



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The reference is made by the appellant in relation to the refusal by the respondent of a placing request to place the child at the specified school. The ground of refusal of the placing request relied upon in this case is Paragraph 3(1)(f) of Schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("The 2004 Act"). It was accepted that conditions 3(1)(f) (i) and (iv) were met, and the tribunal considered whether the conditions in S3(1)(f) (ii) and (iii) were also met.

Decision

2. The Tribunal unanimously confirms the decision of the education authority.

Process

3. The reference was received by the Tribunal in August 2019. A case conference call took place in January 2020 and a full hearing was due to take place over 2 days commencing 23rd March 2020. On 18th March 2020, the case was postponed due to the Covid-19 outbreak. By direction of July 2020, a further case conference call took place when a further hearing was set down for November 2020 by video conference. The appellant participated by telephone.

4. The parties lodged a Joint Minute (T034 to T036) of agreed facts in advance of the hearing. The agreed facts are contained in Findings of Fact numbers 1-30 inclusive.

5. The parties agreed that witness statements would be provided and treated as evidence in chief, and the witnesses would be available for cross examination at the hearing. The appellant relied upon the documents contained within A1 to A084 and the respondent relied upon documents lodged at R1 to R384. It was accepted that the onus was on the respondent to satisfy the tribunal that the grounds of refusal were satisfied.

6. The child had provided his views to an advocacy worker in advance of the original hearing. Those views are contained at T24 to T25. Updated views were obtained from the child in October 2020 and are contained within T032 to T033.

7. Following the hearing, the appellant lodged a document to which she had referred in evidence (now forming A085 and A086), to which the respondent did not object. The information contained in the document was considered by the tribunal when they met to consider their decision on 18th November 2020.

Findings in Fact

8. The Appellant is the mother of the child.

9. The child is a 9-year-old boy with sensory difficulties, social, emotional and behavioral difficulties and anxiety.

10. An Independent Educational Psychologist, made a diagnosis of autism spectrum disorder (ASD) in 2019. This has not been confirmed by a NHS assessment.

11. An ASN Tribunal in 2018 determined that the child should attend School A.

12. Following parental request, the child continued to attend school B, a mainstream primary school run by the education authority, the school he had attended pre-Tribunal.

13. Around 5 weeks into the 2018/9 school term, the child stopped attending school B.

14. In June 2019 a multi-agency meeting agreed that the child would attend school C.

15. The child is currently enrolled at school C.

16. The child is not currently attending school regularly due to his anxiety.

17. The child attended school C on two occasions between 14th August 2020 and 3rd September 2020. He attended school D on 31.08.20.

18. A taxi and an escort are arranged each morning to take the child to school.

19. The child participates in an outdoor education programme as well as an alternative curriculum on a one to one basis with a staff member.

20. The child is unaware of danger to himself or others.

21. The child (always) requires one to one support to keep him safe at all times.

22. The child struggles to organise himself and requires support with daily tasks.

23. The child does not have a Coordinated Support Plan.

24. The Appellant made a placing request to the authority for the specified school, an independent special school on 15 May 2019. The Appellant received no response from the authority, and it is therefore a deemed refusal as of 15 July 2019.

25. The specified school is willing to admit the child to the school.

26. The child is familiar with the school as his brother is a pupil there.

27. The specified school offers an individualised curriculum that would help the child develop his academic and life skills.

28. The cost of the child attending school C is nil.

29. An application has been made for a Flexible Learning Pathway which will include input from the Autistic Society at £100.20 per week; Outdoor Learning School at £1458.72 per term and ELM Music at £55 per weekly session. This would involve a cost to the Education Authority of approximately £11,879 per school year.

30. The basic cost of the child attending the specified school is £31,400 per annum. This cost is subject to review after a six-week assessment and may increase.
31. The cost of transport for the child to school C is £100 per day plus escort costs of £2435 per annum
32. The cost of transport for the child to the specified school is £125 per day plus escort costs. The escort costs for transporting a pupil to the specified school from the same location are £9,924. As the child's older brother currently attends the specified school, there may be scope for sharing of these costs so the additional cost for the child may be less.
33. The child has been enrolled in school C since 21st August 2019.
34. The child is a Primary 4 pupil.
35. The Primary 4 class is a small class of 25 pupils. There are 2 class teachers.
36. The child is encouraged to access the classroom and enhanced provisions) within school. The child has no specific learning difficulty.
37. There is a life skills room in school C which is staffed by teacher A, a fulltime additional support for learning teacher and pupil support assistants.
38. There is a sensory room available at school C.
39. An intervention prevention teacher works with the child and is supported by teacher C.
40. Teacher D works as the child's escort and key pupil support assistant (PSA).
41. The child has participated in outdoor learning with success and has also accessed learning opportunities in the life skills room.
42. An updated flexible learning plan has been approved by multi agencies to extend the support from the Autistic Society to include one hour daily at school. This will build upon successful input by the Autistic Society with the child out with school.
43. School C have kept a "running record" of the child's time in school (R308-331). When in attendance, he has demonstrated that he is happy and engaging.
44. Until the date of the hearing, the child had attended 29 out of 234 possible half days at school.
45. The child finds transition from home to school or to community venues difficult as he suffers from anxiety.
46. The team working around the child in school have put in place an individual education plan and various personalised learning plans to encourage the child's engagement in school.
47. The biggest barrier to the child's learning is lack of consistent attendance at school.
48. Staff at school C have appropriate training, experience and are willing to work with the child to ensure that he is supported to reach his full potential.
49. The child's additional support needs can be fully met at school C.
50. The child has a history of being happy and settled within nursery, his previous primary school and school C.
51. The child is curious about learning and is motivated by a range of learning experiences. He has particular aptitude for numbers and strength in numeracy tasks.

52. The child is fully participative in school tasks. He perseveres with tasks even when they are challenging.
53. The child will engage with school activities independently or as part of a small group.
54. The child can listen well and join in conversation and discussion appropriately. He can take turns and wait appropriately. He asks pertinent questions about a task across home and school.
55. The child has developed positive and supportive relationships with key adults within school. He likes to spend time with teacher B and her therapy dog.
56. The child has a positive relationship with teacher D (pupil support assistant) who is also his escort.
57. The child has slight delay in gross and fine motor skills. He learns most effectively from others and benefits from the use of visual pictures, model behaviors and peer examples.
58. The child enjoys outdoor play and has recently begun outdoor learning at school C on a one to one basis with a member of staff before joining other peers.
59. An NHS assessment for autism spectrum condition (ASC) was carried out in January 2016 and found not to be present.
60. Following parental requests for further assessment for ASC, the request was refused by child and family mental health services in August 2017 as inappropriate at that time.
61. The child and appellant attended a "choice" appointment in May 2018 when the child was rereferred for further assessment. Further assessment was offered in October 2018. Prior to this meeting, the appellant received a private autistic spectrum condition diagnosis from the Independent Educational Psychologist. Further assessment through NHS was not pursued.
62. The child was assessed in his pre-school year by speech and language therapy and no language difficulties were identified.
63. The child was rereferred to speech and language therapy in 2019. The assessment was completed through consultation. A total communication approach was recommended.
64. The child has a history of reported difficulties with gross and fine motor skills. An occupational therapy assessment in January 2017, confirmed that the child's mild delay in motor skills did not have a negative impact on his ability to carry out specific tasks.
65. Social Work involvement commenced with the family in September 2019, including home visits, direct work with the child and communication with other professionals involved.
66. Following assessment by the Social Work Department, outcomes suggested included opportunities for the child to adopt positive peer relationships and social communication skills, to be supported to manage his anxiety and oppositional behavior in the home and local community.
67. The Social Work Department provided self-directed support which includes support from the Autistic Society and activities to meet the outcomes from their assessment. The child is to be supported to integrate into local resources and to begin to develop life and independent skills. An allocated Social Worker continues to support the family through regular home visits to offer advice and guidance and attend multi agency action planning meetings (MAAPM).

68. The child has demonstrated some sensory difficulties at home and in school including oral defensiveness and dislike of noise or noisy environments.
69. The child does not like unexpected change and is supported by predictability and advance warning of any change.
70. The child benefits from consistency and familiarity.
71. The child engages well with supports in school such as a visual timetable.
72. The child is reluctant to leave the house to play outside or to transition into another context. The child prefers to remain at home.
73. The child finds separating from the appellant challenging.
74. Taxi transportation with an escort is in place to transition the child to school.
75. The child can transition well into school when he is able to travel in the taxi. The transition is less successful when the appellant separates from the child at school.
76. The Autistic Society currently support the child at home, initially focusing on building a relationship with him.
77. The Autistic Society has been supporting transition from home to other familiar environments or preferred activities in the community.
78. Within school the child does not exhibit signs of feeling anxious or stressed. He can become excited and demonstrate hand flapping when approaching an exciting task.
79. The child engages in all activities offered and suggested.
80. The child has significant temper tantrums at home when things do not go as he expects them to (he does not get his own way).
81. At home the child follows more preferred activities like iPad or television play and predominantly engages with screen time at home. The child has meltdowns when he is asked to stop viewing or playing on a screen at times.
82. The child has experienced interrupted schooling for a prolonged period and requires a responsive and bespoke phased return to learning in a stable and consistent environment.
83. The child requires a mixture of individual and small group work to build his resilience and support him positively back into education and learning.
84. The child cannot learn effectively if he is anxious or stressed. His emotional needs and wellbeing will take priority over his academic and learning needs.
85. The child needs to feel safe and comfortable in his environment and to build trusting and empathetic relationships with those staff working with him.
86. The child needs to be educated in an inclusive environment where he can access positive models of language, play, social communication and relationships.
87. The child has 3 siblings with ASC diagnosis and spends significant periods of time experiencing atypical social communication interactions.
88. School C has a role of 427 pupils.

89. School C houses an enhanced provision that offers flexibility and targeted support for those with additional support needs both within mainstream and through the enhanced provision resources.
90. School C enables those accessing the enhanced provision to experience a high level of targeted adult support, alongside opportunities for small group working.
91. School C allows pupils the opportunity for outdoor learning and encourages the use of this environment to de-stress and relax.
92. The specified school has significant experience in supporting individuals with complex additional support needs.
93. The specified school would provide outdoor opportunities for the child to de-stress and manage his anxiety.
94. The specified school currently has 62 children, 27 of whom have no additional support needs, 35 of whom are pupils with additional support needs.
95. The specified school could offer the child a flexible day so that a whole day is built up to or a soft start to the day is offered.
96. The specified school is set within a large estate in which there are woodlands, fields, gardens, a farm and animals.
97. The specified school offers a range of therapies and craft workshops and is an integral part of their curriculum and outdoor activity is encouraged.
98. The specified school currently does not provide the choice of subjects at national awards level which can be offered by a mainstream academy.

The Views of the Child

99. The child considers school to be scary and thinks that he is too little to go to school. He is scared to go there without his mum. He does not know why he is scared. He dislikes school and does not want to go. When asked how he felt about going to another school he shrugged and said that school is scary. He was visibly upset discussing school. When the subject was changed, he was talkative, smiling and laughing. We took the views of the child into account in reaching our decision.

Reasons for the Decision

100. The conditions in paragraph 3(1)(f) are met in this case. Measures (i) and (iv) were not in dispute. We heard evidence in relation to measures (ii) and (iii).

101. Witness B and Witness C for the respondent provided informed, credible and reliable evidence based on a good knowledge of the child and understanding of his additional support needs. Where that evidence conflicted with the evidence provided by or on behalf of the appellant, we have preferred the evidence of the respondent's witnesses.

102. The onus is on the local authority to establish the grounds for refusal of the placing request are met. We were satisfied that the disputed conditions in paragraph 3(1)(f) were satisfied as follows:

(ii) The authority are able to make provision for the additional support needs of the child in a school (whether or not under their management) other than the specified school. From the evidence provided, we are satisfied that the authority is able to make provision for the child's needs in school C.

103. Witness B provided a witness statement (R153). Witness B explained the approach which has been adopted by school C in relation to the child's learning. From the staff perspective, the main barrier to the child's learning is that he is not attending school. If this issue was overcome, she had no doubt that the child would make successful progress. Staff within the primary school are trained, experienced and more than willing to work with the child to ensure he is supported to reach his full potential and witness B considered that the child's additional support needs can be fully met at the current school.

104. The child has a flexible learning plan. An application has been made for an outdoor learning school, and forest schools and music therapy are available for the child. The outdoor learning school is a flexible pathways provider and the respondents have approved the education plan for the child which includes an enhanced provision. At outdoor learning school the child learns outside skills and develops social and emotional skills which prepare him for life, learning and cooperating with others. He received this support over the summer holidays and was doing one to one sessions where one adult was available with him at all times. He will be introduced to peer group sessions in small groups gradually as the outdoor learning school learning continues.

105. In the forest skills group, which is run by support for learning staff, 5 or 6 children are in the group.

106. Staff have been trained in support for learning since 2014, since the school became an enhanced provision for the cluster. They have received training by educational psychologists, attended an induction course and accessed autism training through the authority Portal. Now, staff are working on 4 sensory modules. Staff have had extra training on "meltdowns" to recognize causes of anxiety. They have input from an educational psychologist linked to the school and speech and language therapy support in-service. Staff participate in a rolling programme of training every year.

107. Teacher D is the pupil support assistant who works with the child and is both an escort for him and an assistant. She has completed specific training on child psychology.

108. Witness B spoke to the running record contained at R381 to R384 showing the recent attendance of the child for brief periods at school. This was a detailed record of interaction with the child, which was very helpful to the tribunal. She provided evidence that when in school, the child is very contented, is happy and engages with staff. He also engages with peers and is keen to learn. The main issue is that the transition between home and school (which) is not working at present. Witness B has looked at a number of strategies to try and help the situation. Some strategies have been successful for a period of time and then stopped. Witness B felt that she listened to the appellant and took on her advice and suggestions, for example asking the PSA to go to the kitchen window at home to speak to the child. Prior to lockdown restrictions the PSA would go into the family home to encourage

the child to come into the taxi with her and travel to school together, and recently agreed to be in the garden to play a game with the child to try and encourage him then to make the transition from the garden. The difficulty is that when the child arrives at school with the appellant, he does not want to separate from her. He wants to leave when she leaves. Recently staff have updated a social story which includes the appellant being the first one to leave school with the child remaining there. The school continues to take the educational psychologist's advice in relation to the best approaches.

109. The Autistic Society have agreed to support the child and to help him at home and at school. A team effort is needed, and everyone requires to be onboard to provide consistent approaches. One thing that the child responds to very well is the assistance dog of teacher B and he is happy to interact with teacher B and the dog. This approach will continue to encourage attendance at school.

110. Witness B spoke to the MAPPM meeting on 28th October 2020 which involved all agencies and the appellant, and was held online. The documents in relation to this meeting are contained at R373 to R374 and a timetable was produced which is attached at R376 to R380. All of this information persuaded the tribunal that the current school was actively seeking to address the issues preventing the child from attending school.

111. Recently, the former nursery room has been made into a nurture space within school due to the redesign of school to comply with Covid restrictions. The child can access that room directly now instead of crossing the playground and could go there directly from exiting the taxi that brings him to school. This is an additional quiet, calm, nurturing space which will be for (ASD) children who have ASD. At the moment, the child is the only child who will access that space although it will be used for small group activities if other children successfully attend.

112. The child will also benefit from music therapy which will be available to him in school and forest schools outdoor learning which would enable him to learn maths, numeracy and language in a natural way.

113. Currently the child has the following assistance; teacher C who is outdoor learning support, teacher A who is his teacher for academic purposes in the life skills room where he is free to access materials and learn through play and digital schools teaching in the library, which the child really enjoys. He could access materials, use a quiet room and meet up with his classmates on google chrome or remotely by other means if that was beneficial. Witness C, Educational Psychologist gives the school guidance on how to adapt teaching to help the child reach his full potential, taking account of the child's needs.

114. Witness B ensured the family were provided with a dongle to help with Wi-Fi connection during lockdown and remote learning. The teachers are happy to continue to provide blended learning for the child until he is able to attend school full time. He is well known to the staff and other children. He was given learning packs over lockdown and the teachers know his interests and how to engage with him.

115. Witness B confirmed to the Tribunal that she felt the other things which could be tried with the child to engage in education were that he be encouraged to work with the Autistic Society to enable transitions to be supported and that the social story is fully discussed and agreed with the appellant, that the PSA who works with the intervention teacher remains fully involved, that staff support the child to engage in community activities such as

swimming (which was (an) offer pre-covid restrictions), that the staff remain flexible about the options and ensure that trust is built up in staff. Teacher B has offered to meet the child at different locations on the school grounds or in public play parks to assist with transition. The more time staff have with the child, the more they are able to listen him, to plan a transition which suits and the better chance they have of encouraging him to engage.

116. Witness B confirmed in cross examination that staff share information all the time about the response to various strategies and information about progress in relation to the children and to this child specifically. Teachers assess the level of support that is needed and that is looked at by the support for learning team and regularly reviewed. They target support to individual need in line with a staged intervention approach. They have a wide range of pupils within the school including many with additional support needs. They have staggered entry and drop off times for the whole school as a result of Covid restrictions and now children access classes directly at lunch time and for outdoor activities as the main shared areas of corridors etc. are no longer used in the same way. There is a one-way system in school and communal areas are quieter, which is a positive for the child and other children in school with sensory issues. They have a good record of devising children's individual plans and have managed to ensure all children returned to school following Covid restrictions, with the exception of the child and another child who had been shielding.

117. The enhanced provision is not a room as such, it is the targeting of support where it is needed to address a specific need and there are different spaces inside and outside school which are accessed by the children who require enhanced provision. All pupils can access that support.

118. Witness B confirmed that the child progressed in his social skills when in school. He is able to engage with others, he is able to self-regulate and has shown staff that he is able to manage his emotions successfully. He is very able in numeracy and literacy. He can work out problems and recognise time. He is difficult to track academically because of his lack of attendance, but each time is in school he takes a little step forward. Attending school more regularly would enable him to build his confidence for social engagement. He has progressed in digital skills. He is about to start music therapy which has been approved through his flexible learning pathway.

119. There is no rigid staff ratio for the child. Sometimes he is with one person working on a one to one basis and on other occasions there is an additional PSA or other support staff available. When the child attends school consistently, he benefits and develops self-confidence and makes progress with his learning. He is a kind, caring boy who engages well with other pupils. He was recently observed by witness B while engaging with Primary 7 children and she observed very positive interactions. In the forest school group, he has good relationships with the other pupils attending.

120. Witness B confirmed that the individual education plan for the child (R199) is an updated version and the targets are current. To achieve the targets, he needs to attend school and engage in flexible learning. During lockdown, the family were supplied with a laptop to enable the child to access online learning. The child had said he wasn't keen on a keyboard and accordingly an iPad was provided instead and a dongle to boost Wi-Fi connection. Feedback from staff was positive regarding engagement in remote learning. Knowing what works with outdoor learning activities, could be a blended model for the education to be provided to the child and he could build up his time gradually in school.

Recently teachers had commented on increased engagement of the child, increased concentration and improved gross motor skills.

121. Witness C is an Educational (child) psychologist who provided options appraisal at R128 and an updated options appraisal at R305 to 307. She provided a statement at R145 to 152 and supplementary statement R294 to 302 which were accepted as her evidence in chief. The witness's qualifications are contained at R143 to R144.

122. Witness C confirmed that she has seen the child with the appellant on a number of occasions. She described him as a lovely boy who is very curious, listens, questions and when relevant showed what he was working on his iPad and shared his attention between the witness and the appellant during the witness' visit and engaged well with her in the company of the appellant.

123. In reaching her conclusions in relation to the child's additional support needs, she takes account of the information obtained from many colleagues and decisions are made on a multi-agency basis which includes school observations. Witness C noted that the child was particularly anxious at transitions whether these are transitions from home to school or home to community environments. The appellant had informed her that taking the child to the shops can be very challenging and they restrict their visits. He considers home a safe base and transition away from home is very difficult for him. His additional support needs are fully documented at R362 to R363 in relation to the occupational therapy assessment which was carried out in 2017 relative to his fine and gross motor skills.

124. The way of overcoming the child's difficulties is to ensure that he engages with the different supports, making all of the unknowns known to him. This includes social stories, visual timetables and breaking down transition issues by explaining to him what he is to expect, where is going and who he is to meet etc.

125. Witness C acknowledged that separating from the appellant at school is very challenging for the child. If he goes in a taxi he manages better. He finds it very hard to leave the appellant. Strategies have been tried such as the PSA at times playing with him in the garden to enable transition from home to the taxi. The Autistic Society has been commissioned for 5 hours per week to work with the child transitioning him from home to other community places and to help transition to school. When he arrives at school the child needs a consistent adult there to work with him. School C have worked hard and have a keyworker and consistent adult there to meet the child (teacher B) and the child responds well to her and her therapy dog.

126. Forest learning is beneficial to the child as the outdoor learning takes place twice per week. In addition, outdoor learning school is also needed. This is for the purposes of widening the child's world and supporting transitions into other learning opportunities.

127. Witness C confirmed that the child is not expected to conform with school uniform as his sensory needs are recognised within school. He can have a soft start in the mornings. He engages well with his peers and follows adult instruction. He benefits from the flexible learning plan and bridges the transition from home to school through the Autistic Society, and PSA assistance. He can attend the life skills room within school and there is a consistent adult within that room. At all times there are no more than 3 children in that space. He benefits from small group learning and all of the supports in place currently for the child are on a one to one basis and small group learning.

(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 (ii), to place the child in the specified school

128. Witness C considered it very important that the child has the opportunity for widening the breadth and depth of his peer group and role models as he is a child who looks and observes and learns from the behavior of others. He needs to have the opportunity to have a variety of social models and a wider peer group. The child also benefits from established relationships at his current school with his key person. This is important for the child as people unknown to him make him feel anxious. His difficulty with transition is related to the anxiety of leaving a safe base. If a safe base can be created in school by him knowing where he is going and the relationships he has with the people there, transition to school will be more successful. The child does very well with adult support and enjoys the one to one level of attention. He is often observed by Witness C and others engaging well with adults or peers in small groups and he can explore his environment with confidence and return to a group.

129. Witness B considered that the benefit to the child of attending his local school is that his sister attends there, and he can engage in links with the local community. The staff within the school are very committed to making the school an all-inclusive school and the child appears to benefit from engaging with his peers and joining in with activities. Because of the flexible learning plan in place, the child has the opportunity to de-escalate and to work flexibly so that his timetable is designed for his specific needs. When he is in school, he is happy. The only issue identified by the school is in relation to transition from home to school.

130. Witness C provided evidence in relation to the specified school with which she is familiar. Knowing both schools well, she felt that the child would have a wider range of peers at school C, which can also provide the option for flexible learning to enable him to transition with confidence. The flexible learning plan offers outreach to home and allows relationships to develop so that the child can engage in education and community resources. The specified school does not offer outreach such as home working with the child in his home environment.

131. The child's sibling attends the latter stages of the senior school at the specified school and his younger sister attends his current school. Witness C is uncertain whether he would travel successfully to the specified school in the same taxi as his brother. Witness C considered an individual escort may be required if the child was to travel there as the appellant has provided information previously that it is tricky for both the child and his older brother to travel in the car together.

132. Witness C's option appraisal detailed the benefits of both schools and confirmed that the specified school could meet some of the child's needs. Attending the specified school however has the potential to be detrimental to the child as his peer group would not be as wide, and he would not benefit from having the opportunities of engaging with his community. His prospects of academic achievement would be more limited. School C alone can provide the breadth of peer group and the outreach flexible learning plan which the specified school cannot.

133. The specified school does not offer the full curriculum to higher level. The breadth and depth of curriculum in mainstream schooling with enhanced provision provides a greater opportunity for the child to develop to be a successful learner.

134. In cross examination witness C was asked, if there is no sign of anxiety or stress in the child at school, why was his time in school so limited? She responded by providing evidence that the child is very able to engage with his education, but in order to access learning, those around him need to ensure that he feels safe and secure in his school environment. In school, observations are of a child who can navigate learning well and engages in discussion, but all agencies involved including school staff, social work department, the Autistic Society, OWL all acknowledge that the child has a high level of anxiety in transition into any unknown environment. An example had been when there was an outside visit to a local forest when he exhibited anxiety.

135. Witness A is the head of education at the specified school and her evidence in chief is provided at A62 to A71 and A75 to A84. She referred to a letter provided at T15 dated 12th April 2019, which was an admissions letter, confirming that after consultation with members of the admissions and reviews committee the child was considered to be suitable for admission pending a suitable vacancy being available at the school. She confirmed that she had not carried out any assessment specifically in relation to the child.

136. Witness A provided generic information regarding the provision of education at the specified school, all as detailed in her statement. She described lots of activities that the children can become involved in including going to visit local shops, using public transport, (having) developing life skills, planning where they are going and what they are going to do. She had no concerns regarding the opportunities which were available for day pupils as opposed to residential pupils. She acknowledged that residential pupils could access at the weekends, the holidays and evenings different activities but many of those activities also took place during the school day. She confirmed that every child is individual, and the curriculum designed for them depends on their need. She considers assessments which have been carried out by the team around the child prior to admission would show how best to support the child.

137. Witness A confirmed that the school offers a low stimulus environment. It is not overly noisy and the whole school building is managed for low arousal, trying to minimize stimulation. She would look at relationship building if a child was anxious to come to school so that she could work on trust. This is something which may require to be done outside the school building. She has experience of managing anxiety of children attending school and finds a way to work with the young person to support them to manage transitions.

138. Witness A confirmed that she has one pupil within the school doing units towards an English higher who will not be sitting a formal exam. Because of the low number of pupils, they cannot offer a full range of qualifications but they do look at the pupils coming into the senior level of the secondary school and try to assess what children will need moving forward. It is a challenge to offer a range of higher exams as would be available in mainstream school, but if a child wanted to do a higher in a particular subject every effort would be made to make that possible, but it could not be guaranteed that the subject teaching would be available.

139. Witness A confirmed in her statement that she had experience of a child transitioning from the specified school to mainstream school. She confirmed that that transition had not

been successful in that case, but she was aware of it happening with other pupils successfully (A69). If the multiagency team around the child considered that transition to mainstream is appropriate, she would work towards that. She disputed that there was any less access to the range of peers at the specified school. She did not know the makeup of the alternative school and accordingly felt she could not compare but she considered that there is a wide range of ability within her own school and there was no lack of social role models.

140. In cross examination, witness A confirmed that the specified school is not involved in the transport to and from school, as that is a matter for the Local Authority. Where children have had difficulties transitioning from home to school, strategies which have been employed by witness A include later start times, communication strategies including social stories, staff providing escort in one case (which was a highly unusual situation and was time limited). Class teachers tended to move with the class throughout the school which provided children with consistency, which aids their confidence and feeling of security, there is low staff turnover and many members of staff have been present in the school for 6 or 10 years.

141. The appellant provided evidence orally and relied on her statement contained at A57 and A72 which she was content to have adopted as her evidence in chief. She remains of the view that the child requires to be educated at the specified school. She confirmed that nothing has been done to assist her throughout the child's education so far. In relation to the provision of transport for the child to school everything was fine until the taxi driver changed and then the child refused to go in the taxi. The taxi would often take the child to school and there was no one there to meet him, which caused distress. She would attend school to ensure the child was safely met by a member of staff and there was never anyone there. She felt that transport to school worked better when the PSA was able to come into the house and interact with the child and then transition from there with him in the taxi. That had then been stopped due to Covid restrictions because she was not allowed to enter the home. In addition, the PSA was playing a double role as an escort for the child and also a PSA. She did not start her PSA job until 9.30am and accordingly when the child was picked up and taken to school from 9am there was no one looking after him between 9am and 9.30am. The appellant was at school each morning at 8.45am to drop off her daughter. No one spoke to her or approached her to let her know what was happening with the child. The appellant advised that every morning was chaos. No one knew what anyone else was doing. The child has missed 4 years of school. He goes to the forest school but does not do the full hours that he is entitled to there. The school did not engage outdoor learning school, it was the social work department. The taxi arrangement is chaos. There are no social stories except the one that the appellant has prepared with assistance from the Autistic Society. She has been requesting photographs of the staff since 2017 to add to the social story for a long time and her requests have been ignored. On Friday 30th October she received a black and white passport sized photograph of some staff members which she could barely recognise.

142. The appellant advised that she did not discuss most of the issues noted in the MAPPA meeting documented at R371. No one has mentioned to her that the nursery room has now been converted into a quiet space which would be beneficial to her son. She disputed how often the child had attended school, advising that he has never been in for a full day and has attended at most for 30 or 45 minutes outside. A teacher had met him on one occasion and engaged in bouncing a ball with him. Another occasion staff had tried blowing bubbles, which upset the child. On occasions he has pushed her over to get out of the school

grounds. When he reacts in that way, he has no idea what he is doing or where he is. The appellant recalled that probably on one occasion this year the child had gone to school in the taxi accompanied by PSA and taxi driver. The taxi driver had driven the child around to use up time as he had no other job to go to.

143. The appellant advised that her relationship with the staff involved with the child is sometimes positive. She acknowledged that teacher B does outdoor learning and that the PSA supports him in school and is meant to support the child in school and travel with him. She complained that she often gets taken away to other duties. If another class comes out when the child is there he leaves. He is not with anyone within the school long enough to build any peer relationships or have peer interactions. Even the provision of outdoor woodland learning is not as extensive as suggested. Outdoor learning school only attend 2 hours out of the 4 of the provision and the Autistic Society also do not work with the child for the full number of hours provision. During the holidays they saw him one day per week and out of holidays twice per week, once after school for education purposes and once with social work through the school day. The appellant disputed that the Autistic Society were working with the child to assist him in transitioning into the community from home. He has had no social outings with the Autistic Society.

144. The appellant advised that the forest school has only lasted for 15 minutes or so on one or two occasions. The child meets teacher B at school, and they kick a ball around the playground together. Sometimes he sees her for 10 or 15 minutes in the afternoon. When he attends forest sessions, he smiles to avoid conflict but is anxious and flapping all the time, so although he appears to be smiling he is just trying to stay in one place but is paddling to stay afloat.

145. It is the appellant's position that the main barrier to education is anxiety due to the child's autism. The school do not know how to address these issues. When she is in the car park, she has on occasions sent messages to the PSA and been told that she is too busy to come out. She has now been given a text number (on Friday 30th October) to contact the school directly when she arrives if no one is there. She can take the child in the car and drive him to school, but she needs to know that someone will meet him at the other end. She could drive him to the specified school. The only reason that the shared journeys with the child's brother previously failed was because School C school made the child late and the older child was anxious about being late to his school. The child is not more anxious separating from the appellant but is anxious because the arrangements which are supposed to be in place are not adhered to. He can separate when he goes with his grandmother or his sister, and a friend has dropped him off at school on an occasion. The issue is due to his autism and not separation issues.

146. The appellant wishes the child to attend the specified school because it is autism accredited. Her older child attends there, and the school would understand the child's needs. Her older child had the same transition issues and the school dealt with that within 2 weeks' (time). They have a similar diagnosis, and the specified school has been able to provide a quick individual learning plan and the same teachers to provide consistency. During lockdown she spoke to the staff there every day, and she has a direct line to 2 people to contact if any issues arise. She disputed that there is any restriction on academic achievement at the specified school on the basis that her older son is studying higher physics. He had been told he was "too stupid and thick", but he is now studying to a higher level, and she anticipates the same success for the child.

147. The appellant provided evidence that all visits to the specified school have been very positive for the child. In comparison when the appellant attends school C she has to follow the child around. At the specified school, the child feels no tension and is able to approach staff directly. Although she has been nearby during any visit of the child to the specified school, the child has happily separated from her and gone with other family members. They all understand autism, whereas school C do not. The appellant anticipates that at the specified school on day one an individualized learning plan would be put in place and followed through.

148. The appellant has no concerns about the child accessing a wide range of peers. He lives in a house with many siblings and is exposed to a range of behavior, as his siblings also have issues of various types. The child is not attending school at the moment and accordingly his chances of succeeding educationally are nil whereas at the specified school his older brother is studying higher physics.

149. In cross examination the appellant advised that the reason transition issues for the child's older brother had been swiftly resolved by the specified school was because they had communicated with her and she had trust in them and the older child trusted the staff.

150. She confirmed that she had a letter that she could produce, and that the NHS had confirmed the diagnosis of autism. When challenged further on this point by the Tribunal she was unable to produce the letter and her position was that a private consultant had provided a report confirming a diagnosis of autism which had been provided to CAMHS and they had accepted it.. This evidence conflicted with the documents provided at R366 to 368.

151. Subsequently a letter (A085) was provided to the tribunal and considered (by agreement of the parties) which confirmed that in 2018, CAMHS had felt there would be little benefit in repeating the assessment. There is no NHS diagnosis of ASD, although that assessment has now commenced. We concluded that that the provision of education to the child is based upon assessment of his needs, and does not rely on a formal diagnosis of ASC.

152. The appellant advised that she encourages the child to go in the taxi to attend school. She has tried leaving the child at school on a number of occasions and it is not successful. She is at school with the child every day. She disputed that the child had managed to attend school on three occasions in the week preceding the hearing. On production of the running record contained at R383 to 384 she conceded that the child had been in attendance for short periods but had suffered serious anxiety as a result, and it continued to be the case that she cannot leave without him wanting to leave with her. She notes that the teachers struggle to keep him in school. The environment is not suitable for the child as he is surrounded by 400 children and bells going off.

152. The appellant did not consider that there would be any difficulty for the child in changing school or having to have new relationships with staff. She anticipated the transition being as easy for the child as it had been for his older brother. The child knows nothing about the change of school, and it has not been discussed with him. It is the appellant's position that she has done everything to make the current placement successful.

153. Having accepted the evidence of the respondent's witnesses in preference to that of the appellant, we are satisfied that this condition is met. In relation to **respective cost**, the child's needs can be fully met in the current school at significantly lower cost to that of the

specified school. The costs of attendance at the specified school and current provision were a matter of agreement. There is no justification for the additional expenditure required to attend the specified school. In relation to **respective suitability**, the current school has adequate provision and resources to meet the child's needs and is most suitable for supporting his sensory and learning needs. There is the potential for detriment to the child if he is removed to the specified school, both in educational attainment and in restriction of his peer group but also in relation to the impact upon him of a further transition to an unfamiliar learning environment.

The Second Stage

154. Having considered that grounds of refusal specified in 3(1)(f) of schedule 2 to the 2004 Act exist, the Tribunal then went on to consider whether in all the circumstances, it was appropriate to refuse the placing request.

155. Having considered the evidence in this case, including the views of the child, we are satisfied that it is appropriate to confirm the refusal.

156. The provision of education at school C can meet the child's needs. It offers a holistic and appropriate educational opportunity for the child. An education at the specified school is likely to limit his educational achievement without which his opportunities for employment or further education will be greatly reduced.

157. Witness B was very concerned that another transition to another school and a new set of teachers and peers would be detrimental to the child. She considered it essential that the child is given the opportunity of building on his coping skills, which he has already demonstrated as he has positive experiences within school when he has been able to attend. Change would cause further disruption.

Reason for preferring evidence of the respondent's witnesses

158. Regrettably, the appellant appeared to the Tribunal to be an unreliable witness. She appeared to be entirely resistant to making the current school provision work for the child. She was inconsistent in the evidence she provided about the PSA being allowed to attend the home, and her engagement with the child. In giving her own evidence she had advised that the PSA was not allowed to enter her home and then subsequently on being presented with the information from the MAAPM meetings, confirmed that the PSA had entered her home but it had resulted in severe anxiety for the child. Similarly, she had to correct her evidence when confronted with the running record, which detailed the interactions between the school and the child.

159. The appellant provided a long list of complaints about the provision of education to the child, which was not supported by the productions and evidence relied upon by the respondent, much of which was unchallenged in evidence. She appeared unrealistic about the extent to which a school move could be detrimental to the child. She asserted that the child would have an individualised plan "in days", and that he would travel to school either with his brother or with the appellant without difficulty. There was no evidence to support that. In fact, the evidence indicated that even with the appellant's encouragement the child found transition difficult. There was no evidence to suggest that leaving the appellant each day would be easier for the child if he went to a different school. Although he had enjoyed

visits to the specified school, he had done so in the context that the appellant was present, and the visits were on open or activity days, and not a day for school lessons.

160. The appellant's position in relation to the diagnosis of autism was unreliable. Throughout the paperwork lodged and the information provided to the Tribunal it is clear that no NHS assessment has confirmed a diagnosis of autistic spectrum condition. A private report was commissioned by the appellant. The diagnosis has not been confirmed by the NHS. The productions lodged by the respondent at R366 to 367 make it clear that the CAMHS nurse specialist (who is the author of that letter) acknowledges the history that a report was obtained privately and that the appellant wished the conclusion to be accepted by the NHS. It does not endorse the conclusion and in fact considers that the best way forward would be for the child to be accepted for assessment within CAMHS. That letter is dated 23rd April 2020 and it is following on that letter that the appellant was allocated to the case load of Doctor A. The appellant's position that Doctor A had accepted that diagnosis (or one of her colleagues had) some time ago or that any decisions which had followed on in relation to the assessments by the educational psychologist or other agencies had chosen to ignore that assessment, is simply not borne out by evidence produced.

161. No challenge to the expert evidence provided by witness C was made on behalf of the appellant in relation to the factual basis upon which the evidence was based. However, in her own evidence the appellant challenged all aspects of facts and had a very different version of the engagement between her and the school and the engagement of staff with her son from either of the professional witnesses.

162. The evidence which was provided by witness A was generic in relation to pupils at the specified school and not specific in relation to this child. No evidence was provided by that witness in relation to the assertions made by the appellant regarding the provision of education and strategies employed in relation to the child's older brother, upon which the appellant sought to rely. Witness A also confirmed that she had carried out no assessment of the child's needs. In addition, the appellant gave conflicting evidence to her witness. Witness A was clear that the school could not provide a wide range of highers at this stage but would consider the need for any additional subject teaching. She told us of one pupil currently working to higher level in terms of course work but not sitting the formal exam (in English). The appellant however provided evidence that her son was undertaking a higher physics at this time. As none of the contradictory evidence provided by the appellant was put to the witness from the specified school, we conclude that the evidence provided does not support that of the appellant.

163. The barrier to education is the child's anxiety surrounding transition. He finds school scary. A plan has been put in place to assist the child and support the family to ensure his attendance at school. The key to successfully transitioning will be for the child to feel secure and safe within the school environment. That will involve cooperation of the appellant and the school staff following the plan to ensure the child has a social story which is appropriate and explains to him where he is going, when he is going there and who will be there to meet him, and that the appellant and staff arrange to comply entirely with that plan on a consistent basis. The strategies which would be employed at the specified school are no different from those available at the current school and there is the added benefit at school C of home interventions through the flexible learning plan. Every effort should be made by joint engagement of the family and the school to ensure that these are successful strategies.

164. Accordingly, the tribunal confirms the decision of the education authority.