



Additional Support Needs

DECISION OF THE TRIBUNAL

Summary of the Decision

The decision of the authority to refuse the placing request is overturned. The placing request is therefore granted, the Tribunal holding that the authority places the child in the school specified in the placing request by August 2021 in terms of section 19(4A)(a) of the Education (Additional Support for Learning) (Scotland) Act 2004, the authority having failed to establish that any of the grounds at paragraph 3 of Schedule 2 of the 2004 Act applies.

Introduction

1. The appellant made a reference to the Tribunal in November 2020 under section 18(3)(da)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) in relation to the refusal by the local authority (“the authority”) in November 2020 of a placing request.
2. This request was refused by the authority (T21-22) on the basis of Schedule 2, paragraph 3(1)(f) of the 2004 Act.
3. This reference relates to a placing request by the appellant for the child, to attend school A. The authority has offered her a place at school B
4. The child has additional support needs in terms of section 1 of the 2004 Act.

Evidence at the hearing

5. At the hearing, the tribunal heard oral evidence for the authority from witness A, and witness B. Both witness A and witness B lodged witness statements (R23-24 and R25-36).
6. The tribunal heard evidence for the appellant from witness C, whose evidence was also set out in a witness statement (pages A45-A54). We heard evidence too from witness D, who had also lodged a witness statement (pages A88–A92). We had the benefit of witness D’s report dated 20 October 2020 prepared for the authority’s senior officer review group (SORG) which makes decisions on placing requests. A report from therapist A, dated 22 January 2021, which contained information in support of the placing request, was also lodged.
7. The appellant lodged a detailed witness statement and she gave oral evidence to support, supplement and update it (A55-A86).

8. Although the appellant representative had previously intimated to the tribunal that the child would prefer not to give evidence directly to the tribunal, we had the benefit of her views through a letter drafted with the assistance of an advocate, dated January 2021 (T37-T39) and an advocacy statement (consisting of two mind maps) (pages T51 – T55).
9. While we would have liked to have met the child, we understood her anxiety around the Tribunal process and felt well informed about her views as a result of the mind maps which she prepared and which displayed her intelligence and comprehension of the situation.
10. Parties lodged a joint minute of admissions (T56 -T57).
11. The tribunal also considered other documents and reports produced in a joint file of productions, which are referred to throughout this decision where relevant, and which were all taken into account in reaching our decision.
12. Following the evidence, the tribunal received written submissions from the respondent representative, which she summarised in oral submissions, and we heard oral submissions from the appellant representative. We were referred to some case law, but we did not understand there to be any dispute about the relevant law.

Findings in Fact

13. The appellant is the mother of the child, who is 14 years old. The child has a diagnosis of autism spectrum disorder (ASD) and is currently under assessment for Attention Deficit Hyperactivity Disorder (ADHD).

[Part of paragraph 13. 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)]

The child's additional support needs

14. The child's additional support needs are set out in the report prepared by therapist A (T27- T33), as well as the report and evidence from witness D and described by the appellant in her witness statement.
15. In summary, the child's executive functioning skills are extremely low; her adaptability and living skills are very low; her processing speed is a big barrier for them, particularly in relation to verbal processing; the child has challenges with: self-organisation and planning; processing and remembering spoken information; initiation of tasks; memory; motivation; attentional focus; understanding and expressing emotion; and being able to manage the sensory environment. The child finds the noise of other young people difficult to manage and has difficulties with social interaction and understanding the nuances of a range of social relationships. The child finds it difficult when other individuals do not follow the rules.

16. The child's conditions mean that they experience low mood; high levels of anxiety; and trauma- like symptoms.
17. Therapist A states that "the late identification of her challenges has meant that school has been traumatic and distressing for the child to date".
18. Therapist A concludes that in order to help the child fulfil her academic potential she needs day to day access to a learning environment which meets her sensory organisation and emotional regulation needs. She makes a number of recommendations about what is needed from a school placement, and these include: clear and reliable timetabling and scheduling with key information written down; a learning environment where there are opportunities for overlearning new skills and to develop and practice key skills (including attentional focus, academic skills, and social interactions); a learning environment where the adaptation and generalisation of new skills is built into the learning environment; where the educational provision is available to her as part of a consistent, supported daily environment; support which is informed to help her understand and make sense of her neurodevelopmental profile and empower her to work with this; dedication to ensure commitments made are fulfilled in order to build her trust; maintenance of a consistent approach throughout the school day and across the school week; an individualised transition plan (taking account of timing of arrival and leaving to avoid busy transitions) over a realistic timescale; a supportive environment where her individual needs can be understood and supported in a small and nurturing environment with a small and focused consistent group of supporting adults who offer flexible and responsive support that might increase or decrease dependent on how she is managing; changes to be made slowly and sensitively to rebuild her self-confidence; dedicated spaces she can easily access if she is feeling distressed or overwhelmed in order to help her regulate her emotions; an environment where fidget toy supports can be accommodated/accessed to support her self-regulation.
19. Witness D states the child needs requires a significant level of support in order to meet her full potential in the educational setting. This accords with therapist A's recommendation that the child requires specialist support from a team experienced in autism but also wider neurodevelopmental differences who can individualise and tailor strategies to meet the child's needs and who can work with the child to overcome her previous difficult experiences of education (and her anxiety associated with those).

Attendance at IWS

20. The child last attended her current school in October 2019.
21. Between November 2019 and March 2020, the child attended school B on an outreach basis.
22. School B is part of the Inclusion and Wellbeing Service (IWS), which is the education sector specialists in ASN for the education authority. The range of young people with ASN supported by IWS include interrupted learners, looked after children and young people, young people with ASD, young people with sensory impairments, ADHD, social and emotional difficulties, language and communications needs, and young people with mental health needs.

23. Children and young people with ASN will be referred to IWS by mainstream or special schools. The service provides training to staff in schools across the education authority. IWS has two schools, a primary provision and school B (secondary) providing full time learning programmes. Tailored support is also provided for children and young people remaining in their own schools but who are in need of specialist input. The staff have specialist experience with a wide range of ASN.
24. Following an assessment of wellbeing on 31 October 2019 (R17-22) the child was referred to IWS interrupted learners service in November 2019 by her current school. Following a meeting at which teacher A was in attendance, it was agreed that the child would attend a one to one nurture group, with support worker A identified as the child's key contact.
25. One to one sessions took place for two weeks, and then at the assessment of wellbeing meeting which took place on 11 December 2019, it was agreed that these would evolve into a small nurture group to commence January 2020 and to be run by support worker A.
26. Subsequently, relations broke down due to an incident relating to the child's use of fidget toys which she requires for self-regulation; and an incident when support worker A illustrated the consequences of making excessive noise, to which the child also reacted negatively. A restorative meeting was proposed but did not take place.
27. On 16 January 2020, the child was allocated further curriculum time to cover biology and maths at school B on a Thursday from late morning to mid-afternoon, that is two 45 minute sessions straddling lunchtime. The class was taught by teacher B at the school B and included one other learner who also had significant needs and anxiety. Unusually, it was agreed that the appellant could be in the room (as well as the other child's parent). The child reported having a positive relationship with teacher and engaging in lessons which she enjoyed.
28. During one class at the beginning of February 2020 (at which both parents were present) an incident occurred which resulted in the other child absconding. This incident had a profound impact on the child. The child continued to attend some sessions throughout February, with the appellant, but declined to attend the March sessions until lockdown began on March 20.

Education during lockdown

29. Although her current school offered some on-line learning during lockdown, the child had lost trust with the school because of what she saw as reneged commitments, such that she found it impossible to engage with them. Instead, the appellant made certain arrangements for the child's education and wellbeing, with a focus on nurturing and addressing her personal and mental health issues.
30. This included signing up for a government funded project in May 2020 run by therapist A with online support along with weekly sessions for approximately 10 weeks. Therapist A encouraged pursuit of a diagnosis of ADHD to try to understand better the child's needs and what support was required.

31. The appellant undertook other research into what education the child could access. That included an on-line art course at college A which the child successfully completed. The child has been offered a place on that course for a second year.
32. The appellant also sourced an additional needs tutor to keep the child's academic level of Maths and English up to date. When she could no longer afford her tutoring she sourced specific educational charity funding of £1,200 to pay for 3 hours of tuition a week for 6 months. The child successfully engaged with this tutor.
33. The appellant applied for and the child was offered a place one day a week at service A which is an outreach service provided by school A which she has been attending both on-line and more recently in person.

Placement at IWS

34. In October 2020, the child was offered a full-time place at school B, while remaining on the role of her current school. This offer was turned down by the appellant. This offer remains open for acceptance.
35. Despite numerous attempts by teacher B, head teacher at school B, to make an arrangement to talk through with the appellant what is on offer at school B, that has not been possible due to the breakdown of relations and the child's lack of trust in engaging with them. Latterly teacher B and the appellant have been in limited e-mail communication.
36. The offer being made by school b is a full-time place in Class C which has a scheduled timetable in place (R007). Class C has five other pupils who are all boys. The school has 20 full-time pupils who are currently all boys. The profile of these students is different from the child's profile. In particular, while some have ASD, these students have behavioural difficulties in addition to other additional support needs. The authority would seek to mitigate concerns around that by establishing a girls' group in one of the education authority's secondary schools and build a group around the child.
37. It is recognised by witness B that this package is not ideal for the child, given the profile of the current cohort of pupils, but also because of the child's negative associations with the building due to her previous experiences resulting in a lack of trust on the child's part.
38. Consequently, witness B advised in evidence that the authority can offer a bespoke package of education which would not require the child to attend the building and which could include any of the following: wellbeing walks in the community near the child's home; support online; provision of IT access and laptops; personalised teaching and learning plans to meet her needs; tailored art lessons; the option of art therapy; and classes at other venues such as community centres or college A.
39. Witness B also accepts that there would be a requirement to build up the child's trust in the staff at school B gradually, which they propose to do in whatever way suits. This could include initial contact through her advocacy worker or another intermediary. It could include working with witness D. However, it is suggested that they could meet

the child at her door as a doorstep check-in; then build up to going for a walk; then introduce one key member of staff; with any additional work being done on-line initially, working with the child at her own pace.

40. School B is able to offer a full range of academic and vocational subjects at all levels including National 3-5 and Higher levels, rural skills qualifications, Princes Trust and a Steps to Work programme. They work with college A and college B to study to National 4/5 and Higher. The curriculum offered includes a variety of therapeutic interventions such as horse management, counselling, art therapy, dog walking, pet care, and wellbeing walks.
41. All staff are trained mental health first aiders and all have training in ASD with specialist ASD teachers and pupil support workers. Staff at school B are also trained in trauma. There are meetings every six weeks with parents to review the Pupil Passport (equivalent of IEP). The current school does not need to be involved in the child's education.

Placement at school A

42. A placing request has been made by the appellant for the child to attend school A for four days a week. This is a new service due to commence August 2021.
43. The majority of young people attending school A and their services have a diagnosis of autism, some with ADHD, Tourette's or dyslexia and typically all have high levels of anxiety, stress, depression and low self-esteem. Staff are skilled and experienced in working with children and young people with a range of complex additional support needs.
44. One service currently on offer from school A is service A which is registered with the care inspectorate as a support/wellbeing service, which does not offer any educational qualifications.
45. Service A is an outreach assessment service, focussing on wellbeing in the first instance, intended to allow young people to express themselves and to build their confidence to use a variety of settings. The focus is on coaching and mentoring, with the use of mindfulness, stress and anxiety reduction techniques as well as arts, crafts and sports.
46. The environment is not like a mainstream school and it was not set up as an alternative learning space or school. The physical environment supports reduced noise and addresses sensory issues by the creation of low arousal spaces.
47. The child has attended service A one day a week during lockdown. This has included the provision of regular on-line sessions with her key worker A in relation to mindfulness and stress reduction. Latterly she has attended sessions with key worker A in person. The child has enjoyed the sessions at service A.
48. Her key worker will remain the same person during the transition from service A to school A. This latter service is to develop and expand on service A by providing both a wellbeing service and access to a core curriculum. Service A is to be closed down in June 2021 and replaced by the school A and service B services.

49. School A has been developed as a result of experiences with children and young people with neurodiversities. These are children who would normally attend mainstream school “without additional learning needs”. They have however significant levels of social anxiety that results in them not being able to cope in the environment in which they are being asked to learn because of the impact that sensory, social and transitional issues can have on their health and well being. The service is for interrupted learners with neurodiversities who have a significant lack of confidence, who have social anxiety disorders and/or who have sensory processing issues. The aim is to improve their well-being and help young people re-engage with learning by offering a balance of core curriculum and a wellbeing programme of activities to support learning and help to reduce stress and anxiety.
50. At school A, the child will be able to mix with other young people from the assessment service A regardless of who is placed in school A. Her peer group would remain the same as now at service A. Much of what the child is currently doing there would remain the same, with the addition of teaching sessions delivered by qualified staff.
51. School A currently plans to offer qualifications up to higher level only in English and Maths. It is intended that this will be extended to other subjects once the student interests are known.
52. Each class will have a maximum of eight students with one teacher and a skills development mentor. School A will accommodate a maximum of 36 students.
53. The National Autistic society SPELL philosophy is used to ensure low arousal environment through school A spaces. There will be individualised spaces within the classrooms for each student; use of smart boards and ipads; breakout rooms are available outside the door of the learning spaces. The students are also next to an exit door leading to the campus gardens.
54. Forty two applications have been made; nine applications have been approved after assessment and are currently awaiting decisions by the education authority; one place has been granted and accepted. The Service will run with a minimum of one student, as it is viewed as a “start up” which will expand over time.

Comparison of services and cost

55. School A uses the “CALM” method of de-escalation; whereas the authority uses the MAPA technique.
56. The child is due to attend a second year of an art course at college A on Fridays. Both provisions are content for the child to attend this art course.
57. The cost of the placement at school A, based on four days per week over an academic year of 39 weeks, is £6,000.
58. The transport costs for the child to attend school B for four days each week (with an escort) are currently estimated at £12,160.

59. The transport costs for the child to attend the school A (with an escort) are currently estimated to be £16,112.

The relevant law

60. The general duties imposed on an education authority in relation to children and young persons with additional support needs are to be found in s.4(1) of the 2004 Act. The education authority must “(a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person”.

61. Section 22 of the 2004 Act gives effect to Schedule 2, which disapplies the ordinary rules relating to placing requests (set out in the Education (Scotland) Act 1980) and substitutes, in relation to children and young persons having additional support needs, the provisions of Schedule 2.

62. In terms of paragraph 2 (2) of Schedule 2 of the 2004 Act it is the duty of the authority to meet the fees and other necessary costs of the child attending the specified school. That duty will not apply if any of the conditions set out in paragraph 3 apply, the relevant provisions being as follows:

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

(a)

(e)....

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

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

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

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

(iv) the authority have offered to place the child in the school referred to in paragraph (ii), or

(g)

63. If paragraphs (1)(a) to (e) apply the education authority may place the child but if paragraphs (f) or (g) apply then the education authority has no discretion.

64. This is a reference in terms of section 18(3)(da)(ii) of the 2004 Act in relation to “the decision of an education authority refusing a placing request made in respect of a child or young person.....made under sub-paragraph(2) of paragraph 2 of schedule 2 in relation to a school mentioned in paragraph (a) or (b) of that sub paragraph”.

65. Section 19(4A) states that “where the reference relates to a decision in subsection (3)(da) of that section, the tribunal may -

(a) Confirm the decision if satisfied that –

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

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

- (b) Overturn the decision and require the education authority to –
- (i) Place the child or young person in the school specified in the placing request to which the decision related by such time as the tribunal may require, and
 - (ii) Make such amendments to any co-ordinated support plan prepared for the child or young person as the tribunal considers appropriate by such time as the tribunal may require”.

66. This thus sets down a two stage test, and if the tribunal is satisfied that at least one of the specified grounds for refusal exists, then the tribunal must move to the second stage. In the second stage, the tribunal must exercise its discretion and determine whether, in all the circumstances, it is appropriate to confirm the authority’s decision. The authority bears the burden of proof in this case overall (at both stages of the exercise).

Tribunal observations on the witnesses and the oral evidence

67. The tribunal heard first from witness A. While we accepted her evidence, and noted the up to date position with regard to transport costs and the background context of the refusal of the placement request, her evidence was of limited assistance to us in reaching our decision.

68. We also accepted witness B’s evidence as credible, and reliable to the extent that it was within his direct knowledge, although much of his evidence related to matters which had been reported to him by other members of staff. We understood his difficulties and frustration at not being able to liaise in the way he would have liked either with the child or indeed with the appellant. Nevertheless, as discussed in detail below, we did not consider that excused the authority from their obligations under the relevant legislation.

69. For the appellant, we heard evidence from witness D. We found this evidence to be helpful in gaining a further insight into the child’s personality and the rationale for her decisions and actions.

70. We heard evidence too from witness C, chief executive at school A. She had set out her evidence in chief in a witness statement, and there was limited cross examination. Representative for the respondent however submitted that witness C had lied during evidence. This related to witness C clear denial that she had previously been involved in a Tribunal relating to the rejection of a placing request at school A, which the respondents representative had herself attended (and indeed the appellants representative who accepted that position as accurate).

71. We were not however able to accept that this denial meant that she was deliberately lying. It is difficult to speculate on a motive for her to lie about that. Rather, it is much more likely explained by having forgotten or misunderstood the circumstances of any previous placing request. Significantly, the respondent’s representative did not follow up with questions relating to the denial, and she did not put to witness C what her position was on the matter, which was, as we understood from her submissions, that school A had previously been seeking pupils to attend the service but it had not yet opened. Further, the respondent’s representative accepted in questioning that she did not take issue with other evidence which witness C had given and which was not otherwise challenged.

72. Most significantly, we did not in any event consider this matter to be in any way relevant to the outcome of this hearing. Even if school A had previously been seeking pupils but had not yet secured any, we did not consider this to be relevant, without more, to the question for determination by this tribunal. That question focusses on matters of what provision is offered by the authority, and the respective suitability for the young person at the centre of this case of those provisions (taking account of course of the relative costs, discussed further below).
73. The appellant had produced a lengthy and detailed witness statement which she supplemented with oral evidence setting out the up to date position and giving further rationale for the decisions which she and the child had made. We found her to be an impressive witness. Her evidence was clear, credible and coherent. It is clear too that she fully understands the child's needs and has gone to some lengths to ensure that the child has continued some form of education, despite the circumstances of the pandemic and the challenges for the child. We note too that she has taken steps to obtain funding from various sources. She was very clear in her evidence about why the child would not find it possible to re-engage either with her current school or school B.
74. We should say too that at first blush we were concerned about the limited evidence which we had in relation to both provisions. Although a full-time place and schedule had been identified for the child at school B, during evidence witness B effectively conceded that was not suitable but offered an unspecified alternative which would be arranged following discussion with the child and the appellant to suit the child's needs. This was significant given the burden of proof in this matter is on the authority, as discussed further below.
75. Further, we heard evidence that the school A was not due to open until August 2021, and only one pupil has accepted a place (although a further nine had been assessed as suitable and a further 30 or so had made applications). We could not therefore have an exact concrete picture of what the provision there would be. However, there were a number of factors which allowed us to take a view on the suitability question of the provision on offer bearing in mind the child's needs, as discussed further below.

Reasons for decision

Ground 3(1)(f)

76. The authority relies on Schedule 2 exemption from the duty to place the child in the school specified, specifically paragraph 3(1)(f) which requires the authority to establish that four elements are met, and normally requires the matter to be considered in two stages.

First stage

77. We first considered whether the authority has satisfied us that each of the paragraphs of ground 3(1)(f) applies (set out in Schedule 2, paragraph 3(1)(f)(i) to (iv), above). We can deal very shortly with (i), that is that the specified school (school A) is not a public school because this is conceded. The authority has offered to place the child in a nominated school, school B, in fulfilment of paragraph (iv), which is also conceded.

Is the authority able to make provision for the child's ASN?

78. Considering paragraph (ii), the question we must consider is whether “the authority are (sic) able to make provision for the additional support needs of the child in a school, other than the specified school”, that is school B. The appellant’s position is that the provision offered would not meet the child’s additional support needs.
79. We have set out in the findings in fact the child’s additional support needs, given that we have accepted what is stated in the report of therapist A (accepted as accurate by witness B); and the evidence and report of witness D, and of the appellant, taking account of course of the child’s advocacy statements. It is these needs for which the authority must provide.
80. We heard evidence from witness B regarding the provision on offer to meet those needs. Witness B is the head teacher of school B, the specialist provision in ASN for the education authority. We have no doubt at all that witness B is a dedicated and skilled professional, and we accept that the staff at school B are specialists. We fully accept that school B is providing a good service to its pupils. The appellant herself recognised that.
81. The difficulty is that school B is not currently catering for others with the same profile and presentation as the child on a full-time basis. Witness B confirmed that there are currently 20 full-time pupils, all of whom are boys. He agreed when questioned by the tribunal the profile of these boys is quite different from the child’s profile and he confirmed that they have behavioural difficulties whereas the child does not.

Witness B was at pains to stress that if the “building” presented a difficulty for the child, then she need not physically attend. However, we wondered whether it was not the building which was one of the primary barriers, but rather the current cohort of pupils and in particular their profile.

82. For example, therapist A in her report explained that the sensory environment can be challenging for the child, who is particularly sensitive to noise and “unexpected sensory input”. We heard of boys barging into the class when the child was being taught and we heard that the way this was dealt with was to lock the classroom door to ensure that the boys did not enter the room. Although witness B said that he “did not recognise” that picture, we accepted the appellants evidence that it had happened.
83. Therapist A explained in her report that the child “will benefit from the opportunity to build (gently) to a full school day once again....[that to] develop and practice key skills (including attentional focus, academic skills, and social interactions) requires a consistent approach throughout the school day and across the school week”.
84. There is no current arrangement being offered that would meet such needs, particularly given that the proposal would apparently involve some lessons taking place at another location such as college A and other forms of outreach and on-line learning.
85. As discussed above, witness B effectively conceded in evidence that the full-time place being offered is not suitable. As we understood his evidence, he accepted that the child had negative associations with the school, such that she could not be expected to go physically to the building. Although the authority had lodged a timetable for Class C (which contains five pupils, all boys) this is not what will be offered to the child, but rather a “bespoke” package would require to be put in place. He explained in detail the

education and outreach services, which school B, could provide, including on-line learning, none of which would require the child to attend the school building.

86. He recognised too that the child had lost trust in them and that would require to be built up over time, and suggested that a reasonable first step might be to come to meet the child on her doorstep, before building up to well being walks in the local vicinity. No details of such an arrangement were articulated, with witness B stating in evidence it would depend on what the child wanted, and the pace at which she wanted to go.
87. One of the reasons why no concrete arrangement as an alternative to the full-time place in Class C, following the timetable lodged, has been offered is because neither the child or indeed the appellant had been communicating with witness B to discuss proposals or alternatives.
88. He understandably is frustrated and concerned about the lack of engagement by the appellant. We too were concerned to hear that there was limited communication between witness B and the appellant although we accepted her explanation in evidence, that the child found any liaison induced unacceptable anxiety for her. Witness D also gave evidence that the child becomes distressed when either her current school or school B is mentioned. We also noted that some limited form of engagement through email had recommenced with the appellant. While witness B also offered to liaise initially through an intermediary at first, and to work with witness D, witness D said that she could only assist if the child was willing to engage.
89. We did not therefore have any concrete details about what alternative was on offer. In such circumstances, we must fall back on the burden of proof. Notwithstanding witness B's position that he needed to engage with the child and the parent before putting together a bespoke package, we were of the view that the relevant legal provisions require the authority to show that they can make provision for the child's additional support needs at school B. We are of the view that the evidence we heard falls well short of that.
90. Given the evidence that we heard and looking at the situation overall, and bearing in mind particularly that the burden of proof is on the authority, we concluded that the authority is not able to make provision for the additional support needs of the child, as required by paragraph (ii).

Respective suitability and cost

91. Given that we have decided above, that is essentially an end to the matter, since there is a requirement for the authority to satisfy the tribunal in respect of all four limbs of the relevant provision at 3(1)(f).
92. However, in the event that we are wrong about that, and having heard evidence relating to paragraph 3(1)(f)(iii), we went on to consider respective suitability and the respective cost of the two provisions on offer, that is whether school A would be more suited to meeting the child's needs, relative to school B, in light of the agreed costs for fees and indicative costs for transport.

93. Paragraph (iii) requires the authority to satisfy us that “it is not reasonable, having regard both to the respective suitability and to the respective cost...of the provision for the ASN of the child” at school B and school A, to place the child at school A.

Respective suitability

94. Many of our conclusions above in relation to the provision on offer by the authority are relevant to the suitability question.

95. As discussed above, to the extent that what was offered was a full-time place at the school B following the timetable of Class C, we did not consider that to be in any way suitable for the child, and witness B apparently conceded as much.

96. This particularly related to the current cohort at school B, and in particular the absence of an appropriate peer group, and the recognised need to make arrangements to form a group with girls from other schools in the education authority.

97. In contrast, while the exact profile of students at school A has yet to be confirmed, we heard evidence that the peer group would be similar to that which the child experiences at the service A, and may be some of the same students. We heard that the classes would have a maximum of eight students.

98. While we did not hear evidence about it, we were prepared to assume that the environment at school B was suitable for children with ASN. We heard that the buildings already in place at school A conform to the National Autistic Society SPELL philosophy to ensure a low arousal environment. However, this would not be a factor which weighed heavily in any respective suitability question in this case, because of the child’s negative connotations with the building and the environment at school B in any event.

99. We heard evidence that the CALM method of de-escalation, which includes the use of holds, is used at school A, whereas throughout the education authority use is made of the MAPA technique where the focus is on the environment, de-escalation and withdrawal. We found this evidence to be irrelevant, given that such techniques have not been used for the child to date, and are highly unlikely to be required.

100. We noted that the curriculum at school B offered a broad range of subjects up to Higher level, whereas as matters currently stand, school A will only offer English, Maths and Health and Wellbeing to Higher level.

101. Given that we have heard that the child is an intelligent student with academic potential, we were concerned about the potential limits at the school A. Witness C did however reassure us that once they know the interests of their students it may be possible to expand the range of subjects on offer.

102. The appellant was also well aware of these limitations, but said that without the right environment the child’s academic potential could not be met, so that it was important to focus on the child’s well being first. She said in evidence that “if we don’t get all this right she cannot use the intelligence she has”. She was of the view that this would only be possible at school A and indeed would be impossible at school B given the child’s previous negative experiences and the inability of the child to overcome them given her personality profile.

103. Indeed, in regard to school B, we heard about her negative associations with some of the members of staff, with the building, and with the service overall. We heard about three incidents in particular, the fidget toys incident, the demonstration of noise incident, and the incident with the child who absconded which clearly have all affected the child deeply.
104. Witness B understood that the child's decision not to return may have something to do with teacher B being unavailable. The appellant explained that it was not that and not these incidents specifically; and indeed it is clear from the child's statements (mind maps) to the tribunal that it was a range of factors, given her following comments (T52): "they have their own way of doing things and it doesn't work for me"; "they think they understand autism but they don't"; "they just said what they thought I wanted to hear"; "it seemed better to start with but it wasn't and it felt just like her current school" and indeed "Teacher B was nice to me but she didn't understand me".
105. Whether these are factually accurate is beside the point, these are the perceptions of the child and how she feels. With regard to the peer group, she says that "the people at school B were nothing like me"; "I was very lonely"; "Most of the people there were loud (and) chaotic"; "I REALLY didn't fit there" and "I didn't learn much because school B wasn't right for me".
106. We also heard that the child had lost trust in them due to the incidents which she had experienced, for example, "they broke my trust and tried to make me do stuff I didn't want to do and wouldn't listen to me"; and we heard that that once lost, her trust would essentially be impossible to regain.
107. In contrast, and this is a matter which we weighted heavily, the child is attending service A, has a positive relationship and positive connotations which would allow her to "hit the ground running" so to speak, in the transition from the outreach service at service A to the educational context and to transition easily to include an educational curriculum.
108. In her mind map, the child stated that: "I can be myself there"; "the class sizes are smaller but not empty"; "the people there are more like me, I could make friends there"; "It's calmer/less stressed"; "they understand the things I need to help me"; "they will work with me not against me"; "they already know me" "I am enjoying the video calls with service A – I thought it would be difficult but I enjoy them"; "school A is my only option because others haven't worked".
109. We heard from witness D that "it may be difficult for the child to return to a placement where she has previously tried to engage but been unable to continue". We thought it relevant too to take into account the length of time since the child has attended school B which would make re-engaging all the more difficult. In any event, we accepted the evidence of the appellant that it was not a case that the child did not want to attend the service, but rather that she could not attend the service given her additional support needs. We were clear from the evidence that we heard that the child's anxiety and the ongoing impact on her of her experience at her current school and school B was likely to mean that if offered a place she may not be able to attend, whatever the arrangements on offer.

110. Witness D stresses how positive it is that the child has been able to succeed in the art course, and attending service A and building a relationship with her key worker. She considers it highly significant that the child is prepared, even keen, to attend school A, which the child says is her only option.
111. If it were even possible, we accepted that the transition process with school B would be lengthy and likely to result in a further lengthy period out of school. In contrast, at school A the transition period would be much reduced since the child is already attending and states that she is excited about further engagement.
112. We were alert to the potential negative long term repercussions that a strategy of “avoiding” anxiety provoking situations might reinforce for the child. When questioned about this by the tribunal, witness D explained that in the child’s case this issue went beyond anxiety and was “almost a trauma response”. While we had reservations about the limited contact which the appellant had made with witness B, we accepted that there was no deliberate obstruction simply to thwart the potential of a successful school placement at school B.
113. Further we noted that witness D concluded that “an entirely home based approach to education would be neither possible nor appropriate for the child. The child is also a sociable young person and while she can require some support in her interactions with peers, she can make and maintain friendships. A placement in a setting with other neurodiverse young people would be of great value in this respect as she is socially motivated and wants to interact with others. The child is a bright and articulate young person who is keen to engage with education and has been prioritising this as part of her daily routine at home”.

Respective costs

114. We were clear that the provision on offer from the authority – such as it is – is not suitable for the child and certainly inferior from a suitability point of view to what is on offer from the school A.
115. However, when we looked at the costs question, we were concerned about the submission from the authority that the costs of the provision at school B were nil, because there was in fact no concrete proposal regarding a curriculum and a schedule, and although costs of travel had been identified, this was the cost to school B each day, when it was conceded that it would not be appropriate for the child, for the present at least, to be attending school B. While alternatives were proposed, including classes at college A, and well being activities such as horse management, there was no costings associated with that. We came to the view, as submitted by the appellant representative, that in fact the respondent had not established that the cost of a yet to be specified provision was nil.
116. But even if we were to accept that the cost to the authority is nil, and even if we were to accept that there would be transport costs to school B or wherever the child was to attend for classes or other activities at the rate indicated, the transport costs as currently predicted are £4,000 per annum more than the transport to school A. It was agreed that the fees themselves for the academic year with the child attending four days at school A are £6,000.

117. That suggests that the indicative costs to the authority per annum are around £10,000 which we do not consider disproportionate, especially when considered alongside the suitability question, discussed next.

Overall assessment

118. We looked at the respective suitability and respective costs, but we were aware that the legal test requires us to consider these factors in the round, that is the tribunal must consider whether the extra cost of providing for the child's ASN is reasonable, given the difference in suitability of provision.

119. This is a case where following careful consideration, we came to the view that given that school A is clearly more suitable and the additional cost of provision is relatively limited, we had ultimately little difficulty in concluding that placing the child with school A is reasonable.

Second stage

120. Where we conclude that one of the grounds of refusal is satisfied, we are required to be satisfied that in all of the circumstances it is appropriate to do so.

121. However, this is a case where we have taken the view that the authority has failed to show that their duty to place the child in the school specified by the parent is not displaced by the establishment of any one of the relevant reasons providing an exemption to that duty.

122. There is no need therefore to consider the appropriateness question in this case, because we uphold the reference and grant the placing request.