Health and Education Chamber
First-tier Tribunal for Scotland

Additional Support Needs

DECISION OF THE TRIBUNAL

1. Reference

1.1. This is a reference in terms of section 18(3)(b)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) concerning a decision of the education authority that the child does not require a co-ordinated support plan (**CSP**).

1.2. The relevant statutory provision is section 2 (co-ordinated support plans) of the 2004 Act, which provides:

> (1) For the purposes of this Act, a child or young person requires a plan (referred to in this Act as a "co-ordinated support plan") for the provision of additional support if–
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> (a) an education authority are responsible for the school education of the child or young person,
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> (b) the child or young person has additional support needs arising from–
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> (i) one or more complex factors,
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> (ii) multiple factors,
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> (c) those needs are likely to continue for more than a year, and
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> (d) those needs require significant additional support to be provided–
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> (i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or
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> (ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

1.3. It is accepted by the education authority that it is the education authority responsible for the school education of the child in terms of section 2(1)(a); that the child has additional support needs arising from multiple factors in terms of section 2(1)(b)(ii); and that those needs are likely to continue for more than a year in terms of section 2(1)(c). The criteria set out at section 2(1)(a) and (b)(ii) and (c) are not the subject of dispute between the parties. Accordingly, this decision is not concerned with any of those non-disputed criteria, other than to the extent that the tribunal satisfied itself from the evidence and submissions contained in all of the papers before it that those criteria were indeed made out.

1.4. The only criterion in dispute between the parties is that set out at section 2(1)(d), namely whether the child's additional support needs require significant additional support to be provided, either by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or by one or more appropriate agencies as well as by the education authority themselves. In short, the issue for the tribunal is whether the additional support to be provided is significant.

1.5. Both parties agreed in writing to dispense with a hearing of this reference, in terms of rule 37(2)(d) of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (**the 2018 Rules**). Accordingly, this reference falls to be decided by the legal member without a hearing under rule 37(1) and in accordance with rule 37(3) of the 2018 Rules.

2. Summary of the Decision

2.1. The tribunal is satisfied that the criterion set out at section 2(1)(d) is made out; that the additional support needs of the child require significant additional support to be provided by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education and by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.

2.2. Accordingly, the tribunal is satisfied that the child requires a co-ordinated support plan in accordance with section 9 of the 2004 Act, all in terms of section 2 of the 2004 Act.

2.3. In terms of section 19(2) of the 2004 Act the tribunal:

(1) overturns the decision of the education authority refusing to make a co-ordinated support plan; and

(2) requires the education authority to make a co-ordinated support plan in accordance with section 9 of the 2004 Act as required by section 2 of the 2004 Act within six weeks of the date of this decision.

3. Findings of Fact

3.1. The child is 12 years old. The child has attended the primary school named in the papers before the tribunal since 2013. The child is in Primary 7. The child is due to commence at the secondary school named in the papers in August 2020.

3.2. The education authority is responsible for the child's school education.

3.3. The child has Down's Syndrome, Type 1 Diabetes, a language / speech disorder, mild hearing loss, a visual impairment and an underactive thyroid.

3.4. Type 1 Diabetes is a chronic incurable condition that the child will have in the long term. The child's diabetes has been stabilized but is subject to unpredictable change.

3.5. The child has additional support needs that are highly likely to continue for in excess of one year.

3.6. A range of planning is in place within the child's primary school to support the child's health and educational needs. The planning comprises an Individual Education Plan, a Managing Accessibility Plan, a Health Care Plan and a Multi Agency Action Plan.

3.7. The child does not have a co-ordinated support plan.

3.8. Transition planning for the child's attendance at secondary school commenced when the child was in Primary 6 and is ongoing.

3.9. The child received a Flash Glucose Monitor in 2018 to supplement measures in place related to management of the child's diabetes.

3.10. The child is not always aware of symptoms related to her diabetes and requires support to manage her diabetes.

3.11. Social Work, Speech and Language Therapy, the NHS (in respect of management of the child's diabetes), organisation A and Down's Syndrome Scotland all provide support in respect of the child's education. All, except the NHS, attend or receive the note of meetings in respect of the Multi Agency Action Plan.

3.12. Organisation A has provided equipment to support the child's learning in school and liaises with the school to review the use of such equipment and to provide appropriate advice in respect of such equipment to support the child's education.

3.13. Social Work has a longstanding and ongoing involvement with the child. Its purpose is to provide support to the child to enable her to enhance her social inclusion and activity level. The child is provided with six hours of out-of-school personal assistant support each week with a further five hours of such support every second Saturday.

3.14. Speech and Language Therapy has a longstanding and ongoing involvement with the primary school in respect of the child. Speech and Language Therapy liaises with school staff to ensure that there is a shared approach and targets in place to assist with the development of the child's communication skills and learning. Speech and Language Therapy advises the school on environmental changes and the use of Makaton and provides training to staff working with the child as required. The child has a highly differentiated curriculum taking account of the child's own needs. Speech and Language Therapy reviews the child's home and school education programme as required to support the development of the child's speech and communication. Makaton, symbols and other visual aids are likely to support the child's communication and learning in the classroom. Speech and Language Therapy and the education authorities Total Communication Policy recommendations have not been fully implemented by the school due to staffing constraints.

3.15. The NHS has a longstanding an ongoing involvement with the child and with the child's primary school in respect of the management of the child's diabetes. In the school four pupil support assistants, a member of administrative staff and three teachers have received training from a Diabetes Team to manage the child's diabetes. The Diabetes Team at the Children's Hospital provides advice to the school in respect of the management of the child's diabetes as required. Blood tests and scans carried out at school are recorded in communication books along with information concerning insulin injections administered, snacks consumed by the child, exciting events and weather conditions so that these events can be monitored and allow medical staff, and the child's parents, to fine tune the child's medication. Diabetes specialist nurses provide specific diabetes care instructions to staff at the school. The NHS provides ongoing training to school staff to manage the child's diabetes. The administering of medication to the child is subject to ongoing review by trained staff including access to advice from the Diabetes Team at the Children's Hospital.

4. Reasons for the Decision

4.1. The education authority's position on the matter to be decided by the tribunal is usefully summarized in the *Statement for Case for the respondent as amended and succeeded by the Statement on 11 October 2019* at page R31 of the papers before the tribunal (the original statement was amended to remove an alternative case that in the event

that it was found that a CSP was required the education authority already provided a CSP in the form of three other types of plan already in place; the education authority accepted that if a CSP is required then either a CSP is provided or it is not; a CSP cannot be provided in the form of a plan or plans that are not CSPs) where at paragraph 5 (pages R33 and R34) the education authority denies that the child's additional support needs are–

> "…such that they require significant additional support to be provided by the education authority or any of the other agencies involved with [the child], namely the NHS and Social Work. Reference is made to the Pupil Support Assistants (PSA) who support the monitoring of [the child's] blood sugar levels with occasional bi-annual input from the NHS Diabetes Clinic. Any other agency support is not significant and amounts to advice and information only. There is no input from any other agencies that requires co-ordination. For example, the SALT speech and language sessions were substantial only to set up a new symbol communication system, but now that it is in place, there are no further sessions. There is no substantial and continuing intervention from another agency."

4.2. The tribunal has reached a different view – namely that the child's additional support needs require significant additional support to be provided – on the basis of the evidence, information and submissions contained in all of the papers before it for the reasons given below.

4.3. In the Statement at page R46 the head teacher of the child's primary school (who makes clear on a number of occasions that her view is that a CSP is not required because additional support to be provided either by the education authority in the exercise of any of their other functions or by other agencies is not significant and does not require coordination) states at page R47:

> "[The child] has a highly differentiated curriculum which is supported by access to a life skills group. Staff use the Education Scotland Complex Needs Framework to plan and track [the child's] educational progress in line with the targets set out within the IEP. Additional Support for Learning staff work alongside the class teacher and Pupil Support Assistants to support [the child's] education. Enhanced transition planning began in March 2019 during a Primary 6 year and they continue to plan with secondary Additional Support for Learning colleagues and multi-agency partners for [the child's] transition to secondary education in August 2020. Planning centres around [the child's] education and health needs.
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> [The child's] medical needs are currently supported by Pupil Support Assistants and some teaching staff (including management) who have been trained by staff from Royal Children's Hospital. [The child] received a Continuous Blood Glucose Monitor in October 2018, reducing the number of "finger prick" tests required to monitor [the child's] blood glucose levels. At present, [the child] has a high level of adult supervision throughout the school day."

4.4. The head teacher continued at page R49:

> "Based on the information and assessments received from agencies, it was my view that the criteria for a CSP were not fully met. [The child's] needs are complex and multiple and enduring, however there is not substantial and continuing intervention from another agency in order for [the child] to benefit from school education. Whilst

Speech and Language Therapy stated in January 2019 that they would have significant input to support education this was on a short term basis (4 sessions) whilst the new communication system was introduced. [The child] was not receptive to the new approach and this was not progressed. Speech and Language Therapy continue to advise on a home/school programme and do not work individually with [the child]. Their support is not significant, requiring co-ordination for [the child] to benefit from a school education.

My position on the need for a CSP has not changed since March 2019. The ongoing input from agencies other than education is set out within the MAAP and the Health Care Plan and I do not consider this to be significant. The support for [the child] from outwith education is neither significant nor does it require co-ordination for [the child] to benefit from a school education. I still do not consider that the criteria are met for a CSP to be required for [the child]."

4.5. The note of the Multi Agency Action Plan Meeting (**MAAPM**) which took place on 19 September 2019 (at page R36) indicates (at page R37) that it was attended not only by [the child's] mother, head teacher, P7 class teacher, principal teacher additional support for learning atthe secondary school the child will attend, a member of staff from additional support for learning at the secondary school the child will attend and an educational psychologist, but also by representatives of Social Work, a speech and language therapist, and representatives of organisation Aand One Parent Families Scotland. Down's Syndrome Scotland sent their apologies for not attending.

4.6. The note of the MAAPM which took place on 15 January 2020 (at page R55) indicates that it was attended by the child's mother, the head teacher, P7 class teacher, principal teacher additional support for learning at the secondary school the child will attend, staff member additional support for learning atthe secondary school the child will attend, a member of the Pupil Support & Attainment Team at the secondary school the child will attend, a school nurse, a first aider and an additional support for learning teacher but also by a speech and language therapist and a representative oforganisation A. On this occasion the representative of Social Work intimated apologies for not attending the meeting.

4.7. The child's Individual Education Plan (at page R14 of the papers), which has a start date of 31 October 2018 and review date of 19 June 2019, has appended to it a Managing Accessibility Plan (at page R23). In that plan under the heading "Administration of Medicines it is stated:

"Four PSAs, one admin support and three teachers trained from Grampian Diabetes Team. Staff carry out blood glucose tests and administer insulin in line with care plan which further outlines procedures for daily care. Plan is reviewed regularly with home.

Ongoing review with trained staff and family including access to advice from Diabetes Team at RACH."

4.8. Under the heading "Communication of Information" (at page R27) it is stated:

"Speech and language therapist liaises with school staff to ensure shared approaches and targets are in place. Home/school programme is reviewed with SLT as required to support progress with speech and communication. Communicate in Print is used around the school environment. [The child] has her own individualised visual

timetable which she responds well to. Key staff are trained in the use of Makaton and this has been shared with her peer group."

4.9. Under the heading "Equipment" (at page R27) it is noted that chunky pencils and loopy scissors are provided to support the child's fine motor skills and that a organisation A device is also available and it is stated:

"Liaison with family and organisation A to review equipment and give further advice."

4.10. Under the heading "Other Agency Involvement" (at page R27) it is stated:

"Other agencies involved – social work, Downs Syndrome Scotland, Diabetes Team – RACH, speech and language therapy, educational psychologist (transition focus), organisation A service. ASL PT [atthe secondary school the child will attend]."

4.11. Under the heading "Further Comments" (at page R28) it is stated:

"Ongoing liaison between parents, school and other agencies as required. Regular MAAPM meetings ensure multi agency planning is in place and that everyone involved contributes to review process and enhanced

transition activities. The review date for the managing accessibility plan is given as September 2019 following the child's transition to Primary 7."

4.12. In the child's Health Care Plan (at page R43) it is stated (at page R44):

"All blood test and scans to be recorded in the appropriate communication books along with extra snacks, insulin injections, exciting events and/or weather to allow medical staff and parents to fine tune medication."

4.13. In a document titled Information and Assessment Evidence (at page R62) signed by a social worker with the Children and Families Team it is explained that the Social Work objective is to provide support to the child to enable her to enhance her need for social inclusion and being active. It is explained that the child has six hours of personal assistant support each week and five hours of such support every second Saturday. While this support is described as being a low level of intensity it is stated that such support is "Ongoing while there is an identified need".

4.14. In a document from a Specialty Doctor, Community Child Health, the doctor states:

"I have reviewed clinic letters for the past year and I don't think that there is anything further for me to add to the CSP.

The diabetes specialist nurses provide specific diabetes care instruction to the school."

4.15. In a document titled Information and Assessment Evidence (at page R67) completed by a speech and language therapist it is stated:

"[The child] struggles to identify when she is feeling unwell due to her diabetes and is unable to manage her care around this independently.

[The child] would benefit from practical/hands on learning opportunities and use of visual supports to support her preferred learning style.

Although the school are aware of and keen to implement recommendations from SLT/the respondent's Total Communication Policy, due to staffing constraints

they have not yet been able to do so much as they would like. More whole class and individual use of the recommendations in this policy such as Makaton, symbols and other visual supports would be likely to support the child's communication and learning in the classroom.

[The child's] ability to understand others and express herself is supported by the use of AAC, e.g. Makaton. In settings providing this support [the child] can become more confident to use her verbal skills."

4.16. The speech and language therapist goes on to state that the objective of Speech and Language Therapy is "to advise on environmental changes and the use of Makaton in line with Total Communication Policy and provide training to people proximal to [the child] as required" noting that "Progress will be reviewed and further sessions arranged as required".

4.17. The decision as to whether the additional support to be provided to the child is significant is, of course, one for the tribunal alone based on its assessment of the evidence before it and having regard to the submissions made to it. Some of the individuals referred to above (e.g. the social worker and the speech and language therapist in responding to *pro forma* questions) indicate their view that the additional support provided by their agency is not significant. The basis for those views is not explained. It may be simply their assessment in light of their involvement in comparison with other cases. It may be for some other reason. The tribunal requires to make its assessment having regard to the level of provision of support taking account of the frequency, nature, intensity and duration of the support and the extent to which that support needs to be coordinated.

4.18. In light of the child's abilities and circumstances, in light of the evidence set out above and more generally in the papers before it and in light of the child's impending transition to secondary school and exposure to a range of different school subjects and extra-curricular activities the tribunal is satisfied that the support provided by each of the agencies involved with the child – in particular Social Work, Speech and Language Therapy and the NHS (in respect of the management of the child's diabetes) – will be for a considerable duration probably running into years.

Social Work

4.19. On the basis, in particular, of the longstanding and ongoing Social Work involvement with the child and the provision of out-of-school weekday and weekend support, intended to support and enhance the child's social inclusion and being active, the tribunal is satisfied that such support is not insignificant but is significant. That support is significant in terms of its nature (support for the purpose of enhancing social inclusion and activity), intensity (the strength of the intervention engaging the child in out-of-school activities), duration (longstanding and ongoing) and frequency (six hours of personal assistant support each week and five hours of such support every second Saturday). That support currently benefits from the level of coordination provided by the current planning in place. That is clear from the evidence in the papers of Social Work involvement with the school and its existing plans.

4.20. That involvement would benefit from the coordination provided by a CSP setting out a statement of the education authority's conclusions as to the factors from which the child's additional support needs arise, the educational objectives sought to be achieved by taking account of the factor(s) and the additional support required for the child to achieve those objectives.

Speech and Language Therapy

4.21. On the basis, in particular, of the longstanding and ongoing Speech and Language Therapy involvement in respect of the child; that a speech and language therapist liaises with school staff to ensure that shared approaches and targets are in place (R27); that the home / school programme is reviewed with Speech and Language Therapy as required to support progress with speech and communication (R27); that Speech and Language Therapy is available and ongoing (R59); that Speech and Language Therapy continues to advise on a home / school programme (R49) the tribunal is satisfied that such support is not insignificant but is significant.

4.22. That Speech and Language Therapy do not work individually with the child does not appear to the tribunal to be of the utmost significance. Speech and Language Therapy is continuing to advise the school to enable it to provide relevant specialist support to the child in support of the child's education. In terms of its nature alone (specialist speech and language therapy input designed to improve the child's communication and support the child's learning in school) that advice and support is significant. In terms of its intensity (the force of specialist advice which would not be ignored but would be acted upon and adhered to) it is significant. In terms of its duration (longstanding, ongoing and with no end to the availability of support in sight) it is significant. The support provided by Speech and Language Therapy is significant.

4.23. In light of the impending transition to secondary school with a new wide array of subject matters, classes and teachers it appears to the tribunal that the frequency and intensity of such advice and support is only likely to increase. Speech and Language Therapy's advice and support to the school currently benefits from the level of coordination provided by the current planning in place. That is clear from the evidence in the papers about Speech and Language Therapy's involvement with the school and its existing plans.

4.24. Speech and Language Therapy's advice and support and the advice and support that it will require to provide in the near future with the child's impending transition to secondary school would benefit from the coordination provided by a CSP setting out a statement of the education authority's conclusions as to the factors from which the child's additional support needs arise, the educational objectives sought to be achieved by taking account of the factor(s) and the additional support required for the child to achieve those objectives.

4.25. The issue of the frequency of the school's engagement with Speech and Language Therapy – other than indications that it is ongoing and that engagement is available as and when required – is not well addressed in the papers but that is no matter because even if it is low the tribunal is satisfied that the additional support provided and facilitated by Speech and Language Therapy is significant for the reasons set out above.

NHS (diabetes management)

4.26. On the basis, in particular, of the longstanding and ongoing NHS involvement in respect of managing the child's diabetes; that the child's medical needs are supported at school by pupil support assistants and some teaching staff (including management) who have been trained by staff from the Royal Children's Hospital (R47); that there has been ongoing training arranged to manage the child's diabetes (R34); that diabetes specialist nurses provide specific diabetes care instruction to the school (R65); that the administration

of medication is subject to ongoing review with trained staff and the family, including access to advice from the Diabetes Team at Royal Children's Hospital (R25); that all blood tests and scans at school are recorded in the appropriate communication books along with details of extra snacks, insulin injections, exciting events and / or weather to allow medical staff, along with the child's parents, to fine tune medication (R44) the tribunal is satisfied that such support is not insignificant but is significant. The provision by the NHS of training, advice, instruction and monitoring to the school to enable it to provide specialist support to the child in respect of her education is significant in terms of its nature (medical advice, instruction and monitoring), intensity (the force of medical advice and instruction which would not be ignored but would be acted up and adhered to; the importance of monitoring) and duration (longstanding, ongoing and with no end to the availability of support in sight).

4.27. Again, the need for such support appears likely to increase in the near future in light of the child's impending transition to secondary school. Again that training, advice, instruction and monitoring which is required now and which will be required in the near future would benefit from the coordination provided by a CSP setting out a statement of the education authority's conclusions as to the factors from which the child's additional support needs arise, the educational objectives sought to be achieved by taking account of the factor(s) and the additional support required for the child to achieve those objectives.

4.28. The issue of the frequency of the school's engagement with the NHS in respect of management of the child's diabetes to support her education – other than indications that it is ongoing and that engagement is available as and when required and the inference that there is monitoring of the communication books referred to above on a regular basis by medical personnel – is not well addressed in the papers but that is no matter because even if it is low the tribunal is satisfied that the additional support provided and facilitated by the NHS in respect of management of the child's diabetes to support her education is significant for the reasons set out above.

4.29. The tribunal is satisfied on the basis of the evidence provided to it that the additional support provided by Social Work, Speech and Language Therapy and the NHS (in respect of managing the child's diabetes) is significant. That view is reached having considered the level of provision of additional support and the need for coordination between the education authority; Social Work and its involvement in enhancing the child's social inclusion and activity in the area out with school; Speech and Language Therapy and its involvement liaising with school staff, reviewing the home / school programme, involvement in curriculum adaptation, advising on implementation of speech and language recommendations and recommendations in the respondent's Total Communication Plan (in particular regarding the use of Makaton, symbols and other visual supports); and the NHS in terms of providing training, advice, instruction and monitoring in respect of the effective management of the child's diabetes. That existing need for coordination will only increase as the child transitions to secondary school shortly.

4.30. The extent of the support provided – directly in the case of Social Work, indirectly in the case of Speech and Language Therapy (with school staff working in terms of Speech and Language Therapy guidance with an adapted curriculum using specialist communication skills) and indirectly in the case of the NHS (with school staff working in terms of NHS training, advice and instruction in respect of diabetes management) – stands out from the range of potential additional support.

4.31. There are also other agencies whose involvement could usefully be coordinated by a CSP including ASPECTS and Down's Syndrome Scotland.

4.32. In reaching its decision the tribunal had regard to the views of the child.

4.33. For the reasons given above the tribunal is satisfied that the additional support to be provided to the child by Social Work, Speech and Language Therapy and the NHS is significant.

4.34. It may be that when the education authority turns its mind to the process of identifying specific achievable educational objectives for the CSP and enters into the dynamic process of consultation with bodies such as Social Work, Speech and Language Therapy, the NHS, organisation A and Down's Syndrome Scotland that is required to determine what support can be provided and by which body to best support the achievement of those objectives that there is scope to enhance partnership working rather than those bodies being seen by the school as simply providers of advice.