

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. By application dated 24 May 2018 the appellant lodged a reference under section 18(1) and 18(3)(da) of the Education (Additional Support for Learning) (Scotland) Act 2004, [as amended by the Education (Additional Support for Learning) (Scotland) Act 2009] (“the 2004 Act”) against a decision of the respondent.
2. The reference is in respect of the decision by the respondent dated 10 April 2018 whereby the respondent refused a placing request made by the appellant under paragraph 1 of Schedule 2 of the 2004 Act, for the child, to attend at the requested school, School A. The child is currently enrolled at School B, which is the preferred school for the respondent.

Summary of the Decision

3. The tribunal uphold the decision of the respondent to refuse the placing request, in terms of section 19(4A)(a) of the 2004 Act, being (firstly) satisfied that one or more grounds of the refusal specified in paragraph 3(1) of Schedule 2 of the 2004 Act exists, and (secondly) that in all the circumstances it is appropriate to do so.
4. The decision of the tribunal is unanimous.

Preliminary Issues

5. Conference calls were held between August 2018 and January 2019. Parties were directed to prepare and lodge a Joint Minute of Agreed Facts. The parties both insisted that the tribunal allow oral evidence from additional witnesses, rather than the usual two that would be allowed in terms of the rules of procedure. In order to reduce the length of the hearing, while these witnesses were allowed to attend, parties were encouraged to lodge written witness statements in advance of the hearing. Additional papers were lodged prior to and during the hearing, without objection. Ultimately, although four days were allocated for the hearing of the

evidence, there was insufficient time and a further day was allocated for oral evidence and the consideration of full written submissions.

6. The child did not attend during the hearing. After making enquiries with those who were familiar with the child it was accepted that she would not be able to express her views on the reference even with the assistance of a children's advocate. Accordingly, the requirement to seek her views was dispensed with.
7. A Joint Minute of Admissions and further Joint Minute of Admissions (agreed additional costs) were lodged during the hearing. Parties also lodged a Note of Disputed Issues. There was a motion by the appellant for a further witness, the Inclusion and Wellbeing Manager for the respondent, to be called to give evidence in addition to her affidavit. However, on the basis that costs had been agreed, this left her evidence dealing with the process of the original refusal of the placing request. As our role is to consider the placing request based on current information, we considered that motion should not be granted.

The Evidence

8. Documentary evidence was produced in a bundle with papers T1-T25; A1–A191 and R1-R143. The parties lodged Joint Minutes of Admissions T26-T27 and T28 and a Note of Disputed Issues T29-T30.10. In addition to the oral and written evidence, the tribunal gave full consideration to the case statement for the appellant and the response for the respondent. The tribunal also had the benefit of written and oral submissions from the parties.

Joint Minute of Admissions

9. The authority is the respondent.
10. The appellant is the parent of the child. The child is a five year old girl with a diagnosis of Autism Spectrum Disorder (ASD), Ocular Cutaneous Albinism, registered blind, Nystagmus, Photophobia, Hyperacusis, and Developmental Delay. The child has additional support needs in terms of section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 ("the 2004 Act"). The child is on the school roll of School B. The child's attendance at Nursery A concluded in June 2018.
11. The child previously attended Nursery A, which offered her a high level of support. There was a high staff pupil ratio at Nursery A. The child very much relied on the predictability and the structured routines during her nursery day. The child can have meltdowns. She becomes distressed when there is change. The child is an active girl and enjoyed most gross motor activities in the gym hall whilst at Nursery A. The child was under close supervision at the nursery at all times. The child is aware of other children around her but does not grasp pretend or joint play. The child can become distressed when having to wait for others.

The child is photosensitive. This can be uncomfortable, sore and blinding. She has to bring objects or visuals very close to her face to investigate what they are. The child can see people across the room but mainly in shape form and needs to be much closer before she recognises them. The busier the environment or visual the longer it takes the child to process detail. She does not use eye contact in a communicative fashion. She has a sound box.

12. The child has significant social communication and language delay disorder. Picture Exchange System (PECS), visual timetable, 'First and Then' board, and song signifiers are used to support her communication. The child's lack of communication and understanding of situations can result in tantrums and challenging behaviour. The child can display distressed behaviours and self-harm. The child can be found to bang her head on the floor or door and hit the side of her head in frustration. The child can have outbursts where she nips and bites others. She can become fixated on certain toys or objects and becomes distressed when these are taken away. This can lead to self-injurious behaviours.
14. The child has no awareness of danger. The child has no stranger danger. The child is at risk from burning in ultra violet light. She must wear a sunhat, sunglasses and sun barrier cream for protection when going outside. The child has a limited diet. She has no awareness of what is socially acceptable. She has sensory issues. She has a ritual of 'two knocks and a slap' on many objects she touches and bringing them to her lips. She walks in circles and repetitively spins while making sensory noises. The child is a vulnerable child.
15. The appellant made a placing request for School A, an independent school in the respondent's area.. This request was refused by the respondent on 10 April 2018 on the basis of Schedule 2, paragraphs 3(1)(f)(i), 3(1)(f)(ii), 3(1)(f)(iii) and 3(1)(f)(iv) of the 2004 Act.
16. School A is not a public school.
17. The respondent has placed the child in School B Autism Resource, which is a special school.
18. The child requires a safe environment to ensure that she can access all learning opportunities and make appropriate choices at all times.

Additional Joint Minute of Admissions

19. If the child attends School B, the respondent will require to adapt School B to make it suitable for her. The cost of doing so is as follows: around £1,200 from asbestos works arising from the electrical works that need to be undertaken to provide suitable lighting for the child and between £17,500 and £27,500 in respect of these electrical works and alterations to the lighting within the school, including the installation of dimmer switches. In addition to this, the respondent will incur the following additional costs annually: around £12,160 to transport the child to and

from school each day and £19,035 as a result of employing an advanced pupil support worker. The total additional cost to the respondent of the child attending at School B will therefore be between £49,895 and £59,895 in the first year and around £31,195 each year thereafter.

20. If the child attends School A, the respondent will incur the following additional costs annually: £19,760 to transport the child to and from school each day and annual fees of around £38,915.04. The total additional annual cost to the respondent of the child attending this school will therefore be £58,867.

Note of Disputed Issues.

3(1)(f)(ii) of Schedule 2 to the 2004 Act

21. Does School B have “appropriate effective” strategies to manage the child’s difficulties that arise from her additional support needs, which have created barriers to her education?
22. Is the environment at School B a danger to the child, having regard to her sight difficulties, the lighting within the classroom, the ground surfaces and that the outdoor space is shared with mainstream pupils?
23. Is School B able to provide knowledge and life skills to cope with the outside world as well as academic?

3(1)(f)(iii) of Schedule 2 to the 2004 Act

24. Is School B or School A more suitable for the child?
25. With reference to the preceding question, whether:
- The main barrier to education for the child is her autism?
 - There would be an appropriate peer group for the child at School B and School A?
 - It would be detrimental for the child’s development for her to be placed at School A because she would not be able to access mainstream classes, nor would it provide the autism specific approaches, set up and structure that are available at School B?
 - What is the difference in cost (if any) to the respondent of the child attending at School B or School A?

Findings in Fact (In addition to Joint Minute of Agreed Facts)

The Child

26. The child is a 6 year old girl at the time of this decision. The child was first diagnosed with Albinism when she was 6 weeks old. She was born with oculocutaneous albinism, which is a condition where there is a partial or a complete

absence of pigment in the eyes, skin and hair. It can be painful for her to be in a brightly lit environment. As part of her condition, the child suffers from nystagmus, which means that she suffers from involuntary eye movement and this can result in reduced or limited vision. The child was registered as functionally blind in 2015 due to her poor level of vision when she was outdoors in bright sunlight. The child has become more tolerant to sunlight and this has meant that she is able to function better visually when outdoors.

27. The child has two pairs of glasses; one for indoors, and a pair of tinted glasses that she has to wear when she is outdoors. The indoor glasses are for the correction of myopic astigmatism. The child accepts wearing her outdoor glasses, but not her indoor glasses. It is not unusual for young children to refuse to wear the indoor glasses, especially if they do not see any marked improvement from wearing them. However, their vision continues to develop up to the age of seven and the wearing of these glasses can have a beneficial effect as their vision develops.
28. Not everyone who has oculocutaneous albinism has autism.
29. The child was non-verbal until around the age of four. She was diagnosed with Autism Spectrum Disorder ("ASD") in or about 2016. She also has Hyperacusis, which is a condition where the sufferer has increased sensitivity to noises.
30. The appellant has made adjustments to her home, such as installing blinds and tinted glass in windows and patio doors. She has tinted windows in her car. The appellant has provided the child with considerable support to aid her communication, constantly talking to her and describing her surroundings and what activities they are doing. The appellant used the Picture Exchange System (PECS with the child extensively at home, having been introduced to it during the child's attendance at Nursery A. The child now prefers not to use PECS at home as she is able to verbalise and is building sentences to communicate with the appellant. The appellant describes the child as having a "thirst for knowledge" and a very good memory, needing only to be shown pictures or cards a few times. The child loves letters and numbers and can put cards containing numbers from 1 to 100 in order.
31. The child has a good ability to form a mental map of her surroundings. When she is in a new place, she likes to explore by going around the walls of the room to get an idea of the size and layout and then to explore the contents of the room. Once the child has become familiar with a room she can then move around independently within the room.
32. The child requires to bring objects and visuals close to her face and be allowed time to explore objects with her hands. The child also requires to go close to look at objects and people, and to be allowed time to process and respond to them. She benefits from having a clear contrast, such as having an object or symbol on a

clear, uncluttered white background. While larger fonts can be used, the child was able to use the smallest size symbols on phase four of PECS at nursery without too much difficulty. The child shows a keen interest in her visual timetable at the start of each day, using it to tell the day of the week and which activity is to take place next. She also has used a 'now and then' board and likes to move the symbol from her visual timetable and post it into a box to show that the activity had been completed. The child responds well to routine and to short bursts of activity. The child enjoys music and singing and at Nursery A staff would use a transition song to move from one activity to another, such as going outside.

33. The child enjoys physical activities. She is co-ordinated and has good motor skills. She is able to run and to jump without issue. At Nursery A, the child was able to take part in and enjoyed soft play and astrogymnastics. At School B, she does not require direct assistance to use the slide or swings or to go up or down the slope in the small playground, nor to go down the steps at the door of the school to access the playground. She is able to take part in physical activities in the class, although she does require assistance when on the balance beam.
34. The child is very self-directed and self-led. She can become upset if she is not allowed to do things independently and can become violent both to herself and to the person attempting to direct her. While the child has language delay and social and communication difficulties, she is making academic progress. The child is described as being "a smart cookie".
35. The appellant wishes the child to attend at School A. The respondents have placed the child at School B. School A has made an offer of a non-residential place to the child.

The child's attendance at Nursery

36. The child attended Nursery A and the appellant thought that her needs were well supported there. For this reason, it was helpful to have some information about the nursery, and then to compare and contrast the other two educational provisions.
37. At Nursery A the child was in a small class with a high staff to pupil ratio (4:6). There they introduced the appellant and the child to PECS. The child was non-verbal when she started at Nursery A, and was able to verbally communicate, supported by PECS, by the time that she left. The child became confident enough within Nursery A to be able to move around the nursery building without having to be led by hand, and also to play independently in the playground, under supervision. The child was assessed by the educational psychologist, as having very good pre-school skills and was more advanced than other children at Nursery A. She was only one of two children in the nursery who were able to be assessed at this level.

The child's attendance at School B

38. Initially the child did not attend School B, although she was on the school roll there. The appellant obtained a "Fitness to Work" certificate from the child's GP. This stated that the child would not be fit to attend school for 12 months from 22 August 2018. The reason given was "albinism with no functional vision". During the pre-hearing this was questioned and the child's consultant pediatrician, confirmed that the child's condition was not one that justified her absence from school. The parties then worked together to bring the child into the school. She started attending School B on a part time basis in November 2018 for two days per week. This was gradually increased so that she commenced attending on a full time basis by the start of this hearing. The child transitioned well into School B and quickly got used to the routine there.
39. The child has settled well into the school and into the class. Each morning the child is met at the front entrance of the school and taken to her classroom. She is in a class with five other pupils, all of whom have additional support needs and ASD, although none have vision impairment. There is another pupil in the resource with additional support needs and vision impairment. He is in a higher primary class. His vision impairment is more severe than the child's.
40. The child enjoys music. The appellant has secured funding for the child to attend music therapy and also funding for an afterschool provision. The funding is available regardless of which school the child attends.

School and Teaching Staff

41. There is no specific qualification available for teaching children with ASD. Most teaching staff and support staff build up experience from working with children with additional support needs and attending courses and training days as well as receiving additional training from specialists such as Speech and Language Therapists (SLT), Occupational Therapists (OT) and Qualified Teachers of Vision Impairment (QTVI).

School B Autism Resource

42. The Resource is part of School B Primary School. Three Resource classrooms are situated at the back of the building. A fourth classroom is situated towards the mainstream section of the school and is for pupils who are beginning to integrate into mainstream classes. Within the main Resource area there is a nurture room and a soft play area. There are six children within each of the classes. Each class has a class teacher and an allocation of 1.75 advanced pupil support workers ("APSWs"). The APSWs are all very experienced, many of them having worked in the resource for a number of years. Staff are trained in respect to each child's specific additional support needs, as appropriate. There is another child within the

school with vision impairment, who is now in primary 4. One of the APSWs who previously supported him is now in the child's primary 1 class. Teaching staff work in a collaborative fashion, seeking advice from others within the school as necessary, as well as accessing additional training from the specialists.

43. Staff at School B have access to the Individualised Educational Programme ("IEP") created for the child at Nursery A. The child has recently been assessed as requiring 1:1 support within the class. The respondent has secured funding to employ an additional APSW for The child and is presently in the process of recruitment. Any APSW employed for the child will be provided with additional support and training in her additional support needs ("ASN") and vision impairment needs.
44. The child's Primary 1 teacher left her post at School B in early January 2019 to take up a role at Nursery A and the child now has a new class teacher. We did not hear evidence from her as, at the time of the hearing, she would only have just started with the child's class. The appellant made no complaints about the new teacher since she had started, and the child had increased her attendance at School B to the point where she is now attending five days a week.

School A

45. School A used to have two campuses but has, within recent years, contracted and is now based in one campus. School A offers residential and day places to 30 children currently, with some children with complex additional support and health needs being offered 52 week residential places. The children at School A are exclusively placed there by education authorities. All of the children at School A have additional support needs as well as vision impairment and have not been able to be supported within local authority provisions.
46. The child attended a playgroup run at School A on a Friday until she started at School B, and also at Family Days held at School A and organised by the Royal National Institute of Blind People.
47. If the child attends School A she would undergo an initial six weeks assessment by SLT, OT and physiotherapists. There is a 0.8 FTE SLT and a fulltime SLT assistant at the school. There are three habilitation specialists. Following the assessment there would be a formal review and a decision would be taken about the level of engagement required from each therapist.
48. At School A they have over a hundred members of staff, including those required for the residential children. They have 19 QTVIs, plus two in training.
49. At School A they offer additional and enhanced habilitation skills, supporting children with vision impairment and additional needs in improving their independent

livings skills, such as eating and drinking, cooking, dressing etc, as well as orienting and navigating skills.

50. School A has identified a class that they believe would be suitable for the child. The teacher of that class, Witness 2, is very experienced in both ASN and vision impairment. She has an Early Learning Professional to assist her in the classroom. The child would get 1:1 support.
51. In addition to her own class, Witness 2 also works across other classes in the school. On a Tuesday she is out of the school, acting as a visiting QTVI, looking after vision impaired children in mainstream classes, where the teachers can be responsible for 30 pupils in their class. She runs courses on School A learning hub and also coordinates the use of Braille.

52. **Physical layout**

- i) Lighting
- ii) Floor surfaces
- iii) Classroom
- iv) Playground

53. **At Nursery A**

- i) At the nursery they had blinds and shutters on the windows that they could open and close. There were advised by the QTVI to sit the child with her back to the window. The blinds were usually kept closed. In practice they rarely had to close the shutters and the child was placed with her side to the window.
- ii) No issues were identified with the floor surfaces at Nursery A.
- iii) The classroom was described as being similar to the size of the room in which the hearing was held. There were six children in the class and each year staff consider the needs of the children when arranging the class furniture. There was a lot of furniture at the start of the year but some was removed to accommodate a child in a wheelchair.
- iv) Nursery A has a small, secure outdoor area with swings, a hammock swing and a slide, along with outdoor musical instruments. The surface of the playground was a soft rubber material, and this could become slippery when wet.

54. **At School B**

- i) When initially assessing the school for the child, the QTVI found the lighting to be too bright, brighter even than she would have recommended for pupils with no vision impairment. She brought this to the attention of the Head Teacher,

Witness 4. The school has since installed dimmer switches in the child's classroom. There is a plan to install dimmer switches in all of the areas that the child is likely to access throughout her years at School B, if she remains there, starting with the gym hall in February 2019. The child does not appear to be distressed by the level of light in her classroom. On occasions she has used the dimmer switch to raise the light levels. It was unclear if the child was adjusting the light to a more comfortable level or if she was simply exploring cause and effect by playing with the switch.

- ii) There is a mixture of hard flooring and carpets. The area that the child accesses is all on one level, except when she goes outside into the playground, which is accessed by three steps. There is a rail on the steps. To date there have been no reports of the child falling or being caused any difficulty navigating due to the floor surfaces.
- iii) The classroom that the child is in was described as being similar in size to the hearing room. The classroom has been stripped back to remove clutter. Normally desks and workstations would be arranged so that they discourage children from running the length of the classroom. Adaptations have been made so that the desks and workstations are positioned around the exterior of the room. At one part of the room there is a small kitchen area, which is effectively cordoned off but can be accessed with the assistance of the teaching staff. Near to the classroom is a soft play room, which the child can walk to, supervised but unaided. The child accesses the school through the main front door. She, along with the other pupils from her class, are met at the front door either by their teacher or support staff and guided by the hand through the school to the area of the school where their classroom is located. They pass the main dining area to get to their classroom. There is a piano there. The child likes to play the piano and has, on occasion, found her own way to the piano to play it. She has been encouraged to explore her classroom and is now able to navigate her way around it without direct assistance. Once she has checked her visual timetable, she is able to make her way to her workstation to begin her tasks. The child is given support during more physical activities, such as navigating through a course made up of cones, or balancing on a low beam.
- iv) At School B, the child and her class currently access a small enclosed outside play area which is close to their classroom. They are supervised while using the playground. There is no shade in this area, although there are willow tunnels, "hideaways", in the main playground. In the small area there are swings and a slide. The child has been seen taking her turn on the slide, climbing up the steps and waiting until the child before her has exited the slide before going down. There is a small slope and the child enjoys going up and down it. She does not require to be guided or physically assisted, once in this play area. The main playground is accessed by older and mainstream children. The appellant

is concerned that when the child leaves Primary 1 she will no longer have the use of this small playground and will require to use the main playground where there are mainstream children. In the main playground there is also a sandpit with a small bridge over it and no rails. It would be very difficult for the child to see the bridge.

55. At School A

- i) There are blinds and dimmer switches installed in the classrooms.
- ii) The classrooms in the school are all on the one level. On a lower level, accessed by a lift, there is a sensory room and a hydro pool. Down another level is the door to the playground. There are some carpeted and some floor areas within the school. There is a dedicated dining room and a soft play room.
- iii) At School A the classrooms are small. They are laid out according to the needs of the pupils, so that if there were pupils with wheelchairs, the room would be arranged to provide extra space for this.
- iv) The rooms have a desk and tables and are stripped back of clutter.
- v) There are signifiers on the doors to let pupils know what is inside. The school corridors are wide and have handrails. There is also a white line down the middle of each corridor, to assist wheelchair users to navigate safely.
- vi) The playground is accessed from the lower level. The outdoor play area is a safe and enclosed area. They are developing a scramble area with a climbing wall and an outdoor gym along with a sensory playground. This gives the children an element of “safe risk”. They are also developing a kitchen garden to teach children where their food comes from.

Travelling Time

- 56. Travelling time to Nursery A was 1-1 ½ hours by school taxi. The journey took so long as other children had also to be collected and the child’s home was first on the journey to school. The child was not troubled by the length of the journey as she enjoyed listening to music in the taxi and sometimes fell asleep. If she became distressed in the taxi the driver could calm her by playing music.
- 57. School B is not the catchment school for the child. School B is 4.2 miles from the child’s home and travelling time is 45 minutes by taxi.
- 58. School A is 12.9 miles from the child’s home and travelling time to School A would be 40 to 45 minutes each way. The appellant did not consider that the travelling

time to school would be an issue. The school starts later on a Monday, at 10.20am, to allow pupils to miss the rush hour.

Supports for ASD and Visual Impairment (VI)

59. The child requires to be taught in a small nurture type group setting, ideally with 1:1 support. She requires a quiet, clutter free learning environment to minimise distractions. The child requires an appropriate level of lighting within the classroom. She enjoys using her vision and checking her visual timetable is important to her. This supports her need for predictability and routine. Introducing “surprise” elements into her timetable supports her in coping with change. The child has the use of a ‘now and then’ Board, Boardmaker visual symbols and PECS. The child requires time to be able to look at and touch objects, to look at screens, such as an interactive whiteboard or an iPad, and printed materials. To date there has been no need to increase the font or size of the symbols on the PECS cards for the child, as she could see when she held the cards up to her face. She may require larger fonts as her reading progresses to more grown up books.
60. The child benefits from short bursts of activities due to her short attention span. The child requires support in learning new environments but once she is comfortable in the environment, she is able to move around independently, under supervision. Song signifiers are used to support her in transitioning from one activity to another.
61. It is unlikely that the child’s vision impairment will become worse, but the demands on her will increase as she grows. She will require support in implementing strategies to overcome her vision impairment,
62. The child requires support with her personal development skills, independent living skills and personal hygiene (she still has toileting issues). The child is able to change from outdoor clothes and to take off her socks and shoes independently, with an adult prompting her to pick up her socks and shoes and place them on a shelf so that they would not be a trip hazard.
63. The child finds social interaction difficult and requires support to learn to interact with others and also to form and maintain friendships. She will require support with social skills, body language, how to pick up on non-verbal cues and to return them (such as a smile). At School B she is being supported to take part in turn taking activities with her peers and has shown an interest in approaching other pupils. At School A the initial focus would be on supporting her vision impairment and habilitation skills with 1:1 support rather than necessarily interacting with others.
64. The child needs teachers and staff trained in and attuned to her ASN and visual impairment needs.

65. A typical Friday in School B is described as follows –

66.

Breakfast club; choosing tasks – functional language, social skills, play skills; hello group – functional language, rules of conversation, developing use of adjectives when requesting, modelling and expanding language, counting skills; soft play- social skills, creativity, motor skills, develop vestibular and proprioceptive senses; snack in class; outside break; story – non-verbal communication/body language, active listening skills; fine motor skills – various tasks; toilet and teeth routine – self-care skills; golden time; and goodbye group – functional language, rules of conversation, developing use of adjectives when requesting, modeling and expanding language, introducing reflection.

Peer Group

67. At Nursery A, while the child did not form friendships, she did show an awareness of the children around her and would work alongside them.

Peer Group at School B

68. At School B the child is in a class of six children, which was described as “almost a perfect peer group”. They are all around her chronological age and are all at the Primary 1 stage. There is a mix of boys and girls. While there are no other children in her class with vision impairment, they do all have ASD. The child has been supported to be involved in activities that include turn taking and working alongside other children. The child has been observed to choose to go and sit beside another child when she was interested in the activity that the child was involved in. The child has been supported in turn taking activities both in the classroom and in the playground (taking turns on the slide). It is likely that the children in the child’s class will continue with her into primary 2.

69. As School B is based within a mainstream school, there will be opportunities for the child to interact with mainstream classes, if this is felt appropriate. At this time it is not in the plan for the child to access mainstream classes. She does have opportunities to interact with mainstream pupils in the dining hall and in the playground in the near future, with support and supervision.

Peer Group at School A

70. At School A there are thirty pupils currently enrolled, spread over seven classes. Their maximum capacity is forty-five. Two classes are completely secondary mainstream pupils with vision impairment. They have fourteen pupils with severe and complex needs, which are, high health needs and significant learning disability. The child is not in this category. There are seven pupils (soon to be eight) with ASD, none classed as severe. All are ambulant. Some are non-verbal. There are

ten children of primary school age spread over three classes and grouped by ability. The class that has been identified as suitable for the child is led by Witness 2, Teacher. Of the three classes, this has pupils who are the most able. There would be six pupils in Witness 2's class, including the child. They all have vision impairment as well as additional support needs. Their vision is less than the child's. Two of the pupils have ASD. The child would be the youngest in the class, and the other children are at different cognitive levels.

71. The class is formed as follows –

The child – age six (working at Curriculum for Excellence Early Level) full time;
Boy age 8 (no ASD) (working between Early and First Level) comes in four days per week;
Girl age 11 (working at First Level for most subjects) comes in three days per week;
Boy age 12 (cerebral palsy and visual impairment) (working at First/Second Level);
Boy (with ASD) and girl age 13 (working at First/Second Level and Second/Third Level) – only in this class for registration and then go into their secondary department. May occasionally come into the class at additional times.

72. There would be periods when the child would be working individually with her teacher on communication skills, and at other times she would be involved in group work on communication skills, self-awareness, social skills and turn taking as well as following instructions. The child can link in with other classes as and when appropriate – for classes such as drama, music and gym.

73. There would be at least one day per week when the child would be in class on her own. For most of the rest of the week she would be in a class with two other children. She would have a differentiated curriculum. Effectively, she would be taught 1:1 for the majority of the time.

74. Witness 2 stated that the child is not yet ready to develop relations with a peer group. When it is felt that she is ready to do so, they could “reach out to other schools”.

75. Witness 1 spoke of opportunities to interact with a local school, School C. On closer questioning, the level of engagement was less than originally suggested. At School A they are creating a courtyard and inviting pupils from School C to come and help. This is to take the form of their pupils painting a mural on the wall rather than necessarily engaging directly in using the area with the pupils of School A. Pupils from School C would come to School A more infrequently than termly. If a child from School A could access mainstream, then School A would try to link in with School C to accommodate that. It is more likely to be when the pupil is in the senior phase.

26. Reasons for the Decision

76. The tribunal considered all the evidence and was satisfied that there was sufficient evidence available for the tribunal to reach a fair decision on the reference. Where there were discrepancies in the evidence of the witnesses, we preferred the evidence of the witnesses for the respondent due to their direct knowledge of the child. The appellant's witnesses from School A, Witness 1 and Witness 2, made a number of sweeping statements which were not substantiated by the evidence we heard of how the child is currently managing and being supported.

77. The tribunal considered the statutory provisions of the 2004 Act relevant to this reference.

Section 19(5) of the 2004 Act provides:

"Where the reference relates to a decision referred to in subsection (3) (e) of that section, the tribunal may –

(a) confirm the decision if satisfied that –

(i) one or more of the 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; or

(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, and

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

78. Paragraph 2(2) of Schedule 2 of the 2004 Act provides:

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

(a) a special school the managers of which are willing to admit the child...it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school."

79. Paragraph 3(1) of Schedule 2 of the 2004 Act provides that this duty does not apply:

(f) if all 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 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 special 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).

Additional relevant statutory excerpts are contained in the Appendix attached hereto.

80. In the circumstances of this case, in terms of paragraph 2(2) set out above, the respondent is required to meet the fees and other necessary costs of the child's attendance at the specified school unless all of the circumstances in paragraph 3(1)(f) are established.
81. There is a two-stage test in terms of section 19(5) (a) as set out above: firstly, the tribunal requires to determine if the respondent has established the circumstances in paragraph 3(1)(f); secondly, the tribunal has to consider whether in all the circumstances it is appropriate to confirm the decision of the authority.
82. Para 3(1) (f) (i) and (iv) are not in dispute.
83. Accordingly, in order to refuse to uphold the decision of the respondent, we have to be satisfied that 3(1)(f)(ii) the respondent is not able to make provision for the child's additional support needs in School B; or 3(1)(f)(iii) that it is reasonable, having regard to both the respective suitability and the respective cost to the respondent of the schools, to place the child in School A. If we are not satisfied on either or both of these grounds, then we require to uphold the decision of the respondent.
84. We are satisfied from the evidence that the respondent has a good understanding of the child's additional support needs, and that her current placement at School B is meeting those needs.
85. There is no dispute between the parties as to the description of her additional support needs. All witnesses who were asked, including the appellant, told us that it is not helpful to separate the child's VI and ASD needs, because the difficulties interact and compound one another. We agree with this. However, we are being asked to give weight to one over the other with regard to deciding what the main barrier to her future education is.
86. We have strong evidence from Witness 3 and the consultant pediatrician which establishes that:
- i) The child's VI will not deteriorate and that she will be able to learn how to use her vision better;

- ii) The child has a moderate level of VI and that her level of photophobia has reduced considerably;
- iii) The child's functional vision is not the same as being blind, and that Witness 3 would not register the child as such if she were making that judgement now;
- iv) The child does not require a QTVI teacher to be present at all times. The most important factor is how well a class teacher implements the strategies suggested by the QTVI;
- v) The child requires constant supervision and constant ongoing assessment;
- vi) Children with this VI generally attend mainstream schools when they do not have other additional support needs.

87. To support her ASD needs, we heard evidence that the child requires:

- i) a small group setting with structure and routine;
- ii) ideally, to be with a peer group appropriate to both her chronological and her cognitive level; concerns were expressed by both Witness 4 and Witness 8 about children being taught in classes where there are big age gaps;
- iii) opportunities to interact with other non-ASD children to develop her understanding of social situations.

88. It is not necessary for the child to have a continual assessment of her vision impairment, as Witness 2 insisted. The consultant pediatrician stated her opinion that it would be appropriate for the child to be supported by a visiting QTVI. The important thing would be to be confident that her teacher would implement the identified strategies and supports between visits. We are confident that the child's VI needs are being well managed at the moment and there was good evidence that her class teachers at both Nursery A and School B have implemented all of the visiting QTVI's suggestions. In a small class setting where each child has an IEP, this will be an intrinsic part of her curriculum, in contrast to a mainstream class setting. The child needs to be educated in a setting that can support both her VI and ASD needs.

89. Not all children with oculocutaneous albinism have autism. Had it not been for her ASD, it is likely that the child would have accessed mainstream provision, with appropriate supports in place for her vision impairment. For the child, the two conditions compound each other. A child with vision impairment needs extra support to understand the world around them. A child with ASD struggles to understand the explanations that she is provided with. The child requires day-to-day support for difficulties related to ASD. She has shown a capacity to overcome her vision impairment with appropriate support and strategies and is described as being a very visual learner. While we cannot separate out the effects that each condition has and its impact upon her learning, we think that her ASD is the main barrier to her education. The child requires day-to-day support for difficulties related to ASD. Many of the strategies used to support autism will also support the child's vision impairment.

90. We are satisfied that School B can provide a suitable education for the child. She has been placed in a small class with a high ratio of staff to pupils and the school has taken advice from Witness 6, QTVI, about providing the child with 1:1 support and has secured funding for an additional member of staff. We heard no evidence to cause us concern that the position would not be filled or that appropriate training specific to the child's needs would not be provided.
91. School B has acted promptly in identifying issues with the existing lighting within the areas to be accessed by the child and has commenced a programme to install more appropriate lighting and dimmer switches. There are no reported issues with the lighting provision and, in fact, the child is reported to be occasionally turning the lighting up, although this could be partly due to her simply playing with the switch and exploring cause and effect.
92. Staff at School B have taken into account the child's visual needs when considering the layout within the classroom and have arranged the furniture in such a way as to make it easier for the child to navigate her way around the classroom and her various workstations safely. The child has familiarised herself with the classroom and can move around it independently. Every child in the class has an individualised visual timetable.
93. There is regular communication between School B and QTVIs, Witness 7 and Witness 6, whose roles are complementary. Witness 6 attends on a weekly basis to observe and give input into strategies to support the child's vision impairment needs and Witness 7 said that she intends to visit a minimum of once a week to give the child mobility lessons in "pre-cane skills". Witness 1 acknowledged Witness 7 as "an expert in her field". Witness 6, in particular, showed a good understanding of the child's vision impairment needs, having been involved in supporting her and her teachers for nearly two years. Both QTVIs confirmed that, as the child and her teacher become more confident in these strategies, it is likely that they would reduce the frequency of their attendances, but could also increase the frequency if necessary.
94. Teaching staff at School B have experience in supporting children with ASN – it is an autism resource. They work collaboratively and can access additional support and training provided by health professionals as well as within the Local Authority.
95. At School B the teaching staff are using appropriate strategies which support both the child's ASD and vision impairment needs. The child has a number of visual supports such as her visual timetable and her now and then Board. She is given time to bring cards or objects close to her face to see and to process. Witness 4 advised that she could envisage no difficulty if, at a later stage, the child required the use of a cane or a support dog within the school.

96. The child is already learning habilitation skills at School B. She and her classmates eat in the classroom rather than the dining area as some of the children require support with using cutlery. The child is assisted in changing clothing when accessing the playground – zipping up her coat and changing her shoes.
97. At the present time the child has the use, along with her classmates, of an enclosed area within the playground. She is supervised within this area. The child has demonstrated an ability to access this play area with minimal support and can explore the same safely, taking turns on the slide and travelling safely up and down the sloped area. There have been no reports of any accidents due to the child's vision impairment. This enclosed area is exclusively used by the child and her primary 1 peers. The appellant is concerned that when the child leaves primary 1 she will no longer be in a small secure area and will be accessing the main playground along with the mainstream children. School B is an autism resource centre and is well equipped to support children with ASD. It is likely that even if the child does access the main playground in future years, appropriate adaptations will be made and she will continue, along with her peers, to be provided with support to do so, and be supervised.
98. The parties invited us, within the terms of their Note of Disputed Issues, to consider what the child's biggest barrier to learning was – whether it was her ASD or her VI. The principal view, shared by the appellant herself, is that it is not possible to separate the child's ASD and VI needs. One witness who differed was Witness 8, educational psychologist. She carried out a formal assessment using Early Years Transition Scoring Tool for pupils for ASN. The child's score brought out that the child's main barrier to learning was her ASD rather than her vision impairment.
99. Witness 5, the child's teacher at Nursery A and someone who knew her well, was also clear that within the nursery setting, it was the child's autistic traits that were her main barrier to education; her need for structure, routine and familiarity.
100. The appellant herself said that the child is happy at School B, that the placement is positive at the moment and that she does not dispute that School B could teach the child. However, she expressed concerns about the child's safety and her future development. Her concerns were focused on the physical aspects of School B – the classroom, the playground and the floor surfaces. She also expressed concern that the child would not get the habilitation support that she needs. She was concerned about the noise and the mainstream children in the dining area, the playground, the unpredictability of mainstream children and the child's habilitation needs for the future. The appellant expressed concern about the child's ability to become independent in the future if she does not attend School A. On the information available to us we consider that these concerns, while understandable, are unfounded.

Respective suitability

101. We accept that School A can meet the needs of some children with both VI and other complex additional support needs including ASD. However we think that the evidence is in favour of School B being better suited to meet the child's VI and ASD needs.
102. SHANNARI – "Included" is very important for the child. The opportunities for being included in a community setting are likely to be much greater at School B than at School A because the resource is situated within a mainstream primary school. We heard that there are occasional events at School A with children from a nearby primary school, but that these are infrequent.
103. Daily contact with other children of her own age is important for a child with ASD to experience and learn to understand social situations. Witness 2 expressed a view that the child is "not ready for socialising with a peer group" without any direct knowledge of the child, and she said that 1:1 teaching which the child would experience at School A much of the time would be in her best interests. The appellant stated that at home the child has siblings and also cousins that she sees often and therefore would have regular opportunities to interact with them. However, we do not consider that this would provide the structured daily opportunities that are needed to learn how to interact with other children that the child is getting at School B. While the child may not form close friendships, due to her ASD, it is important that she is supported in interactions with her peers so that she can develop the best understanding of social situations that she is capable of. The appellant seemed to be of the view that because she does not witness the child interacting with others, a peer group is less important for her education than 1:1 education with a teacher.
104. The evidence is that, while the child does not interact directly with other children she has started, even at this very early stage, to make approaches to other children in her class and can work alongside them, participating in turn taking activities for example, which is part of her IEP. At School B she is already in a class with peers with ASD who are close in both chronological and developmental terms.
105. At School A, for at least two days per week, the child would be likely to be in a class that only contained her and one other older child. On other days there would be a big age gap between her and the rest of the class. The opportunities for experiencing situations with children of her own age are very limited at School A since there are currently only 10 primary aged pupils, and only one P2 child and one P3 child, and no other P1 children.
106. We note that Witness 1, in his evidence, made many sweeping statements and often stated as fact that which could only be an opinion or a prediction. For example, he stated that Witness 6 and Witness 7 were making promises that they could not keep about the frequency of the visits that they would make in

the future. This was stated by him as a fact, but was based on historical experiences with the local authority and not on current factual evidence of failures.

107. Witness 1 stated strongly that he believed that the child was “at danger” and that her vision impairment was “severe”. This was stated to be based on his direct involvement with her and reports from staff at the playgroup. However, upon interrogation, it became apparent that he had nothing to base these assertions on. His direct involvement with the child had been fairly limited and historical. The child and her family attended four or five family days organised by RNIB between 2014 and 2016. The family days consisted of 10 families attending for the day. The setting would have been unfamiliar to the child and different to a familiar classroom setting. There was no evidence that she suffered any injury during these days. In the mornings Witness 1 met the families, doing a “round robin” of crafts and sensory stories, and in the afternoon he organised guest speakers or spoke directly with the parents while volunteers engaged with the children. While staff members at School A playgroup, that the child attended, spent time with the child, this was limited (to an afternoon), was not a formal assessment, and we have evidence that she developed significantly during her nursery placement, developing verbal skills and becoming less photosensitive.
108. While Witness 1 stated that Witness 8 had an agenda against School A, it could be suggested that he similarly had made up his mind that School B could not support the child, even though he had not visited School B and had not observed the child there, had no current knowledge of the support that she is receiving.
109. Witness 1 was keen to stress that School A would provide constant ongoing input from SLT and that the class teacher was qualified in VI and also habilitation whereas the teacher at School B was not. However, the SLTs at School A support all of the children in the school, and would not be exclusive to the child. The SLT is part of the weekly meetings with the class team and not a constant presence. Secondly, we have evidence that the child does not require constant specialist vision input, so long as her class teacher implements the appropriate strategies.
110. At School A, for one day each week, the child would have a different teacher while Witness 2 is doing her outreach QTVI work. The child would also move to different classes for art, music and P.E and to mix with other pupils (of lesser ability) during these lessons. Witness 2 was confident that the school could manage these changes for the child, stating that children with autism form relationships with routine rather than with the individual. “All staff have access to the online learning log and so can continue with the routine”. However, children with ASD find changes to their routine difficult and the need to involve the child in a number of other classes in order to have access to these subjects and other children could be challenging for her.

111. At School B the child has recently had a change of teacher. However, the child's peers and the support staff within the class remained the same and we were told that there appeared to have been no impact on the child.
112. The appellant stated that she does believe that School B can teach the child, but expressed concerns that School B could not provide her with support to become an independent adult. So far, however, we have heard that School B is supporting her with age and stage appropriate habilitation skills – getting changed to go outside, doing up zips, taking shoes off and on. With the regular proposed visits from Witness 7, we have no reason to believe that School B will not continue to provide the child with appropriate support towards independence.
113. All of the concerns expressed by the appellant and by School A were negative predictions of the future which are not substantiated by the current evidence.
114. We are satisfied that the child's ASD, VI and habilitation needs can be well met in School B and, importantly, her need for social interaction with a suitable peer group can be better met at School B.

Respective Costs

115. For the child to attend School B, the respondent will require to adapt School B to make it suitable for her. The respondents have already implemented a program of works, as detailed in the second Joint Minute of Admissions, to install dimmer switches in the areas that the child currently accesses, with a view to installing dimmer switches in the remaining areas within the school that The child would be likely to access if she remains there, such as the dining area.
116. In addition to this, the respondent will incur the following additional costs annually: around £12,160 to transport the child to and from school each day. They have already secured funding for an advanced pupil support worker and will incur an annual cost of £19,035 as a result of employing an APSW specifically for the child. The total additional cost to the respondent of The child attending at School B will therefore be between £49,895 and £59,895 in the first year and around £31,195 each year thereafter.
117. If the child attends School A, the respondent will incur the following additional costs annually: £19,760 to transport the child to and from school each day and annual fees of around £38,915.04. The total additional annual cost to the respondent of The child attending this school will therefore be £58,867.
118. The respondents conceded that in the first year, the costs would be broadly similar regardless of which school the child attends at. In the following years, the additional cost to the respondents of the child attending at School A would be in the

region of £27,672. The child is in primary 1 at present, so the costs would be incurred effectively throughout the whole of her education.

119. No evidence was led as to what the respondent's education budget is, or what their special needs budget is. They have been able to secure funding for the works being carried out to install the dimmer switches and lighting in the school, and also for the employment of an additional member of staff. Witness 4 spoke of having a budget that she could dip into for additional resources. We take from this that cost is not the main factor in the decision of the respondent to refuse the placing request. If we had decided that School A was more suitable for the child, we would not have considered the additional cost to the respondents of placing her there would have been so great that it would outweigh the benefit. Having reached the decision that School B is more suitable for the child's needs, the additional cost to the respondents becomes a less important factor.
120. In all of the circumstances, having considered the respective suitability and respective costs, there are no other circumstances which would cause us to revise our decision.

Appendix

Statutory Provision.

Education (Scotland 1980

Section 28 states that Pupils are to be educated in accordance with the wishes of their parents.

(1) In the exercise and performance of their powers and duties under this Act, the Secretary of State and education authorities shall have regard to the general principle that, so far as is compatible with the provision of suitable instruction and training and the avoidance of unreasonable public expenditure, pupils are to be educated in accordance with the wishes of their parents

Education (Additional Support For Learning)(Scotland) Act 2004, as amended

Section 1 of the Education (Additional Support for Learning)(Scotland) Act 2004 states:

1(1) A child or young person has additional support needs for the purposes of this Act where, for whatever reason, the child or young person is, or is likely to be, unable without the provision of additional support, to benefit from school education provided or to be provided for the child or young person.

1(2) In subsection (1), the reference to school education includes, in particular, such education directed to the development of the personality, talents and mental and physical abilities of the child or young person to their fullest potential.

The 2009 Act came into force on 14th November 2010 and accordingly, the amendments therein apply as at the time of this hearing. The amendment to the Act is shown in italics.

1(3) In this Act, “additional support” means-

(a) in relation to a prescribed pre-school child, a child of school age or a young person receiving school education, provision (*whether or not educational provision*) which is additional to, or otherwise different from, the educational provision made generally for children or, as the case may be, young persons of the same age in schools (other than special schools) under the management of the education authority *responsible for the school education of the child or young person, or in the case where there is no such authority, the education authority* for the area to which the child or young person belongs.

Section 19(5) of the Act provides:

"Where the reference relates to a decision referred to in subsection (3) (e) of that section, the Tribunal may –

- (a) confirm the decision if satisfied that –
 - (i) one or more of the 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, and
 - (ii) make such amendments to the co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require..."

Paragraph 2(2) of Schedule 2 of the Act provides:

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

- (a) a special school the managers of which are willing to admit the child...it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child's attendance at the specified school."

Paragraph 3(1) of Schedule 2 of the Act provides that this duty does not apply:

- (f) if all 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 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 special 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).

In the circumstances of this case, in terms of paragraph 2(2) set out above, the authority is required to meet the fees and other necessary costs of the child's attendance at the Requested School unless one of the circumstances in paragraph 3(f) is established.

There is a two stage test in terms of section 19(5) (a) as set out above: firstly the Tribunal requires to determine if the authority has established any of the circumstances in paragraph 3(1)(f); then, the Tribunal has to consider whether in all the circumstances it is appropriate to confirm the decision of the authority.

Para 3(1)(f) (i) and (iv) are not in dispute. School A is not a public school and the Authority have offered to place the child in School B.