and accordingly would be very reluctant to grant a place in a school that is not suitable. However this reference was complicated because we do not know what provision the child will now attend. If nothing else changes the child will continue to attend a mainstream provision which parties do not consider meets her needs, a conclusion which we agree with. However for that placement to change the Appellant will require either to accept the placement in the EPU or submit a further placing request and we do not know where the Appellant will wish the child to attend while a further request is considered. That said given the Appellant was at least open to the child attending the EPU and stated that she believed a placement there could be successful with adjustments we considered it also relevant to consider the suitability of that provision.

There was clear evidence before us that numerous professionals regarded the EPU as a suitable provision, all three PSRG meetings coming to this conclusion as well as the professionals involved in the team around the child. Indeed we considered that from the evidence all the things that the specified school does well would also be done well within the EPU; individualised curriculum, small class (currently five children, three of who have ASD per the evidence of Witness B), sensory area and a hands on practical programme delivered by trained staff. The three reports the Appellant obtained for the purposes of the Tribunal (two of which were spoken to) gave us no reason to doubt that the said professionals were wrong. Witness E in her evidence commented on the similarities between her conclusions and those of the Respondent's educational psychologist, the similarities giving her confidence that they had both got it right. The report from E, Independent Occupational Health Therapist while extremely useful did not provide any reason in our view to doubt the suitability of the EPU and, significantly, Witness B gave evidence that she would work with Occupational Health to ensure the environment was suitable for the child, in terms of the child's needs, sensory issues and safety. Indeed the Respondent's position is that they will consider the reports produced by the Appellant in ensuring the environment is suitable for the child. Finally the recommendations contained in the speech and language therapy report by Witness D at A85-96 all seemed to us to fit with the provision described at the EPU. The reports had not previously been provided to the Respondent but Witness A, when asked about the reports by the Tribunal, stated that the best "route" would be for the team around the child to consider them. While he was not convinced there were glaring differences from the Respondent's reports, he considered the TAC should look at them and clarify what they might mean for the plan moving forward. The Appellant's solicitor submitted that the provision would not be adequate and efficient, directed to the child's personality and talents, indicating that the child requires an environment with an individual approach to learning. We do not accept this submission, the evidence was explicitly clear, particularly from Witness B but also from Witness A and documentary evidence, that the education that would be provided to the child at the said

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EPU would be highly individualised to meet her needs and other than the Appellant's own submission there was no evidence before us that warranted the conclusion that the Appellant's solicitor suggested.

There was also a submission by the Appellant's Solicitor that the child's needs had not been assessed in advance of her starting at the EPU indicating the authority are unaware of the extent of the child's needs. This appeared to relate to evidence given by Witness A, Witness C and Witness B that additional one to one support beyond five hours already put in place for the child would be assessed once the child attended the EPU. This was also the process at the specified school.

We do not agree with the submission by the Appellant's Solicitor as there was ample evidence before us that the Respondent is well aware of the child's needs. Most obviously there was the evidence given in respect of PSRG meetings and the detail provided to those meetings from the schools and TAC meetings. There was also the report from the Respondent's Education Psychologist that sets out the child's support needs. Witness A indicated the PSRG would consider assessment information, the plan of intervention and at least one meeting of the TAC. We have found in fact based on the Appellant's evidence and that of Witness A that the transition process to the EPU did not proceed as the Appellant did not wish to proceed while this process was underway. Clearly had a transition process been proceeded with it would have further assisted the Respondent in making plans for the child to attend the EPU. The child's needs having been assessed prior to deciding the EPU is a suitable education provision for her, it seems to us entirely sensible that further assessment be carried out once the child is actually in the provision.

A further criticism was made by the Appellant that the EPU is not able to meet the child's needs as there is not currently a plan in place for her transition. We consider this to be an unwarranted leap; the Respondent's accept that a transition will be needed wherever the child goes next.

In our questioning of the Appellant we endeavoured to be clear on all of her concerns regarding the EPU given she stated clearly that with adaptations made prior to transition the EPU could be successful and also said it couldn't meet all the child's needs in its current state. One of them was of course the focus on mainstreaming which we have dealt with above. However she was also concerned regarding the physical environment and how it would be safe for the child (with the risk of the child running away being a significant concern) and would meet her sensory needs. In relation to the physical adjustments the Appellant claimed she had been told that the adjustments would not be in place prior to the child starting school in August. This claim was not supported by the evidence she relied upon (letter from Witness A at T56-57) where he stated that each case where adaptations are required is considered in terms of feasibility, costs and timescales with reasonable adaptations being implemented before pointing out that no request had yet been received from School B School or the TAC. Following the reference to the Tribunal being submitted thereafter, on 24 April 2017, the Respondent's position was that they were waiting to ascertain where the child would go before making any adjustments, an approach we consider reasonable. The issues the Appellant wanted addressed by adjustments are referred to at A40-43 in notes/pictures she made when visiting the EPU and concerned sensory issues, the safety of the playground, the risk of the child running away (witnesses referred to this as a flight risk) and the toilet facilities. The concerns were put to Witness B

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and she gave very convincing evidence that adjustments are made to the classes every year according to the needs of the children attending and if there needed to be less sensory stimulation in the class that would be done, that other adjustments could be made very quickly, to the toilets for example should that be needed and that the playground had changed substantially since the Appellant's visit. Occupational health advice would be taken in relation to the child's sensory needs. In relation to the perceived risk of flight there was conflicting evidence as to whether this was a material risk for the child, and an older child had recently ran away from the specified school. In any case Witness B satisfied us that the risk within the EPU would be well managed in the class due to the number of adults present, there being always at least two so if the child opened the fire door (the fire door in the classroom being a concern for the Appellant as it opens onto the playground) one member of staff could follow. In addition she indicated that the fire door could be alarmed to alert staff to it being opened. The EPU playground would be supervised by at least 2 adults when children were present and to further safeguard the area a stair guard could be put in place to prevent the child exiting the playground from the one side that was open. Consequently we did not consider EPU was unsuitable for any of the reasons suggested by the Appellant. Indeed Witness B greatly impressed us with her commitment to ensuring the environment was suitable for the child.

We also note that Witness A gave evidence that children have transferred from an Enhance Provision to specified school but, as stated previously it is extremely rare for a child from the specified school to transfer to mainstream secondary education. Witness B advised that at the EPU they had monthly meetings to assess the levels of support in place. As stated previously we were very impressed by Witness B and are sure that if a placement in the EPU is not working out she would be active in assisting an alternative provision being made available.

Accordingly we conclude that School B EPU is a suitable provision for the child having regard to her ability and aptitude and that of the two options that we heard evidence of it is the most likely to enable her to achieve her full potential.

Given we have concluded the specified school is not suited to the child's ability and aptitude and an alternative placement being available which is, we confirm the decision of the Respondent to refuse the placing request.

## **Conclusion**

Accordingly our unanimous decision is to refuse the appeal. The decision of the Respondent is accordingly confirmed.

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