**DECISION OF THE TRIBUNAL ON PRELIMINARY MATTER**

**Reference**

1. This is a reference in which the appellant seeks, under s.19(2) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**‘the 2004 Act’**), to overturn the decision of the respondent (referred to in s.18(3)(b)(i) of the 2004 Act) that the child does not require a coordinated support plan (**‘CSP’**).
2. The appellant is asking the tribunal to order the respondent to prepare a CSP for the child.

**Decision**

1. This reference is dismissed under rule 22 of the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (‘**the rules’**), since it is premature.

**Process**

1. The appellant is unrepresented. The respondent is represented by a solicitor.
2. The reference was received in April 2021. There followed the case statement period, but no case statement was lodged by the appellant. A conference call took place in July 2021. It was agreed that case statements would be lodged by July 2021, and this happened.
3. A further conference call took place in July 2021. It was clear from the case statements that the reference was not yet ready to proceed to a hearing. A preliminary issue arose as to the procedure to be adopted in the reference. Two options – suspension or dismissal of the reference – were discussed. The views of both parties on each were taken during the July call. The appellant sought a suspension, the respondent urged me to dismiss the reference.
4. Following that call, I deliberated on the matter and reached the decision recorded here. The relevant facts (such as are set out below) are not disputed, so I have not made any formal findings in fact.

**Reasons for the Decision**

1. The child was 12 years old, and will complete a deferred primary 7 year in school session 2021-22.
2. In order for a CSP to be required, the tests in s.2 of the 2004 Act must be met. There are four tests. There is no dispute about the fact that three of these tests are met (those in s.2(1)(a)-(c) of the 2004 Act). The issue is around the test in s.2(1)(d) of the 2004 Act.
3. That part of the test (in s.2(1)(d)) may be met only if the wording of s.2(1)(d)(i) or (ii) applies. I will deal with each in turn.
4. It is clear that the needs of the child require significant additional support to be provided by the respondent in the exercise of its functions relating to education. However, there is currently no support being provided by the respondent in the exercise of any of its other functions. This means that s.2(1)(d)(i) does not apply.
5. Turning to s.2(1)(d)(ii), the position is more involved. There was a CSP in place for the child between primary 1 and 5. The CSP was discontinued when the child was in primary 6. The reason provided by the respondent for the CSP being discontinued is that from that stage, there has been no input by one or more appropriate agencies. The claimant accepts that this is the case.
6. The claimant indicates that she intends to make referrals to the child’s pediatrician, to speech and language therapy and to mental health services to assist with secondary school transition planning for the child. The child is due to start secondary school in school year 2022-23. The appellant indicates that due to the current pandemic, there are long waiting lists for these services, with some taking over a year for a referral.
7. The claimant would require to lead evidence of significant additional support being required from a health service (such as those listed above) in order to have a prospect of success in this reference. In my view, in the absence of referrals and assessments of those health needs, that evidence is not available. It is not clear when that evidence might become available.
8. Although, as urged by the claimant, the reference could be suspended for a period to see if the referrals and assessments might be carried out, it is not clear how long the period of suspension might be. While an indefinite suspension is possible (see rule 24(2) of the rules), I may only suspend a reference where I consider that it is fair and just to do so (rule 24(1)(b)).
9. I am not satisfied that it would be fair and just to suspend the reference. To do so would leave the reference in limbo for what would be likely to be a substantial (unspecified) period. In my view, where a reference is made, the appellant should be in a position to pursue it in reasonably early course. This is underpinned by the overriding objective which requires the avoidance of delay (rule 2(2)(e)). In addition, the appellant may lodge a further reference at a time when the relevant assessments which would provide evidence to substantiate her case may be available. This means that a dismissal would not deprive the appellant of a remedy. Finally, it is fair to allow the respondent an opportunity to decide whether or not, on the basis of those assessments once they are available, to agree to compose a CSP. If the respondent were to agree to do so, there would be no need for a reference of this kind.
10. The reference is not ready to proceed to a hearing. A suspension would not be fair and just. That leaves dismissal as the only course of action open to me.
11. For these reasons, the reference is premature, and ought to be dismissed.