Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. This is a placing request reference, received by the Tribunal on 26 June 2020. It is made under section 18(1) and section 18(3)(da)(ii) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**'the 2004 Act'**). The appellant asks the tribunal to require the respondent place the child in school B.

Decision

2. The tribunal overturns the respondent's decision to refuse the placing request, in accordance with section 19(4A)(b) of the 2004 Act. The tribunal therefore requires the respondent to place the child in school B by the first day of the start of the 2021-22 school B academic year in September 2021, or on such other date as is agreed between the parties.

Process

3. A hearing took place over two days. It was a remote hearing, conducted in this way due to the COVID-19 outbreak. Prior to the hearing, a number of case conference calls took place. Directions were issued to regulate the hearing and pre-hearing process. Following the oral hearing, written submissions were directed and received.

4. Early in the progress of the reference, a preliminary issue arose, namely whether school B is a "school" under the 2004 Act. Following written submissions and evidence from one witness (witness C), the legal member issued a decision on the preliminary issue on 7 September 2020. In that decision, the legal member held that school B is a school under the 2004 Act, and that the reference is therefore competent. The respondent sought permission to appeal that decision on the preliminary issue to the Upper Tribunal. Permission was granted and the appeal was heard and a decision was issued on the appeal on 16 December 2020. The appeal was refused and the reference was remitted back to the Tribunal.

5. A joint minute of agreed facts was directed and prepared by the parties' representatives (T135-T138).

6. Some late documents were lodged by both parties. These were received without opposition. This means that the written evidence we considered (the bundle) consists of: T1-T184 (including the written submissions for each party); A1-A108 and R1-R245. Before reaching our decision, we fully considered the oral and written evidence and written submissions.

Findings in Fact

General findings

7. The appellant is currently 16 years old, and will soon be 17.

8. The appellant was diagnosed with an astrocytoma tumour on her optic chiasm at a young age. Treatment for this tumour has affected her vision, particularly her field of vision. She has no vision in her right eye and no vision on the outer half of her left eye. Her upper and lower fields of vision are reduced so that the overall effect gives her a small area of vision only. Her acuity for distance and near vision is reduced. She is registered as severely sight impaired (blind).

9. As a result of the appellant's visual impairment, she has problems with the timely processing of visual information and psychomotor skills which significantly affects her learning. As a consequence of neurosurgeries and proton beam therapy which the appellant has had to treat the astrocytoma, she suffers from significant fatigue on a regular basis. This fatigue is exacerbated when she is faced with stressful situations.

10. The appellant has a VP shunt so should avoid sudden jerky movements or tipping upside down. Her forehead is extremely tender from previous neurosurgeries and it is painful for her to sneeze or cough or be touched in that area. As a further consequential side effect of neurosurgeries and proton beam therapy, the appellant requires certain treatments, including medication which she administers herself on a daily basis. There is an emergency protocol in place for the appellant to manage any health crises.

11. The appellant is an extremely poor sleeper. Her complex health needs and previous and ongoing treatments have an impact on her strength and stamina.

12. The appellant requires to use a wheelchair for long distances.

13. The appellant has received input from the Council's Vision Support Service (**'VSS'**) from the age of 2 years until present. She attended a primary school from P1 to P7. She has attended school A for her secondary education and is currently a pupil there in secondary year 5.

14. In or around February 2020, the appellant's parents made a request to the respondent for the appellant to be placed in school B from September 2020. On 8 June 2020, the respondent wrote to the appellant's parents by e-mail, refusing the placing request. That e-mail did not identify a statutory ground for refusing the placing request since the request was refused on the basis that it was not competent.

15. School B's managers have offered to admit the appellant as a pupil in September 2021 on the same basis as an offer of a place was made to the appellant for September 2020 entry. That offer is specified in the letter from school B dated 23 January 2020 (T097). Due to the complexities of the appellant's health and related fatigue issues, school B has offered the appellant what would ordinarily be a two-year course to be completed over a period of three years, to allow for a reduced weekly timetable, to assist with the pace of learning.

16. The appellant has a CSP. Her first CSP was formed on 17 February 2011. In most of each of the subsequent years, a fresh CSP has been produced. The appellant's current CSP is dated 23 April 2019, and was intimated to witness D and her husband by letter of 10 June 2019 (R066-R074). The date by which the next review should have been completed was 15th July 2020 (R074).

17. On 28 January 2020, a meeting took place about the appellant's CSP. It was attended by (among others) witness D and her husband, witness A and witness B.

18. At that meeting, certain amendments to the current CSP were proposed and agreed. One such amendment (at the request of witness D) was to record the following: "[the appellant] is currently in S4 in the transition process due to leave [school A] on 31.05.2020, to go to [school B] with a placement request to be made to [the respondent]."

19. No concerns were expressed by anyone attending that meeting about the possibility of the appellant attending school B.

20. Following the meeting on 28 January 2020, by March 2020, witness B submitted an amended CSP bearing the changes agreed at that meeting, to the respondent. Usually once the amendments to the CSP have been agreed, the amended draft CSP is submitted and is finalised in amended form. The respondent had not produced an amended CSP by the end of the hearing.

Findings on school A and the appellant

21. School A is a mainstream secondary school, providing education from secondary year 1 to secondary year 6, inclusive. The pupil roll is around 1500. It has been operating since 2009.

22. Around 90% of pupils at school A stay on beyond secondary year 4. Most pupils leave school A with a mixture of National 5 and Higher qualifications. Over 80% of pupils at school A leave with three or more Higher level qualifications. School A is an academically high achieving school.

23. Although other pupils with visual impairments have previously (and currently) attended school A, there are currently no other pupils of the appellant's age with a significant visual impairment at school A.

24. A finalised S5 timetable for the appellant was put in place from 11 September 2020 and was revised on 11 November 2020 (R035).

25. The curriculum the appellant currently follows at school A includes accounting, functional English, maths, personal finance, ICT skills, health and wellbeing, tactile learning and Braille and independence skills for living and mobility. Due to the appellant's health and related fatigue problems, she has three periods per week in her school A timetable for personal study or for rest. The appellant uses some of the rest period time to catch up on school work. Pre and post learning periods are also built into the appellant's school A timetable to help her engage with content (five in total each week). The total teaching contact time at school A would usually be around 18 hours per week.

26. The appellant struggles with her Accounting studies at school A. She requires considerable support in that subject. In her most recent assessment, she scored 35%.

27. The appellant struggled in her National 5 Business subject, and is now working towards National 4 level.

28. The appellant has had difficulties in Maths (in particular with recalling what she has been taught and reading questions carefully) but her confidence and ability have significantly improved in the last two years.

29. The appellant is making good progress in Braille and Tactile Learning classes, for which she has an enthusiasm. She is learning Braille at a basic level. She is working well in her Habilitation Skills and PC Passport classes.

30. In English lessons the appellant needs encouragement to do more than the required minimum and support with punctuation, close reading, summarizing and making inferences.

31. The appellant has an individualized timetable at school A, designed (as far as possible in a mainstream environment) to cater for her additional support needs. Her school day at school A lasts from 8.40am until 3.00pm. The appellant usually sleeps for around 2 hours each school day following her return home.

32. The appellant has been allocated one full time equivalent Vision Support Teacher organised and supervised by the respondent's VSS, and two periods of support per week from a Support for Learning Teacher at school A.

33. The appellant attended VSS residential trips in 2015 and 2016, from which she benefited. The appellant has not attended such events recently, due to COVID-19 restrictions, fatigue or other commitments.

34. The appellant has been invited by the VSS to undertake activities such as taking part in a national virtual mentoring scheme and assisting a younger person who needed support from an experienced cane user. The appellant declined both invitations due to other commitments.

35. The appellant has benefitted from VSS staff input on a 1:1 basis to learn skills for study, life and work throughout her secondary education.

36. The appellant has been taught how to use information technology in her learning and to experiment with different techniques for reducing visual fatigue. The appellant is learning how to use assistive technology, which will support her with her education and future working life.

37. VSS staff have assisted the appellant with note taking, study skills, scanning and skimming skills, all to assist with the learning experience.

38. The appellant is consulted by VSS staff on her preference for the format of learning materials. A formal learning media assessment was carried out in 2019 (R147), leading to materials being produced in the appellant's preferred N36 bold format.

39. The appellant uses an iPad Pro in school A. It has a large screen to access whiteboard work, using a mirroring app. The appellant can also take screenshots and use the iPad functions to enlarge work to the size she prefers. The iPad Pro was provided in January 2020, but technical issues meant that it was not able to be used in school initially. The appellant used it at home until the technical issues at school A were resolved. During the period when the iPad Pro was not available at school, other technologies were provided for use in school, such as an iPad, a PC and Microsoft Surface. A complaint by witness D around the delay in provision of the iPadPro was upheld in April 2020 (A029-035).

40. The appellant is learning how to use Narrator (screen reading technology) and is making steady progress.

41. The appellant has been provided with support and education to help her to develop her social skills, including showing interest in others, taking turns and reciprocity.

42. The appellant was initially predicted to be able to achieve, by the end of secondary year 4, five National level qualifications, four subjects at National 5 level and one subject at National 4. In the end, the appellant embarked on assessments in four of her subjects at National 4 level, and one at National 5 level.

43. The appellant's level of academic achievement is around average for a pupil of her age.

Findings on school B and the appellant

44. School B is an independent educational establishment for young people and adults who are visually impaired or blind. It offers a wide range of academic and vocational programmes preparing pupils for their transition into adulthood. It has been operating for 147 years, the last 42 of which have been based at its current campus.

45. There are currently 75 students enrolled at school B: around one-third aged 16 and 17 years, with the remainder aged 18-25. The majority of the 18-25 age-group is aged 18-20.

46. All students attending school B have a visual impairment. A number of students at school B have a similar level of visual impairment to the appellant's. Some pupils have no vision. Others have better vision than the appellant.

47. The level of academic education offered at school B runs from Entry Level to Level 3 within the Regulated Qualifications Framework (RQF) which applies in England, Wales and Northern Ireland. The equivalent framework in Scotland is the Scottish Credit and Qualifications Framework (SCQF). The following qualification and level equivalencies apply (see A005):

    a. RQF Entry level = Levels 1-3, National 1-3, SCQF

    b. RQF Level 1, GCSE Grades D-G = Level 4, National 4 SCQF

    c. RQF Level 2, GCSE Grades A-C = Level 5, National 5 SCQF

    d. RQF Level 3, GCS AS and A Level = Levels 6-7, Higher SCQF

48. School B employs 43 teachers (a total of 30 whole time equivalent teaching staff). Eight teachers at school B have a visual impairment; three of these are IT teachers.

49. The mission statement of school B is: “Education, employment and empowerment for people with a visual impairment.”

50. The vision statement of school B is “A world where every person with a visual impairment has true equality.”

51. The planned provision for the appellant at school B is set out in detail in school B’s letter of 23 January 2020 (T097). The curriculum which is offered for the appellant at school B is highly individualized to the appellant and includes mobility, independent daily living skills, functional English (RQF Level 2), functional Mathematics (RQF Level 2), Information Communication Technology, Braille (RQF Levels 1 and 2) and Business Administration (City and Guilds Level 2).

52. In addition to classes in these subjects, the appellant would attend flexible study sessions and weekly tutorials, career development sessions, link working sessions and Information, Advice and Guidance sessions (the latter fulfilling a pastoral role).

53. The residential provision at school B involves each student having a bedroom with an en-suite bathroom. There are six sitting rooms and a kitchen area in the accommodation.

54. On the basis of the curriculum planned for the appellant at school B, the total regular teaching contact time would be around 17 hours per week.

55. School B has, as part of its ethos, a strong emphasis on pupils learning independent living skills as well as academic skills. School B operates a number of independent living courses within its curriculum.

56. School B was inspected by Ofsted in 2017 and was found to be ‘Good’ in all areas.

57. School B’s residential provision was inspected in February 2018 and was judged to be outstanding.

58. Tuition in school B takes place in small groups. The appellant would be taught in groups of around 4 (maximum 5) for some subjects, and for the independent living subjects (such as independent living skills, mobility and Braille) the appellant would be taught on a 1:1 basis.

59. There is a focus on independent learning in school B. The appellant, as a pupil there, would develop skills in studying independently, without the input of class-based support workers. In order to promote independence at school, with a view to promoting independence in later work and life, school B does not employ teaching assistants.

60. The appellant, as a pupil at school B, would be able to apply some of the life skills taught in lessons there (such as meal preparation and household budgeting) within the residential setting offered by school B.

61. The appellant, as a pupil at school B, would be able, with the assistance of nurses and wellbeing support officers, to develop skills to manage her medication routines and medical appointments.

62. The appellant, as a pupil at school B, would embark on a work placement of a minimum of one week per year as part of her studies. Placements are arranged with an employer/business related to the chosen vocation of the students, and where possible take place in an area where the student plans to relocate after completion of their studies. In addition, the Business Administration course involves practical work experience in the school and in the workplace.

63. The appellant, as a student at school B, will have access to a range of ICT and assistive learning technologies. Learning resources at school B are provided in a format to meet the individual needs of pupils, including assistive technology to meet the pupil's needs. These technologies will include large print and/or screen reading software. The main aim of such technologies would be to prepare the appellant for fluency of use for her working life.

64. Students at school B are provided with a laptop and a desktop computer. Every laptop and desktop is pre-loaded with six different assistive technologies. One such technology is "Jaws", which is screen reading software. Alternative software such as "Supernova", "Zoomtext" and "Fusion" are also available. All such provision is included within the tuition fees for school B.

65. There are four full time members of school B staff in the school's IT technical team. They are responsible for setting up laptops, technical repairs and software platform work.

66. The appellant, on attending school B, would consult with members of the school IT team to assist in identifying the most appropriate software for her needs.

67. All teachers at school B are qualified in their specialist subject area. In addition, all teachers there have undertaken a qualification in teaching pupils with a visual impairment, and so are Qualified Teachers of the Visually Impaired (**'QTVI'**).

68. As a pupil at school B, the appellant would have access to the Point4 sports and leisure centre, a facility built in 2009 as a fully accessible, international standard sports centre.

69. At school B, pupils learn between 9am and 5pm each school day. Rest breaks are arranged during the school days. Since the residential part of school B is nearby, pupils can return to their residence to rest during rest breaks.

70. The Learning Hub at school B remains open until 9pm and is staffed by teachers who can assist students with homework and provide study support.

71. School B offers support to students with social skills to assist in making friends.

72. School B offers a range of extra-curricular activities, including some within the neighbouring areas.

73. In the final year of education at school B, provision is made for a 1:1 transitional session to assist with completion of application forms for further/higher education or employment.

74. School B encourages students to become involved in recreational activities in the local community including in learning, sporting and career events at other local educational institutions.

75. The appellant attended a 'Come and Try' weekend at school B in October 2019. She was impressed with the facilities on offer at school B and felt comfortable with the supportive environment there. While at school B for this event, the appellant made two friends, with whom she remains in touch.

Reasons for the Decision

General remarks on the evidence

76. The evidence we heard from the witnesses was credible, and also, for the most part (and subject to the comments below) reliable. All witnesses provided witness statements, and in oral evidence none of the witnesses deviated in a material way from the content of their witness statements. The reference was, therefore, decided principally on our interpretation of the evidence. The three skilled witnesses (witnesses A, B and C) are very well qualified and experienced in their fields, (their experience and qualifications being set out in their witness statements), and we have no doubt, subject to our comments on witness A below, that they are able to provide their views on the relevant matters covered in their evidence.

77. The appellant was an impressive witness. She did not present as someone who sought to persuade us to place her in school B; she answered questions honestly and in a measured way.

78. Witness D also gave her evidence in a measured way. It was clear to us from her evidence that she genuinely feels that the appellant would benefit from attending school B. She did not present as someone who wished to cast school A in a negative light in order to persuade us to place the appellant in school B; indeed, in places (and in general) she was complimentary about school A. This lent significant credence to her evidence.

79. Witness C was very straightforward in the manner in which she gave her evidence. She is clearly very knowledgeable about the provision in school B. She presented as neutral in her explanation of the benefits of school B generally, and in relation to the appellant. We would add, however, that of all of the three skilled witnesses, witness C has had the least contact with the appellant; that is a matter we took into account in assessing her views.

80. Witness B gave his evidence in a very clear, honest and straightforward fashion. He is clearly a dedicated professional with a strong grasp of how school A operates, and a good knowledge of the provision in place for the appellant. While he sees the appellant on a regular basis in and around the school building (and occasionally in class), he has not spent any significant time with the appellant in a classroom learning environment.

81. Witness A was the main witness for the respondent. She is clearly a dedicated and experienced professional with a very good grasp of the VSS provision in school A and

for the appellant. However, we approach the evidence of witness A with some caution. This is for three reasons.

82. Firstly, while witness A leads the VSS provision for the respondent, and while she has known the appellant since she was a young primary school pupil, she does not spend significant periods of time in the classroom with the appellant. We recognise that the VSS teachers who do perform that role report to witness A on a regular (daily) basis but witness A herself has little direct and regular experience of the appellant in the classroom environment. While this does not seriously undermine the value of witness A's evidence, it does mean that caution is required when assessing it.

83. Secondly, (unlike the appellant, and witnesses B and C), witness A in her oral evidence presented as somewhat defensive in manner. We can understand why a skilled witness would seek to defend provision for which she is responsible, but we take the view that witness A's tendency to defend school A's provision may have influenced her conclusions on some important factors. In her oral evidence, we detected a tendency to overly minimise the appellant's problems at school: for example, her feelings of loneliness and isolation, the impact of pace of learning on her fatigue, and her difficulties in using IT in classes. This affects the reliability of witness A's evidence.

84. Thirdly, it was clear to us that witness A was, at least to some extent, influenced in her evidence by matters that were not relevant to the issues on which she should properly provide evidence. This affected our assessment of the evidence provided. One such matter is the likely cost to the respondent of the appellant attending school B. While cost is a relevant factor for us (as it is part of one of the relevant ground of refusal), it should not be something that should influence a skilled witness whose remit is to give evidence on specialist provision. Witness A made a few references to cost during her oral evidence and it was clear to us from what she said on this subject that she had allowed the question of the cost of the appellant attending school B to influence her views against the appellant's case.

85. Another irrelevant matter which influenced witness A's evidence was provision in neither school A nor school B. Witness A discusses in her statement (R205 of the bundle, para 27) how she encouraged the appellant and her family to consider transitioning to her local further education college. She also states that, in her view, the appellant ought to be remaining at school A and transitioning to the local further education college (R206, para 31). In this reference, we may only consider whether the appellant continues her education in the coming academic years at school A or continues it at school B. It would appear that witness A's view of that question was influenced (at least in part) by provision in neither.

86. Finally, witness A appears to address the 'ultimate issue' in her evidence (the 'ultimate issue' rule was recently affirmed: *Kennedy v Cordia (Services) LLP* [2016] UKSC 6; 2016 SLT 209, para 49). She states a view on one of the main parts of the ground of refusal (see her statement at R206, para 28). No witness, skilled or otherwise, should do so. The reason for this is clear: the legal test is to be considered by the tribunal having heard all of the evidence and argument. No witness has the benefit of that material. It is therefore not appropriate for witness A to state or be influenced by such a view. We appreciate that witness A may simply have been answering a question which was put to her when her statement was taken; however, it is clear that witness A has applied her mind to a much broader test than is appropriate. We therefore have to consider the

reliability of her evidence in this context. We are aware that there is an argument that the respondent requires to apply its mind to the ground of refusal in making its initial decision on whether to grant or refuse the placing request; however, it is clear from witness A's evidence that she was not the decision maker on the request in this instance.

87. Doctor D, Clinical Pediatric Neuropsychologist with Health Board A has been reviewing the appellant and has made recommendations around her educational provision. His reviews (in 2019 and 2020) were followed up by reports which were available to us (dated 22 May 2019, R054-65 and 7 October 2020, A103-107). The respondent in submissions points out that Doctor D has never seen the appellant in class, that his report is based on the appellant and witness D's self-reporting, and that he has never (despite invitation) attended any meetings held on the appellant's education. On the other hand, the respondent in submissions set out in detail how all 12 recommendations made by Doctor D in his 2019 report have been implemented. This suggests that Doctor D's conclusions were treated by the respondent with some respect. Having said that, we accept that Doctor D's reports did not involve direct observation of the appellant at school A, nor did he consult with any education professionals in preparing them (although we note that for his 2019 report he had access to a range of information from the appellant's school – see R057). He did not give evidence, and so could not be cross-examined on his conclusions. We therefore have to approach his conclusions on the appellant (especially those on the general impact of her school experience) with considerable caution. We have limited our reliance on Doctor D's reports to his general observations about the impact of certain events and factors on someone with the appellant's additional support needs. We feel that it is appropriate to rely on Doctor D's reports to this extent, given his qualifications and the fact that his professional competence was not called into question. It would certainly be inappropriate to ignore Doctor D's reports, and indeed the respondent does not ask us to do so.

88. Witness D had prepared a diary of events (A071-085) which she explained had been transcribed from a paper diary into a Word document and had then been "tidied up" by witness D's husband. The respondent produced a diary prepared in response by professionals involved in delivering the appellant's education (R183-194). In submissions, the respondent pointed to various inaccuracies in witness D's diary, as highlighted by witness A. However, on comparing the two diaries, they are not in any significant way in conflict with one another; they are simply prepared from different perspectives. Witness D's diary is based on what the appellant told her on coming home from school, whereas the respondent's diary is based on how education was delivered in particular subjects and on particular days.

89. On the reliability of witness D's diary, we have no difficulty with this in general terms. While we accept that it was "tidied up" on transcription, there is a level of detail in it (including events, names, even quotations of what the appellant stated) which is indicative of it being prepared reasonably contemporaneously with the appellant's account. We have no reason to doubt, at least in general terms, the accuracy of the diary. It represents witness D's record of what the appellant told her she felt about her schooling.

General remarks on the legal test

90. As set out in the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court)), the appropriate assessment point is at the time of the hearing. We accept that

the onus of establishing the ground of refusal lies with the respondent. We also accept that (again arising from the *M* case), consideration should be given to the assessment of the child's needs which happened closest to the hearing. We have such an assessment in the evidence of, in particular, witnesses A and B.

91. There was no dispute between the parties on the question of whether the appellant has additional support needs, as defined in section 1 of the 2004 Act. Given the content of paragraphs 8-12 above, there is no doubt that this is the case.

The ground of refusal: 2004 Act, schedule 2, paragraph 3(1)(f)

92. Following the decision on the preliminary issue (discussed above), the respondent indicated that it relies on paragraph 3(1)(f) of schedule 2 of the 2004 Act as the sole ground of refusal.

93. This ground of refusal is split into four component parts, numbered (i) – (iv) within paragraph 3(1)(f). The respondent, in order to succeed in arguing that the ground of refusal exists, must satisfy us that all four parts of the ground are met.

94. Parts (i) and (iv) are not in dispute, and are clearly met: the specified school, school B, is an independent school, not a public school and the respondent has offered to place the appellant in a school other than school B, namely school A.

95. Parts (ii) and (iii) are in dispute, and we will now address each in turn. In doing so, we do not address all of the points and evidence referred to by the parties, but only those parts of the evidence and argument that influenced us in our decision. This is in line with appeal court decisions on the required content of reasons (for example, see *JC v Midlothian Council* [2012] CSIH 77, per Lord Menzies in the Inner House, at para 31, citing House of Lords authority *South Buckinghamshire District Council v Porter (No 2)* 2004 1 WLR 1953 per Lord Brown of Eaton-Under-Heywood at para 36).

Provision for the appellant's additional support needs in school A (schedule 2, para 3(1)(f)(ii))

96. The question here is as follows: is the respondent able to make provision for the additional support needs of the appellant in school A? We have concluded that the respondent is unable to do so, despite significant efforts.

97. We should at the outset make it clear that (with the exception of IT support and the CSP review delay, both considered below) we offer no significant criticism of the provision at school A. It is clear that considerable efforts are being made to provide for the appellant, within what is available to school A. The question is not, however, whether everything that can be done by the respondent at school A is being done; rather the question is whether what is being done is sufficient to meet the specific learning needs of the appellant.

98. A number of factors were relevant to this question. We will now discuss each. In doing so, we draw upon the findings in fact recorded above.

Visual impairment and information processing

99. It is not in dispute that the appellant's main challenges at school come from her visual and information processing impairments. These impairments are connected with one another.

100. It is clear from the evidence that school A has made a considerable effort to accommodate the appellant's needs arising from her visual impairment. We note that the evidence of witnesses A and B are to the effect that the appellant manages very well despite that impairment. The view is formed, in particular by witness A, that the appellant's visual impairment is not a barrier to the appellant's learning and progress.

101. However, this is not borne out by the evidence taken as a whole.

102. Firstly, as indicated at paragraph 42 above, the appellant's recent academic performance is significantly less than was originally predicted. There was a reduction in the qualification level attempted by the appellant in four of her five main subjects (from National 5 to National 4). Witness B explained that the target grades agreed to be applicable from academic year 2019-20 (from secondary year 4) are 'aspirational', but we note that they are agreed with teachers and that they are described by the school itself as 'aspirational but also realistic' (A024). In addition, in the same paragraph, it is made clear that these grades were agreed between the appellant and her teachers for each of the subjects. Further, these grades are 'based on previous attainment and current class work' (A024). By the time these target grades were set, the appellant had been attending school A for three full academic years.

103. Witness D and her husband in their joint statement refer to a change in S4 following the increased frequency of in-class testing which exposed a shortfall in the appellant achieving her potential learning (A067, para 2). The appellant in her oral evidence was clear in her view that she is not achieving her academic potential at school A. When asked what might help her to achieve her potential, she referred to more time, a slower pace and being able to attract the teacher's attention in class to ask what was happening.

104. Witness D and her husband set out the factors which, in their view, are problematic for the appellant's education in the current mainstream setting at school A.

105. They refer to the pace of learning being too fast for the appellant (A067, para 4). The appellant herself refers to this in her statement (A091). Problems with pace are identified in witness D's diary, for example at A078: 'Teacher going really fast so couldn't keep up but managed to catch up with period afterwards'. It is clear from Doctor D's 2019 report that information processing speed by someone with the appellant's visual impairment could interfere with the appellant's ability to complete tasks on time (R060, para 2).

106. Related to this is a concern around the adequacy of the pre/post learning periods which are used for catch up – the concern expressed is that these offer insufficient time for the appellant to fully catch up her learning (A067, para 5). The appellant explains that one of her teachers 'tried really hard to help and gave me extra tuition over lunchtimes' but that she could still not keep up with the rest of the class (A093).

107. A further difficulty is that when the appellant begins to fall behind, this causes her to be anxious, causing her to feel 'overwhelmed and worried about the work that I haven't

picked up on.' (Appellant's statement, A091). In witness D's diary she recounts a day in September 2020 when the appellant came home from school in tears, worried about all of the work she had to catch up on (A075, under 'Wednesday'). Witness D notes in that diary entry that part of the reason for the appellant feeling upset was that the school B term start was imminent. However, it is clear that the appellant also felt stressed about her work at school A.

108. In addition, the support in place for the appellant does not always assist her to close the learning gap with her peers. The VSS staff who assist the appellant are not qualified in the class subjects the appellant is taking. The appellant is sometimes referred by the VSS staff back to the class teacher for clarification, which takes up time.

109. The appellant feels self-conscious in a mainstream class where she is the only pupil with a significant visual impairment. This manifests in several ways: she carries a walking cane; she has an adult with her at all times; and in order to be ahead of the rush of pupils, she needs to leave each lesson five minutes earlier than everyone else. It is within judicial knowledge (especially for a specialist tribunal) that teenagers of the appellant's age typically feel sensitive and embarrassed about being different from their peers. This perspective is shared by witness C (A101). Witness B explained that the lesson has finished by the time the appellant leaves, but even if this is correct and therefore the early finish for the appellant does not impact on her learning, it is clear that she does leave class earlier than her peers, drawing attention to herself in the process.

110. Witness C, a very experienced teaching professional in the visually impaired sector, expresses concern about the use of very large print (N36 Bold) as it could be challenging in the work context or higher level (beyond secondary level) studies. In her oral evidence, witness C stated that it can be very tiring and cumbersome reading that font size. School B would advise against the use of this font size.

111. In the context of the appellant's information processing difficulties, the respondent refers to the 12 recommendations of Doctor D in his report of 8th October 2020, and the respondent's representative sets out in his submissions how each has been implemented (respondent's submissions, paras 28-44). However, as indicated earlier, we do not doubt that school A is, for the most part, providing all of the support it can; the issue is that even with this support in place, it is not enough to meet the appellant's needs.

Fatigue

112. It is clear from the evidence that the appellant suffers regularly from fatigue and that a tendency to fatigue is caused by her additional support needs. Witness A is of the view that fatigue is the principal barrier to learning for the appellant (see her statement at R211, para 44).

113. Fatigue also features heavily in both witness D's and the respondent's diaries (especially that of witness D) (A071-085 and R183-194). The appellant refers to tiredness in her statement too (she refers to 'exhaustion' at A095).

114. The respondent in its initial submission (paras 45-52) argues that steps have been taken to reduce fatigue such as timetable adaptations, homework being done in school time (to allow the appellant to sleep when she returns home) and increased adult support,

but that the appellant remains tired. We note that the appellant sometimes uses some of the rest period time to catch up on her work, so that the rest periods are not always used for rest. The suggestion is that nothing else can be done for the appellant by school A staff.

115. Subject to what we say below on IT provision and CSP, we agree that this is broadly the case. However, the appellant attributes some of her tiredness to the educational environment of a mainstream school. In her oral evidence, she cites the stress of being under pressure to keep up with learning (which is too fast-paced) as being tiring. It is clear from the evidence that the appellant feels more tired when stressed (see, for example, witness A's acceptance of this – R198, para 8, witness B at R222, para 13). It seems to us that the pace of learning (combined with IT issues, see below) has caused stress which has contributed to the appellant's fatigue problem. Another contributing factor is the stress of falling behind (discussed above).

116. In other words, while the appellant is susceptible to fatigue as a result of her visual and information processing impairments, that susceptibility is exacerbated by the pace of learning at school A and the consequent falling behind in lessons, both of which the appellant feels keenly.

IT provision

117. It is clear that the appellant has faced significant issues with the IT provision at school A. These issues have been related to various aspects of the IT provision: hardware, software and connectivity. Although witness A explains that considerable efforts have been made by school A staff to provide appropriate technology and IT support for the appellant, in our view the problems have significantly affected the appellant's ability to learn. We need not go into detail on this subject, by drawing attention to numerous specific examples: the evidence before us suggests that it is a regular and ongoing problem.

118. Witness D's diary (A042-049 and A071-A085) discloses numerous IT issues during the current academic year, with the latest being recorded on Thursday 14 January 2021, only a few weeks prior to the hearing. The entry for Wednesday 13 January 2021 states 'Absolute nightmare of a morning with tech issues', leading to 'hours spent troubleshooting'. The respondent did not produce any evidence to doubt these entries, or the others relating to IT provision.

119. The respondent in submissions refers to the evidence of witness A who indicated that there are no ongoing IT issues (respondent's initial submissions, para 21). However, witness D's diary, as explained above, contradicts this. We have no reason to doubt the veracity of the diary entries (they are specific and detailed, and witness D was straightforward and credible). In our view, it is obvious that IT issues persist. Further, the respondent relies on witness A's assertion that contingency plans are in place to ensure that the appellant does not miss out on learning due to technology problems. This misses the point. Given the importance of technology to the appellant's learning, she is entitled to a (largely) smooth IT learning experience. Evidence that such an experience can be provided for pupils with the appellant's additional support needs comes from witness C, who explained that there are no significant problems with IT provision at school B.

120. In any event, as pointed out by witness D in her oral evidence, it is difficult to know if the classroom IT issues are resolved since the appellant has recently been largely learning from home. Some of the IT issues the appellant refers to occurred at school.

121. It is important to note that the appellant is a pupil who has been in school A for around four and a half academic years. Her learning needs were known to school A staff when she joined the school. This makes the continuing IT issues more difficult to explain away.

122. The appellant relies heavily on IT to meet her additional support needs. The persistent and numerous issues with IT provision present a serious barrier to school A's ability to teach the appellant in a smooth and stress-free way.

Social and emotional factors

123. The appellant indicated in her evidence that she is lonely at school. When asked in her oral evidence about other pupils at school A, she stated: 'They don't talk to me'.

124. The respondent attempted to contradict this, but we were not convinced by these attempts. The respondent explains the efforts that have been undertaken to encourage the appellant to improve her social skills and to be as integrated into the school community as possible. In addition, the respondent points out that the appellant tells staff animated stories about funny conversations she has had with other pupils (see the respondent's initial submissions, paras 53-55).

125. However, witness A in her statement acknowledges that the appellant has difficulties interacting with peers (R203, para 23) and states that the appellant 'continues to need support to stay positive about friendships' (same para). Further, the appellant's current CSP acknowledges that social isolation and difficulties with peer interaction are ongoing challenges for the appellant, having been reported by three teaching staff members (R071, first paragraph).

126. Witness B refers to the appellant laughing and joking with peers and playing games at break time in the learning support base. However, sharing funny stories and company with other pupils is not the same as having friends. Witness A indicated that the appellant spends most lunchtimes alone. Also, the appellant packs up early from each class (to move to the next class safely). It is well understood (and within judicial knowledge of a specialist tribunal) that school children socialise while moving from class to class. This is an opportunity to socialise which the appellant does not have at school A. Witness C, as someone very experienced in teaching pupils with a visual impairment, expressed the view that packing up early at the end of each class could impact on the appellant's learning, self-esteem and views from peers (A101, para 16). We agree.

127. Witness B stated that for many pupils their best friends are out with school. However, Doctor D is of the view that 'a child's friendships outside of school tend, in the main, to centre on those that have been formed at school.' (A105, final para). We prefer the latter view, given Doctor D's qualifications and experience in working with children.

128. The respondent argues that a number of opportunities for the appellant to make friends with those who understand visual impairment have been created by VSS staff. This is true. However, it is clear from the appellant's evidence that she wishes to make

friends at school. The appellant has already made friends with current pupils at school B.

[Paragraph 129 of the original decision has been removed by the Chamber President for reasons of privacy and anonymity of the child under rule 55(3)(a)(b)(c) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]

130. Our impression, taken from the evidence as a whole, and stated explicitly by the appellant, is that she has found it difficult to make friends at school due to her additional support needs. She is surrounded by pupils who don't (cannot) understand how she feels about the world around her and how she learns. While a number of efforts have been made by school A to introduce the appellant to young people locally who have a visual impairment (respondent's initial submission, para 56), it seems clear to us that the appellant wishes to have friends at school. As the appellant states: 'I want the chance to make new friends who understand the difficulties of being visually impaired..'. It seems to us that at school A, this has not been possible.

CSP

131. The respondent has failed in its duties under the 2004 Act in relation to the appellant's CSP. No reason has been advanced for the delay in producing an updated CSP in over 12 months since the review meeting took place. The amended draft was submitted by March 2020, some 11 months prior to the hearing. Even taking the deadline for review (15 July 2020), over 6 months has passed. This means that the updated document is over 6 months late. It is quite extraordinary for the respondent to offer no explanation for this breach of statutory duty. While we appreciate the pressures on education authorities caused by the current COVID-19 outbreak, the statutory duties to produce and timeously review a CSP remain in place.

132. Although not a major factor in our decision, we do take account of the fact that the respondent has failed in a significant way to fulfil its statutory duties towards the appellant. In the absence of an explanation, it is fair to infer that no good reason for the delay exists (if it did, it would have been referred to in evidence). It is significant that even relevant school A staff (including witness B) do not know the reason for the delay.

133. The identification of up to date needs (via the CSP as the main overarching document) is a key part of meeting the additional support needs of the appellant. The respondent's failure in this regard indicates that it is less likely than would otherwise be the case to be able to meet the appellant's needs. We note here that the ground of refusal at schedule 2 para 3(1)(f)(ii) refers not to the school, but to the respondent.

Conclusion on provision at school A

134. Taking these points together and looking at the provision at school A overall, it is clear to us that the appellant is being provided with an education which is in mainstream form and is adapted for her. However, these adaptations only serve to highlight the fact that the appellant is in an environment which is fundamentally not suited to accommodate her needs. An important example of this is pace of learning, discussed above. In our view, the appellant deserves to receive education at a pace which is appropriate to her learning pace. What school B provides is learning which is too fast for the appellant, and

then opportunities to catch up later. This is, by some distance, second best to the delivery of properly paced learning in the first place.

Reasonableness of placing the child in school B: respective suitability and cost - paragraph 3(1)(f)(iii)

135. Given our conclusion on schedule 2, para 3(1)(f)(ii), we need not address this branch of the ground of refusal. However, since it was a matter of some focus in the evidence and submissions, we will deal with it here.

General comments on the test

136. The application of the condition in this paragraph is disputed. This paragraph requires us to have regard to both the suitability and cost of the provision for the child's additional support needs at school A and school B respectively. Having carried out these comparison exercises, in order for this paragraph to apply, we must conclude that it is not reasonable to place the child in school B.

137. It is clear that we must have regard to both cost and suitability, and in considering both, to reach a decision on the reasonableness of placing the child in school B. In other words, this ground does not require us to consider cost and suitability separately and apply a reasonableness test to each. If Parliament had intended each factor (suitability and cost) to be judged separately against a reasonableness test with the result that reasonableness requires to exist on both before the condition is satisfied, each factor would be contained in a separate paragraph (or sub-paragraph) within 3(1)(f). Further, this interpretation, as well as being clear from the words and structure adopted, is sensible. It would be absurd if the way in which this paragraph is interpreted could mean that a child must be placed in an affordable but completely unsuitable school.

138. The reasonableness question must be viewed from the respondent's standpoint, and this approach was confirmed by Sheriff Tierney in the case *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126, where he says at paragraph 54:

> "The matter in respect of which a decision on reasonableness is required is the placement of the child in the specified school. That placement would be made by the defenders' education authority and accordingly it seems to me that the question is whether it would not be reasonable for the education authority to place the child in that school, not whether it would be reasonable for the parent to seek to have him so placed. The two factors which have to be taken into account are suitability and cost. It seems to me that suitability involves an assessment of the respective qualities of the provisions from which [the child] will benefit in each of the two schools."

Respective suitability

139. Using this test, it is clear that we must embark on 'an assessment of the respective qualities of the provisions from which [the appellant] will benefit in each of the two schools'.

140. We are in no doubt at all that the provision for the additional support needs of the appellant at school B is significantly better than that at school A.

141. In coming to this conclusion, we rely on the following comparisons on suitability:

a. School B, unlike school A, is a specialist school which provides education only to students with a visual impairment, meaning that the appellant would be being educated in a school where the ethos (including vision and mission) is geared towards students with the appellant's additional support needs;

b. Teaching staff at school B, unlike school A, are not only qualified in the subjects they teach, they are qualified in teaching visually impaired students. As explained by witness C in her oral evidence, this means that they have a better understanding than non-QTVI teaching staff around how to produce appropriate resources, and to use assistive technology. They will have a better understanding of the needs of students with a visual impairment, including knowledge of different eye conditions, mobility issues and mental and physical health issues which may come with visual impairments. While the VSS staff fulfil that role at school A, in our view, a better model is for the subject specialist teacher to have that knowledge, so that the appellant would not continue to have to deal with two members of staff, something about which she expresses discomfort;

c. Unlike at school A, some staff at school B are visually impaired, allowing them (as pointed out by witness C) to better understand the needs of students. Three of these teachers are IT teachers, and witness C indicated that they are always looking to what is available on the market in the visually impaired technology field, given their IT and visual impairment experience;

d. Class sizes at school B are much smaller than in school A, allowing more time for staff-student interaction;

e. IT provision at school B is, in our view, significantly better for visually impaired pupils than at school A, in terms of reliability, choice and suitability for students who are visually impaired;

f. Technical problems are rare for students at school B. Further, the technical support available to students at school B is much more impressive than that available at school A, with four full time technicians at school B, which is (by pupil numbers) a much smaller school than school A;

g. The appellant will be able to learn alongside peers with similar additional support needs, unlike at school A where the vast majority of the appellant's peers do not;

h. The curriculum at school B is geared towards students who are visually impaired;

i. The balance between academic and independent living skills at school B (with more of an emphasis than in school A towards the latter) is more suitable for the appellant's additional support needs;

j. The availability of a work placement every year at school B will allow the appellant to gain key work skills within the structure of her education;

k. The pace of learning at school B is likely to be more commensurate with the appellant's abilities than at school A;

l. The flexible learning environment at school B is more likely than at school A to cater for the appellant's tendency to become tired: the contact time (around 17 hours per week) is similar to that at school A but the supported learning day is spread out from 9am to 9pm, as opposed to 9am to 3pm (as at school A), allowing for more rest opportunities and catching up in a supported and more relaxed environment;

m. The residential element of provision at school B (not available in school A) will allow the appellant to apply independent living skills alongside her education in these matters.

142. Taking the differences between schools A and B in these 13 areas into account, it is clear that the provision at school B would be far superior for the additional support needs of the appellant. The provision at school B is therefore much more suitable for the appellant than at school A where (as we have concluded above), her needs are not able to be met. This gap is not surprising given that school B is a specialist school catering for the needs of students with a visual impairment; school A is not, and is instead a large mainstream secondary school. Again, this is not a criticism of school A. It simply reflects the reality of the different provisions on offer in two completely different schools.

143. We are alive to the fact that in comparing the suitability of the two schools, we have a wealth of information about how the appellant fares at school A and no direct evidence of how the appellant will fare at school B. However, that is almost always the case where there is a placing request, and we require to make inferences about the likelihood of success at the specified school (here school B) from the available evidence. We do rely (at least in part) on the enthusiasm of the appellant and witness D for school B following on from the weekend visit there. While that visit is not representative of daily life as a student there, it is clear that both were convinced that the ethos and environment would be good for the appellant. That feeling is clearly genuine and is important to our decision.

144. The respondent, through concerns raised mainly by witness A, sought to argue that the appellant would find it difficult to manage being away from home when attending school B. We see no basis for this in any of the evidence; this concern is, in our view, speculative. Many 17-year old young people leave school and attend university. The appellant would, in attending school B, be in a highly supported and supervised environment, much more supported than in regular university or college facilities, including halls of residence. In such an environment, she is no more susceptible to difficulties in living away from home than any other teenager moving away at that age. Indeed, any issues with living away from home are more likely to be picked up and tackled at school B than at another college or university the appellant's peers will be attending.

145. There was some discussion around whether the appellant should be attending school so far away from home. We do not find this to be, in itself, a relevant factor. Witness D

indicated that she and her husband were comfortable with the appellant being in school B's area, and they indicated that they would be able to visit the appellant or have the appellant back home for visits. If the appellant is living away from home and in a different city, we do not see whether it makes a difference that she is in an English city, rather than another Scottish one. The appellant was relaxed about the prospect of living away from home and had clearly given the matter some thought. She had travelled to the campus already, and so is aware of the distance involved. Again, given her age, in our view she is old enough to make these decisions for herself. The fact that the desire to move to an English school was one supported by the appellant's parents is, of course, only a reassurance to us.

146. There was concern expressed around the assessment process to decide the appellant's suitability to receive an offer to attend school B. However, witness C was quite clear in her view that the appellant is eligible, and that there was an assessment process prior to the offer being made. It is difficult to imagine why the managers of school B would make an offer of a place to a prospective student who would not be suited to attend there.

147. We considered all of the points made by the respondent's representative in his written submissions on the respective suitability question (initial submission, paras 69-90). However, we are unconvinced by the arguments made there – in comparing the provisions (above), there is a clear gap in suitability for the appellant between the two schools.

Respective cost

148. On cost, it is clear that we should consider the additional cost in meeting the ASN for the child at school A compared with the cost (the fees and, if applicable, transport cost) for school B: *S v Edinburgh City Council (SM, Appellant)* 2007 Fam LR 2 at paragphs 23 and 28, as approved by the Inner House in *B v Glasgow City Council* 2014 SC 209 at para 19.

149. As Lord Glennie stated in the *S* case at para 23:

> "*The question is: how much more will we have to spend to give the child that extra benefit rather than place her in our own school? That inevitably involves identifying the costs which will actually be incurred if one or other option is chosen.*

150. There is a question over whether a 'single year' or 'multi-year' approach to the cost calculation should be taken. The legislation and case law do not provide an answer. In our view, a single year approach should be taken, so that the cost comparison for the purposes of this ground of refusal is the difference in cost for one year of provision only. It could be said that this is unfair since the cost to the respondent is not for one year only, but is for the remainder of the appellant's education.

151. However, there are a number of uncertainties in using a multi-year approach: it is not clear how many years of education a pupil will require; the cost at either school may change from year to year; the additional support needs of the pupil are likely to change from time to time, meaning a likely change in cost of provision. Since a specific figure requires to be identified, the only reliable way to do this is to take the annual figure, based

on the current cost of each provision. A multi-year approach would be more likely to lead to an unreliable figure.

152. There is an argument in this case for following the multi-year approach since the offer of a place at school B is for three years only, and, as confirmed in oral evidence by witness C, the school B fees will be the same for each of the three years the appellant will attend there. However, the same approach to cost should be taken in every case. In any event, the uncertainties mentioned above will still exist for the cost of school A provision and even around the length of the placement (the appellant may not, in the end, choose to complete all three years of study at school B).

153. The appellant argues that the cost of the teaching provision should be taken into account when calculating the relevant cost figure. The respondent argues that since the teaching staff allocated to the appellant will remain employed by them if the appellant attends school B, this should be left out of account. We favour the appellant's approach here. The provision in the 2004 Act refers to comparative cost, not to cost saving. In our view, it is irrelevant that the respondent would continue to incur the cost of employing teaching staff who would not be allocated to the appellant if she attends school B. That is a choice the respondent would be making, and those staff members would (as pointed out by witness A – R218, para 64) be allocated to other duties, assisting other pupils, and therefore assisting the respondent in the delivery of its statutory obligations. The respondent would not, therefore, be wasting resource; it would continue to pay staff costs from which it would continue to benefit. This makes the argument that the continuing cost of staff should be ignored illogical.

154. Taking that approach, and on an annual basis, the fees for the appellant's attendance at school B would be **£71,784**. The staff cost attributable to the appellant at school A has been agreed as **£52,673** (joint minute, paras 19-20). The differential between these figures is: **£19,111**. That is the figure which represents the respective cost in this case, to be weighed against respective suitability.

155. In calculating that figure, we have excluded the potential costs relating to Guide Dogs Scotland and other support in the area, as these costs are minimal and are uncertain. We have ignored the taxi costs for transporting the appellant to and from school A since, in fairness, the respondent will continue to bear that cost since the taxi is shared by other pupils. These exclusions benefit the respondent.

156. The respondent argues that the costs associated with the appellant travelling to and from school B will be significant. However, we have no evidence of what those costs are likely to be, and, as the appellant points out, it has been decided that it is for the respondent to put forward evidence of transport costs if they are to be taken into account (*M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court)). In our view, this must be correct as otherwise we would require to engage in speculation both as to number of journeys and the cost of each.

Conclusion – reasonableness arising from cost and suitability comparisons

157. We are in no doubt that, in taking into account respective suitability and cost between schools A and B for the provision of the appellant's additional support needs, it is reasonable to place the appellant in school B. The suitability gap is significant, while the

cost gap is insignificant. A cost gap of under £20,000 per year is worth the extra benefit for the appellant. Attendance at school B is likely to transform the appellant's educational experience, her confidence and her opportunities in later life, not to mention her happiness. £20,000 is a small price to pay for such an opportunity.

158. To be clear, even if (as the respondent urges) we take the full cost of provision for the appellant at school B over three years, and assume nil cost for school A (making the cost gap £215,352), our decision would have been the same. While we accept that such a cost gap would be a significant sum, this cost would be spread over three years, and would transform the wellbeing, education and future of the appellant. In addition (and this is not our main point, but very much a subsidiary one), given that a placing request can be made for attendance at a fee-paying school for a pupil at any age, this sum is significantly lower than would be the case for a much younger pupil who might require to attend an independent school for, say, 10 years or longer, not 3 years. Viewed in this context, such a sum, even if the correct one, would not be excessive. It would still, with such a figure, be reasonable to place the appellant in school B, given the significant suitability gap between the two schools.

Appropriateness in all of circumstances - 2004 Act, section 19(4A)(a)(ii)

159. Having concluded that a ground of refusal does not exist, we do not require to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request.

Additional comments

160. The comments in this section do not form part of the reasons for the decision in this case. These are optional comments which are designed purely for the assistance of the parties.

161. We note that witness A's view, as conveyed to the appellant's parents, was that out of authority placements are not supported unless in 'very exceptional circumstances' (R205). This is clearly incorrect in law and inverts the legal position – placing requests should be granted unless one of the reasons for refusal exist (2004 Act, schedule 2, paragraph 2(1) or (2)). The respondent's representative's attempt to explain this by reference to the mainstream presumption is, with respect, unconvincing. The mainstream presumption ground of refusal was not employed in this case, demonstrating that the test which applies there (which in any event is different from the policy as explained by witness A) is not universally applicable. Further, the evidence suggests that witness A's understanding, as explained to witness D, is that the 'very exceptional circumstances' test is the general test to be applied in all such cases.

162. We would urge the respondent to consider who within the education authority should be permitted to give advice to parents on the law around placing requests, and to ensure that any such person gives advice in accordance with the proper legal test. Otherwise, there is a danger that parents and young persons may be misinformed and as a result deterred from making (or following through on) such a request on the basis of an incorrect understanding of the prospects of success.

163. Finally, we are very surprised by the respondent's unexplained failure to timeously issue an updated CSP for the appellant. It is now long overdue. The importance of the

duties on education authorities in respect of CSPs has been confirmed by the Inner House recently (*City of Edinburgh Council v R* 2018 SC 399, per Lord Malcolm, delivering the opinion of the court, para 10).