Additional Support Needs
Tribunals for Scotland

Decision of the Additional Support Needs Tribunal for Scotland

Details of the reference:

A reference dated November 2017 was lodged in respect of a placing request made by the appellant on July 2017. By decision of September 2017 the placing request was refused by the respondent under paragraph 3(1)(f) of schedule 2 to the Education (Additional Support for Learning) (Scotland) Act 2004 hereinafter referred to as "the Act". It is against that decision that this reference is made.

Summary of the decision:

The tribunal unanimously overturns the decision of September 2017 and requires the respondent to place the child in school A.

Procedural history:

The application was received on 7th November 2017. Case conference calls took place on 10th January and 15th February 2018. The parties lodged a joint minute of agreed facts on the first day of the oral hearing. Late productions were lodged by the respondent without objection, forming R97 to R100.

At both case conference calls the issue of the views of the child was discussed. An advocate was appointed to ascertain whether the child wished to express a view and, if so, to obtain his views using appropriate communication aids. The advocacy statement is contained at T60. The child was unable to and/or did not wish to communicate any views or preferences to the advocate in any format, despite her attempts at communication.

The parties provided written witness statements and the witnesses supplemented their evidence orally. The parties provided written submissions and had the opportunity to respond orally in respect of the submissions made by each other.

Evidence

The following facts were established as agreed by the parties without further need of evidence:

1. The appellant is the mother of the child.
2. The respondent is the responsible body.
3. The child is a 6 year old boy with a diagnosis of Autistic Spectrum Disorder (ASD); and social, emotional and behavioural difficulties. The child also suffers from communication difficulties, sensory processing difficulties and suffers from Avoidant Restrictive Food Intake Disorder (ARFID).
4. The child has severe language difficulties and struggles with word formulation.
5. The child has additional support needs in terms of Section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (the 2004 Act).
6. The child is currently in Primary 2 at school B.
7. The child requires support on a 1:1 basis.
8. The child follows a differentiated curriculum to his peers.
9. The child has ongoing input from Speech & Language Therapy.
10. The child, due to his ARFID, has an extremely restricted diet.
11. The child has input from Child & Adolescent Mental Health Services (CAMHS).
12. The appellant made a placing request on 27 July 2017 for the child to attend school A, an Independent special school.
13. This request was refused by the authority on 27 September 2017 on the basis of Schedule 2, Paragraph 3(1)(f) of the 2004 Act.
14. The appellant accepts that school A is not a public school.
15. The appellant accepts that the respondent has offered a place to the child at school B.
16. School A can provide a variety of therapies and has experience in dealing with children with eating disorders.
17. School A has various strategies and supports which will be able to assist the child in having his additional support needs met.
18. The burden of proof lies with the respondent to establish the grounds for refusal exist.
19. The base cost for attendance at school A school is £23,370 per annum and the cost of transport, inclusive of an escort, is £38,000 per annum, bringing the total minimum cost for placement at school A to £61,000 per annum.

Evidence for the respondent:

The respondent relied upon written and oral evidence from the following witnesses:

1. Witness 1, Deputy Head Teacher at school B
2. Witness 2, Quality Improvement Officer

The respondent's productions were contained in R6 to R41 and R51 to R100.

Evidence for the appellant:
The appellant relied upon the oral and written evidence of the following:

1. The appellant
2. Witness 3, Chartered Psychologist and Educational Psychologist
3. Witness 4, Clinical Psychologist

The appellant's productions were contained within A5 to 101 and A136 to A173.

The parties were agreed that the conditions in paragraph 3(1)(f) of Schedule 2 of the Education (Additional Support for Learning) (Scotland) Act 2004 parts (i) and (iv) applied. The a disputed that paragraph 3(1)(f) (ii)and (iii) applied.

Evidence for the respondent

Witness 1

As Deputy Head Teacher at school B with responsibility for the management of the community resource hub, enhanced provision and support for learning services, witness 1 had worked directly with the child through her role as intervention and prevention teacher for the school B cluster. She has provided direct support to the child, along with the management of the team supporting him. Witness 1's evidence was contained within statement provided at R46 to R50.

In addition, the witness provided evidence in relation to production R81, a minute of a person-centred planning meeting ("PCPM") which had taken place on 15th February 2018. The actions required from that meeting are minuted at R84.

Witness 1 gave evidence about the implementation of the required actions as follows:

In relation to the development of the child's timetable, this required to happen in collaboration with the occupational therapist. The occupational therapist had been due to attend school B but had to re-schedule. She had however sent information to the school regarding the sensory diet for the child and that has been imbedded in his school programme. Witness 1 confirmed that there will be a meeting between the occupational therapist, the educational psychologist (who prepared the minute of the PCPM) witness 1 and the teacher at the community resource hub. The purpose of this meeting will be to explain the assessment of the occupational therapist. The occupational therapist assessment had not taken place at the date of witness 1 providing evidence (13th March 2018).

In relation to the second and third actions, the child continues to enter and leave school at quiet times. In addition, he now enters the school through a quieter entrance point at the nursery door. These measures enable face to face handover with a member of staff at drop off and pick up times.

In relation to the fourth point, antecedent behaviour consequence recording is done in school to attempt to identify the triggers of anxiety. The goal of the school is to reduce stress for the child as much as possible. Examples of these forms are

contained within A67 to A72. Witness 1 confirmed that this was a specific, new approach for the child as although the school have always looked at behaviour in this way they have not always looked at the sensory triggers.

Witness 1 advised that the advantage of having the community resource hub within the school was that the school can adjust to meet the needs of each child. The school provides a bespoke service and is responsive and reflective in what they do. They adjust and modify the timetable and curriculum to suit the child.

In relation point five of the actions in R84, witness 1 had contacted the speech and language therapist following the meeting and agreed that the best way forward was for the use of social stories as well as natural opportunities in class to teach emotional labelling and expression. This was in addition to the child's current involvement in the nurture group, which is a programme to support emotional literacy in children.

In relation to point six, the appellant had shared information with school and made them aware of the music and movement programme at school A. This was not dissimilar to the programme in which the child was engaged at school, which associated sound and movement to build literacy skills. In addition, the school added a motor skills group for all children to enable the child to take part in small group work with his peers and to support his physical development.

In relation to point seven, and capitalising on the child's enjoyment of information and communication technology, witness 1 had a conversation with Miss W, who liaises with the school from the IT Department about tools and equipment which could be used with students in the hope of improving communication and engaging the child in his learning.

In respect of point eight, outdoor woodland learning, a provider has been agreed. The person who has started the outdoor woodland learning group is a member of the teaching staff at school B. Following the PCPM witness 1 recognised that she could not commission outdoor learning sessions quickly and actually set up a liaison programme with an in-house team. That programme has now been developed and is in the child's timetable. She confirmed that this was an example of the benefit of having the community resource hub. It is the highest level of provision and support available in mainstream schooling and enables immediate response for differentiation and universal support. Students at school B can move through different levels of support through the mapping process as appropriate. There are pupils in the school at all levels of support. The enhanced provision teachers are asked to deliver services at the appropriate level.

Witness 1 confirmed that the owl therapy referred to at point nine of R84 has been investigated. Two therapists came for a preliminary visit to see how well the children responded. This therapy was not specific to the child. The benefit of the therapy will be assessed, and the costs ascertained.

In relation to point ten and the possibility of outdoor learning sessions with an ASN teacher, Mr T provided outdoor learning sessions within the school. In the PCPM there had been a discussion about whether he could take the child for session. The

answer was no, as the timetable was full for this term. It was decided that Mr T would liaise with the teacher at the community resource hub, the child's class teacher and consult with the outdoor woodland and learning service to start delivering a programme in the context that it will be for other children too. If it was considered necessary for the child to have that input alone that would be achieved.

In relation to commissioning services on a small group basis to support the child's social development, witness 1 advised that she had identified a number of opportunities which could be created based on in-house resources including Lego therapy, motor skills group, outdoor woodland learning. In each of these groups witness 1 felt that the purpose of developing the groups was to allow small group social interaction opportunity. If it is apparent that the child's anxiety would be reduced if he did these activities on his own, then individual support will be provided. If the purpose of the activities for socialisation then the small group is created around that.

In relation to the final action point, in respect of liaison between the school and parents to build the child's curriculum witness 1's position was that there is ongoing liaison as evidenced by the person-centred plan at R84. She confirmed that most of the resources identified can be provided internally through school, except the outdoor woodland learning and the owl therapy. The owl therapy cost is £65 per session for 38 weeks. It had been priced in relation to another pupil and accordingly the school are now hoping to include the child in those sessions.

Witness 1 confirmed that the package of measures discussed in evidence had not yet been agreed with the appellant as the meeting they were due to have in early March to discuss these matters had been delayed due to the snow and a further meeting had been arranged.

The content of witness 4's report at A12 was put to witness 1. She explained that the school have adapted to meet the child's dietary needs by installing a kitchen to cook food in-house for the child. The plan is that the installation of the kitchen will be carried out over the summer period. This is hopefully going to meet the needs of the child regarding how food is presented, where he eats and allows the school to try to replicate what he eats at home. At present the child eats in the sensory room with low lighting, calm and quiet space. Most of the recommendations made by witness 4, the school can contribute to, but certain things they cannot do, for example bottle weaning which needs to be done at home. Desensitisation around the mouth and messy play is done in school. Witness 1 confirmed that she would take the lead from the appellant and the school would ensure consistency in approach between home and school. She considered that once the kitchen was installed, the child's needs could be met in school. The kitchen will be used by the school as a whole, but be set up in room 8 which is a class where cooking takes place in the context of life skills lessons.

In respect or witness 3's report, witness 1's position was that due to the child's autism he does not seek out social interaction in comparison with his peers. Now he likes being around other children, he likes being outside and running about but often finds it overstimulating. He participates in a nurture group which works on his experience of emotions and takes place in room 8. He goes there for sensory

support. The child knows the group is going on, but he does not join in. However, the week before witness 1 gave evidence was the first time he had joined in to the extent that he sat down amongst the group. He was able to leave when he wanted to, and this flexibility worked for him. He usually does parallel play but does not share. This parallel play is a step up from solitary play which the child often does.

Witness 1 was concerned that witness 3 did not understand the different levels of support offered by the school in terms of staged intervention. She was concerned that he referred to school as a mainstream school and did not fully understand the different levels offered in relation to additional support needs, although that had been discussed in the context of their meeting. She was concerned that witness 3 referred at A103 to "Teach" as a curriculum whereas she would describe it as a method of delivery of curriculum. She confirmed that the curriculum used in school B is curriculum for excellence at the early level for literacy and maths and the curriculum for communication in relation to communication, life skills and independence comes from the Scottish Government framework for complex needs. She believed that witness 3 misunderstood the difference i.e. one is format and the other is content and "Teach" is not content. She explained that the Teach method is used in line with the authority policy as it embeds total communication policy within all of the schools and addresses the needs of ASD children and others who rely on visual support to help with time, sequencing, when things are going to happen etc. She disagreed with witness 3's position that school B Primary could possibly meet the child's needs, as her position is that the school could meet all of the child's needs well.

In cross examination witness 1 conceded that the child's sensory needs require to be assessed by an occupational therapist. When the meeting took place on 9th November 2017 with the occupational therapist, the appellant and health professionals it was a multi-agency meeting, as referred to at A99 which contains the minutes of meeting.

One of the actions from that meeting was that the occupational therapist ("OT") was to carry out a school visit. Witness 1 confirmed that the assessment is still outstanding. There has been involvement of the OT to the extent that the school have been in receipt of information from her about sensory diet generally, but an assessment of needs is still outstanding. Questionnaires have been sent to the family and staff to be completed and to feed in to the OT assessment.

Witness 1 agreed that it was recognised by the educational psychologist that sensory profiling was required. The record of consultation at T39 relates to a meeting on 24th August 2017. In cross examination witness 1 was asked why there had been a gap in obtaining a sensory profiling assessment. The gap was explained by witness 1 as having been caused by the educational psychologist being absent on sick leave and his replacement thereafter leaving, and the educational psychologist now in place now being allocated for the whole school. As a result of a series of different occupational therapists being involved the caseload has had to be redistributed. The current educational psychologist had attended the PCPM meeting in February, but otherwise her involvement has been limited as she has only been in post since November 2017.

Witness 1 accepted that educational psychologist involvement was necessary. Witness 1 advised that the assessment previously carried out by the educational psychologist was a working document available to all staff and was contained within the child's pupil profile record. It provides the advice and guidance to inform the team. This evidence having been provided, the tribunal requested that the educational psychologist assessment referred to be lodged as no document was contained within the papers before the tribunal. Subsequently the respondents lodged document contained at R95 and R96 which consisted of minutes of a multi-agency meeting on 27th June 2016, which contained an action for the minute to be copied to Dr M with a request for screening and assessment.

When witness 1 gave evidence, she referred to the assessment as being the document from which staff gain advice and guidance. In answer to a question from the tribunal she confirmed that it was not a dynamic assessment of the child's needs i.e. it was not regularly updated.

Witness 1 had provided information at R47 regarding the CSP currently in place in relation to the child since December 2017. She was asked in cross examination why a PCP had not been considered before December. Witness 1's position was that the school had been able to work with the family and develop plans until August 2017, when they then presented the family with an Individual Education Plan ("IEP") that the appellant did not wish to sign off as she didn't agree with it. Because the educational psychologist had been involved, the school thereafter felt it would be best to have a PCP to identify the priorities and start a fresh.

Witness 1 felt that the PCP was another tool to be used. She felt that if the multi-agency process (MAAPM) isn't working, for example if a family did not want to share all with all agencies, then the PCP is a safer place to share needs and concerns.

Witness 1 was asked about the inclusive strategies being employed at school and her evidence was that the child comes in to school and is a part of the school community. He is overwhelmed by the number of students if he enters at the same time of day as other pupils, and arrangements have been made to ensure that he has a soft start and a separate entry point. She considered that to be inclusive and to meet his needs.

In relation to the child's eating difficulties, witness 1's understanding was that his eating disorder is severe and requires a lot of support and agency working along with communication. She acknowledged that his ability to take in enough food to sustain him to engage in school is critical. She felt that the school managed reasonably well now and that the ability to cook with him and have the food that he needs in school would be beneficial. The staff were going to be attending food hygiene and preparation training in March so that as soon as the kitchen is ready the staff are prepared to begin using it. She acknowledged that it would be good to have the involvement of witness 4 and have face to face contact with her to explore her options further. She acknowledged that the child is a very special child who has needs which require specialist support and she would anticipate involving a dietitian and witness 4. She had not considered the cost of consulting witness 4 but would consider that.

At present if the child is not eating or drinking enough to sustain him for the day his mum will be contacted to collect him from school. She knows what the child is eating at breakfast and will monitor his fluid intake calories and general health. During the day the school contact the appellant to update her regarding the fluid and food intake and general demeanour of the child. A decision is then made as to whether he requires to eat more or can stay longer at school or if he is to go home around 1pm. He often does require to go home early. The decision as to whether he is collected early is made by the appellant. In school the team around the child record fluid and food intake and produce that information monthly.

Each day, the child attends school B and goes to the community resource hub. School B is a mainstream school but it has room 8 which is two small teaching rooms, a bubble room, two break out areas, a sensory room and two gym halls. There is also a small enclosed outdoor learning space and two playgrounds with woodland. All places are accessed by any of the children in the school which makes it more fluid that specific accommodation. The community resource hub is the level of provision of services and it is not a class room. The “go to” room in the community resource hub is room 8. The child starts his day there and engages in most activities there except for swimming which is in the local community centre in the local primary campus. He also attends riding for the disabled. At this point around 50% of the child’s day is in room 8. He has very limited time in mainstream school. In primary one he was there most of the time but since primary two started something has changed in relation to his needs, and his needs are better met in a different location.

In January the school had begun to explore community resource hub facilities and programming to reintroduce some mainstream time in to the child’s time table. The school builds on activities based on what is appropriate for the child day by day. The meeting which had been adjourned in March and was to take place after witness 1 gave evidence was a multi- agency meeting. Anything suggested there which would involve a change to the child’s timetable would be slowly introduced, enable him to have some peers from mainstream classes with him and allow the child to work with small groups of peers at his own pace.

Witness 1 was asked about the specialist training of the staff within the community resource hub. The teacher at the community resource hub delivers the community resource hub teaching and the class teacher for the child. Witness 1 confirmed that both have additional training in relation to the use PECS, PIXON, attend numerous CPD training courses and twilight courses on sensory supports, have input from the educational psychologist and they do individual research. The speech and language therapy team have also delivered training and witness 1 herself has delivered training in autism, teaching methods, anxiety in children.

In further cross examination witness 1 was asked to clarify what support has been directly provided to the child from outside agencies. She responded as follows:

a. In relation to speech and language therapy, witness 1 had not seen the speech and language therapist working directly with the child, but she meets the team to support them when the child is not there. She is aware that there has been some direct work done with the child at home and the speech and language therapy have worked with the parents.

b. The educational psychologist has had little direct contact with the child as a service model is not used. A consultation model is used to provide advice.
c. The school doctor contributes to the MAAPM process and participates as appropriate.

Witness 1 advised that she is expected to identify the child's needs and then obtain whatever is required to address that need. Following the trial of the iPad which she referred to in R49 she confirmed that funding would be sought if it was considered appropriate. The iPad would be removed until funding was in place and it would not be purchased if it was felt that it was ineffective.

On the whole witness 1 felt that the communication between parents and school was positive and that there have been some issues which they have been able to address. She confirmed the views of the child's parents are always taken in to account.

Witness 1 was asked about the chronology of the multi-agency action planning meetings (MAAPM) meetings, minutes of which are contained within R51 to R80. She acknowledged that the minute contained within the R60 reflected that the appellant had expressed concerns regarding the child's non-participation in physical education and the considerable effort required getting him in to school, and that his eating and speech and language therapy are his parents priority concern. These issues were not addressed until they were discussed at the person-centred planning event on 15th February 2018. Witness 1 advised that the issues were under consideration, but the scope of staffing differed in October to February. Her recollection was that the concern about the child not engaging in P.E. became a refusal to join in and at that point the class teacher considered what could be done in class involving all of the children. She felt that the problem for the child was moving from one class to another. Witness 1 was asked whether she considered anxiety and stress was a feature because of the school environment (as detailed in witness 4's report at A103). Witness 1's position was that anxiety could arise due to many different reasons and not just school-based reasons. The challenge was to get the child in to school as the points of transition were extremely difficult. When in school she did not see the levels of that anxiety described by the appellant but sees moments of it in reaction to sensory noises. Sometimes the child met requests or instructions with resistance and his behaviour could be interpreted as anxiety, but her belief was that he communicates through his behaviour to tell us things because he doesn't have words. Adults interpret for him and she does not believe that all of the behaviour described as anxiety was necessarily anxiety, but it was often interpreted that way. She could alternatively have interpreted it as protest or refusal and that is another form of communication. She confirmed that she does not see the child's behaviour at home, but she often sees him protesting at school and has seen him respond to noise by covering up his ears or sitting up. She would not describe that as anxiety but would describe it as a sensory reaction. She accepted that she does not see the child every day but sees him most days and she has weekly meetings with the team to obtain updates. She has access to the electronic chronology, observes the child, talks to staff and has meetings to discuss him.

In relation to the provision of speech and language therapy witness 1 provided evidence that provision was not consistent. The therapist in primary one, who had

been with a member of support staff and started work with the child before leaving the service. Then two further therapists were involved. Witness 1 herself had become involved in primary one as she was the intervention prevention teacher. The appellant had shared reports obtained in Poland in respect of the child and witness 1 recognised the specialised programme which she supported. When she took up her post in April 2017, speech and language therapy was not available in school and she accepted that could have resulted in a regression for the child, but she was not aware of any specific regression at that time. She is aware of the increased behaviours which have been brought to her attention by the appellant, including ticks, self-injurious behaviour. She had witnessed aggression at school but did not interpret that as anxiety, rather that the child got upset and put his hands on a child as a sensory reaction. She was concerned regarding urinating at school. The appellant had wanted toileting issues to be taken off the child's individual education plan. The child's needs were met successfully by way of toileting breaks and time tabled support for a period of time and then there was regression. It continues to be a concern that the child will also often not urinate all day and will do so when his mum comes to collect him from school.

Witness 1 accepted that there was a relationship between anxiety and food intake. She was asked what steps had been taken to reduce anxiety and assist eating and she explained that the child is in a different room, which is smaller, and attention is paid to how food is presented, the temperature of his bottle, all matters which require consideration have been delivered. She did not question for a minute witness 4's assessment that anxiety causes a knock-on effect with food, as she considered that to be indisputable. The child exhibits anxiety in most contexts but she did not believe that school was the cause of it and if there is anything in school which causes anxiety she does whatever is required to ameliorate it.

Witness 1 was aware that the appellant has concerns regarding the intrinsic and extrinsic motivators used in school. Witness 1's position was that if a child was motivated to do something for the experience and pleasure itself it is beneficial to the child. She wants to embed as many pleasurable things in the child's day as possible. Which involves identifying what he likes to do and give him those opportunities. She does not use a reward system for instance asking the child to sit down and then be given a sweet. She uses a visual timetable to help support the child's needs, sets out his activities and the order of same. She wants the child to understand what happens when he finishes a task and then he can move on to preferred activities. He is highly motivated and enjoys finishing a task and then chooses an activity. Witness 1 confirmed that the school use pixon board with the child to enable him to communicate across the day and it is used in all scenarios. He has used it to identify what he would want for lunch. He used it to say that he wanted chocolate on an occasion. If he was associating the use of communication tools with being rewarded with food, then the school would simply stop using the board around lunch time. Pixon has fifty symbols which help the school to understand what the child needs. The speech and language therapist had encouraged the school to create opportunities to practise and use pixon throughout the day. The child can't express his wishes or feelings as much as he wants to but at least it is a tool for him to communicate and was recommended by the speech and language therapist.

In relation to the dreams section at R82 witness 1's evidence was as follows:

a. She was concerned that the approach at point one contradicts witness 4's report and indicated that would require further discussion.
b. In relation to finding fun ways of interacting with the child she felt that the school do that already and do it well. The child enjoys outside sensory play. He likes swimming, messy play, baking and horse riding.
c. In relation to point 4 that he likes a calm environment. Witness 1 confirmed that the school meet that. Room 8 only has four students as a base and often some of those students are elsewhere in the school. There are outside calm and quiet areas too.
d. In relation to an adaptive curriculum, witness 1's position is that the school meet that need and can be responsive to suggestions and new information from the family and others. No issue is made about the child being late or missing school and staff are attuned to his needs which is the key to success.
e. In relation to point six, she confirmed that the child is being intrinsically motivated rather than being rewarded for compliance. She tries to get his interest embedded in the activities and will continue to explore that further. This is addressed in the new timetable. Different opportunities are to be included arising from discussions which are to follow on from meetings to be held. This takes in point seven and eight.
f. Point nine cannot be met but opportunities are created to access the school pool.
g. Point 10 - In relation to the child's sensory needs, witness 1 felt that the needs are understood by the trained staff. She acknowledged more work requires to be done with the occupational therapist and the staff are ready to embed in the curriculum whatever they learn.
h. Point 11- witness 1's view was that the home school communication can be honest and there is a better understanding being arrived at through discussion. The child cannot report on what has happened during the day, so she acknowledged that there is a level of trust required from home in school. A lot of photographic documentation is done to show the appellant what the child's day looks like in school. This is communication. There is a need to understand stressful events, but the school cannot provide a running commentary on the child's school day. That would use up teaching time. They have agreed to provide highlights in communication and don't want to produce all positives or all negatives. They need to manage expectations about how matters are reported. At times staff do not know what has caused upset to the child and he cannot tell them. They endeavour to communicate as much as they can and to be honest with the family.

Witness 1 confirmed that in relation to the incident which had happened at school and is recorded at A5 (where the child was attacked by another pupil) she acknowledged that this information was not communicated to the appellant at the time. This was in keeping with the policy that unless there is a mark or an injury a parent is not informed. That incident had happened and unfortunately on the same day the child injured himself when he bumped in to a door frame, and there was a first aid note about that. In cross examination, witness 1 was asked about whether she considered psychological damage worth reporting. She accepted that if she had seen significant signs of anxiety afterwards or if the child had appeared really distressed she would have asked staff to ensure the appellant was informed. She did not see the need for that on this occasion. The tribunal questioned witness 1 as to

whether she considered that the child cannot communicate himself what has happened during the day and therefore it would be more important to let his parents know of matters which they may not report otherwise. In hindsight, witness 1 accepted that it would have been important to let the appellant know of the incidents which had occurred in school given that the child could not communicate that information himself. She acknowledged that an issue of trust had arisen because the appellant only became aware of the incident at school when the child's mother apologised to her. The injury which had been sustained when the child hit his shoulder against the door was questioned by the appellant as she considered the injury to look more like bite marks than a bump from walking into a door frame, and this had of course led to further lack of trust.

The CSP for the child is contained at A6 to B16. Witness 1 was asked in cross examination about the extent to which the educational objectives had been achieved (as detailed at A9). She confirmed that from the outset Pixon has been used across the day and the speech and language therapist provide advice. Any blocks of therapy would be determined by speech and language. She did not consider that the child would benefit from individual blocks of speech and language therapy as the therapy requires to be across the whole day, and that is better than once per week intensive therapy.

In relation A10, witness 1's position was that the occupational therapist would provide an assessment and identify what further action was required. Child and Adolescent Mental Health Services ("CAMHS") had become involved at a point when the appellant was instructing private clinical psychologists. As a result, CAMHS took a step back.

In relation to witness 3's report, witness 1 accepted as correct all points in 4.5 to 4.6 and the majority of points at 5.1 and part 6.

In part 5.1 "sensory", she indicated that the group in which the child works should be smaller rather than the school. In 5.1 "eating", her view was that all staff understood what needs to be in place for the child. Her view was that the staff do not require to understand the disorder itself. They are hoping to move away from the child eating in isolation and want him to move to a table with peers that would require careful planning.

In 5.1 "behaviour", she accepted that the child becomes confused by different approaches, but her position was that he can adjust.

In 5.1 "social", she acknowledged that building friendships looks different for his level of need, but she can create an opportunity for the child to interact. She cannot force friendships or engagement upon the child or others.

In 5.1 "curriculum", witness 1 did not understand how clear boundaries related to the curriculum but confirmed that the education programme is based on intrinsic motivators. By that she meant that the child will finish a task and gets a choice of a range of other tasks. He takes the opportunity to make the choice. The choice was within a range of options. He is not given free range choice to limit stress.

In relation to part 6.1 to 6.3, witness 1 had no comment to make.

In relation to 6.4 she disputed that the child's major additional support needs are addressed on an ad hoc basis. She confirmed that she is responsive to his needs. She does not have all services on hands at all time. Installing a kitchen is to do with facilities and she has no control over the speed of that installation. She agreed that the child can become easily upset but advised that that would not be school specific.

In relation to the severity of the child's ARFID, witness 1's view was that school B can deal with that. They can take on board recommendations and discuss with the family how to provide support. They can provide food and are installing a kitchen. They would do what was required to support him. She did not accept that the child does not have sufficient access to support services such as speech and language and occupational therapy. Her position is that support is given to the team and embedded in the service provided. The child does not get direct input, but it is imbedded in what the school does.

In relation to concerns regarding the child's toilet routine, witness 1's position was the school cannot enforce a routine. She had built in toileting to the school timetable which worked to an extent, but if the child refuses to go he refuses and there is little that the school can do about that.

As far as social isolation is concerned, witness 1's position was that the child is part of the school. He is involved in mainstream schooling to the extent that his sensory needs allow.

In relation to paragraph 6.5 of witness 3's report, witness 1 did not accept that there were significant gaps in the educational provision which could reduce the progress made by the child.

In relation to paragraph 6.6 she did not accept that the school staff are required to have expertise in areas that are normally beyond their professional competence such as severe feeding and toileting difficulties. She acknowledged these were exceptional challenges but for people who work with ASN children there is no normal. It is a matter of dealing with the needs of the children. The child has specific needs. She did not say that she was an expert in feeding or toileting, but she is an expert in bringing information together and supporting a package for children with additional support needs.

Witness 1's position was that she knew of school A school and the provision that was available there. She agreed that they could support a lot of the child's needs but there were things that school B could do that they couldn't. These included supporting the child in the local environment and enabling him to meet and engage with children in his local community.

Witness 1 confirmed that the child's level of need is level 4. A new package was to be discussed at the meeting to be arranged in March. She was 100% confident that it can be delivered by the school and changed as the child changes. She acknowledged that she could not undertake to provide everything that she wanted for the child but there is not a limited range of services. If she identifies a need the

service can be contracted through the PCP or MAAPM process. She advised that she would have PCPs as often as required, would identify a new timetable for the child and try to contract the services needed. The PCP which had taken place was the first one for the child. Other pupils in school have a varying degree of needs. The child is the highest eating disorder need but not to the highest communication need.

Witness 1 confirmed that the child's parents are the most important people who know his needs and they can speak for him and need to be listened to. She acknowledged that she has experience to offer, but the family know the child best.

In relation to the CSP, the tribunal clarified with witness 1 whether her understanding was that food issues impact significantly on the child's learning and have a fundamental impact on his ability to learn. She agreed.

On further questioning from the tribunal, witness 1 was asked about the appellant's request for a one-day placement at school A so that there was shared education provision. Witness 1 did not know what had happened about that suggestion or how it had been dealt with.

When asked why a CSP had not been undertaken earlier given the complexities of the child's needs, witness 1 advised that the difference between and IEP and a CSP was "legality". A CSP is a legal document and she did not need that to put things in place for the child. The CSP was done at the request of the family, the content within it for making sure that the child had access to speech and language and OT therapies was happening anyway. She acknowledged that there was no report from the educational psychologist to provide context for the plans and works which were critical to the CSP. The educational psychologist provided guidance in respect of the CSP. When the child had been in Primary 1, the same level of need was not identified. His presentation is different now in Primary 2.

The tribunal found witness 1 to be a credible witness, who was clearly committed to educating the child within the mainstream environment. However, she doubted the merit of witness 3's report, as she did not think that he understood staged intervention, or the context within which the child was educated within the Community Resource Hub. She appeared to the tribunal to underestimate the extent to which the child's anxiety is influenced by his environment and the impact upon him relative to his ARFID of being in a mainstream school environment. She appeared to underestimate the complexity and severity of the child's ASD and ARFID. While the tribunal accepts that witness 1 tries to ensure she and her staff meet the needs of the child, we were not persuaded that his needs could be met within school B, even in a specialist resource hub. We discuss this issue further in relation to the evidence of expert witnesses, witness 4 and witness 3.

The staff at school B lack specific expertise in the matters which affect the child, and his needs are at the severe end of such difficulties. Witness 3 and witness 4 are experts in their field. Where their evidence conflicts with the opinion of witness 1, the tribunal preferred the evidence of the experts.

Witness 2

Witness 2's evidence is contained in the statement provided at R42 to R45. She is the Quality Improvement Officer (QIO) at the authority. She prepared the options appraisal which appears at R8 to R16. This was carried out by her alone in September 2017. She noted that school A had met with the child's parents but had not carried out an assessment to identify what specific provision was required for him. School A require 6-week assessment for that purpose.

Having carried out a comparison of the respective costs and suitability of both schools, witness 2 issued the letter contained at T16 and T17 refusing the parents placing request. As at date of providing evidence to the tribunal, witness 2 confirmed she had a full picture of the provision at school B from the Head teacher, Deputy Head teacher and psychologist from the school. Her view continued to be that the child's needs could be met at school B. She had no further information from school A other than that provided in her initial assessment.

As QIO witness 2 has no direct pupil involvement. Her remit covers all of the council. She could confirm that the cost of attendance at school B was approximately £4,500 and the total cost for the child was about £9,000 as he accesses additional support services. If there is to be additional owl therapy the cost will be £65 per session and the outdoor woodland learning is £300 per session but it can be accessed by a number of pupils. Some pupils in the council are placed at school A school. Usually after the 6-week assessment is carried out, additional support needs are identified which raises the cost from the basic cost at school A. The child has no current transport costs for school B as he travels with his parents.

Witness 2 has seen the report provided at A114 by witness 3 and agreed with the responses made by the head and deputy head teachers. In relation to the concerns raised by the parents, she agreed with witness 1's evidence that the provision for the child was not ad hoc but was responsive and flexible. In relation to the severity of ARFID, she had an extensive meeting with catering and as a result a kitchen was being included, and food training given to staff to meet the child's needs. In relation to the child's toileting needs she could make no comment as she did not discuss that with the appellant. In relation to social isolation, she felt that the programme developed through the PCP had gone a long way to address this.

Witness 2 did not agree with witness 3 at A125 paragraph 6.5 that the challenge of meeting the child's additional support needs is beyond the capacity of a mainstream primary school. Although the child is in mainstream schooling, he accesses full time the community resource hub, which makes a difference. This is set up to meet the needs of pupils with complex needs. She totally disagreed that the challenges to staff were beyond their level of competence and asserted that the community resource hub staff have the ability to deal with, and the resources to meet, the child's complex needs.

In relation to part 7 or witness 3's report, witness 2 acknowledged that the child's needs could be met at school A but there was nothing provided there that school B could not offer. In relation to experienced staff, school B were currently training staff

and although school A had a lot of experience with ASD she has had an experience with an older child where the placement at school A broke down due to inflexibility to meet his needs, most notable regarding eating. That child had been on blended placement. She did not have experience of a full-time placement.

Witness 2 acknowledged that school A have in-house doctor surgery, medical staff, dieticians, speech and language therapy whereas in school B these agencies work in partnership with the school.

Witness 2 felt strongly, and has always held the view throughout her career, that children's needs are best met in mainstream school within the local community.

Witness 2 was asked about the extent to which costs was a factor in her decision. She confirmed that it is a factor as she has responsibility to ensure that public money is spent meeting the needs of pupils. There is a presumption of mainstream schooling and it is part of the local authority vision moving forward as far as possible to meet the provision of pupils in local schools. The community resource hub was set up to enhance provision and meet that need. She was not saying that it would never be appropriate for a child to require a placement out with the Authority, but she would make her judgement on the needs of that individual child. She acknowledged that the child's needs could be met at school A, but school B is a better placement.

In cross examination, witness 2 confirmed that she had spoken to all 3 educational psychologists involved with the child to obtain information from them when carrying out her options appraisal. The speech and language therapists were the only health professional she had spoken to, but she had read reports from others. She did not meet the child but gained knowledge about him from others. She had visited school A previously in conjunction with another pupil but not specifically in the preparation of her options appraisal. She based her opinion on the information she had gained from the educational psychologist, speech and language therapist, head teacher at school B, deputy head teacher at school B, staff in the community resource hub and had read the documents, minutes and reports obtained.

In relation to the written statement provided by witness 2 at R43, she had provided evidence that the staff in school B had built up a good knowledge of the child and his additional support needs and work collaboratively with NHS allied health professionals to meet these. She was asked how much input NHS health professionals had had. She was aware that they have been invited to meetings.
In respect of direct involvement, witness 2 was aware that the clinical nurse at CAMHS and a consultant oversee the case. She did not know the extent of OT involvement. She understood the communication between school and the child's parents was very good and daily. She acknowledged that a mistake had been made when information was not passed on to the child's parents when he was assaulted by another pupil at school. She was not involved in the co-ordinated support plan or the preparation of that. Although it was requested by the appellant in June 2017, it was not created until December 2017. She was concerned by the delay in preparation of the CSP, but it was not something she had been involved in.

When asked by the tribunal about witness 4's report, in particular at A106 where she had indicated that without reducing anxiety it was unlikely that progress would be made with the school's management of the child's eating, witness 2's position was that the child's anxiety has reduced since January. He is a full-time pupil in the community resource hub and that is evidence that it has worked for the child. The report which had been prepared by witness 4 was prepared prior to the child attending the community resource hub full time.

When asked to describe the community resource hub she confirmed that it is an enhanced provision for targeted support. There is one hub in every cluster of primary school and secondary schools across the council. It provides support for pupils with more complex specialist needs. It gives the school the same status as a special school. It is not a base but is an entity. It has the same resources as special school. She was unable to elaborate on the specialist resources which were available in school B and confirmed to the tribunal that she had not visited the community resource hub.

Witness 1 confirmed that "extreme cases" go out with the authority. She would expect the community resource hub to meet the needs of all pupils. She needs to involve decision makers at a higher level for authority to go out with the local authority for a placement out with the authority.

When asked by the panel if school B could meet feeding needs of the child, witness 2's position was that they have the expertise, knowledge and resources to deal with eating disorder.

Witness 2 accepted that a sensory profiling assessment has not been done in relation to the child. She acknowledged that was a concern as it was due to be done by a psychologist, but that psychologist had then gone off ill. The tribunal asked whether the OT would carry out the assessment. Witness 2 said a debate had occurred about who was to undertake the assessment, but it has not yet been done.

It was a concern to the tribunal that an options appraisal had been carried out without this information. Witness 2's position was that it was not available, and she had to use the evidence which was available to her. She accepted that she was missing a sensory profile.

Witness 2, in answer to questions from the tribunal, confirmed that there are around 12 of the authorities pupils currently placed at school A. The majority of the pupils had been placed there as the best way of meeting the child's needs. She was unsure how many had been placed by way of placing requests.

The tribunal explored with witness 2 witness 4's evidence that the child falls in to the top 2-4% of severe ARFID cases and her evidence that such pupils were almost exclusively in special schools. Witness 2's position was that the child is in a specialist provision, which is school B.

When asked about the plans in relation to the kitchen being installed, witness 2 said that that was not specifically for the child, but it was going in as part of the nurture

area so that the school could have the ability to make whatever food the child required.

Witness 2 acknowledged that school B is like all special resources which rely on NHS staff who are not onsite. She had been concerned when speech and language therapy was not available to the child. In addition, a sensory profile had not yet been done either by speech and language therapist or OT. She asserted that such issues could arise at school A if there was sickness or difficulty with staffing.

The tribunal considered witness 2's evidence to be flawed in relation to the options appraisal completed by her. She had not visited school A in the preparation of that appraisal or had direct discussions with the school regarding the child and his specific needs. She had, it appeared, a fixed view that the child's needs could be met within school B. Without a sensory profiling assessment, it was difficult for the tribunal to be satisfied as to the extent of the child's needs or how to address them. It was therefore difficult to see how a comparison of the ability of both schools to meet those needs could be prepared. Little weight could be attached to her appraisal as a result, as it did not appear to have been independently assessed truly weighing up the factors relevant to the child in respect of each school.

In addition, witness 2's evidence cast doubt on the position stated by witness 1 that the kitchen being installed at school was to meet the needs of the child, as she viewed it as being installed as part of the nurture area and the child would benefit from that.

The appellant's evidence

Witness 4 clinical psychologist.

Witness 4's credentials are contained at A113 (a) and she provided a report contained at A102 to A113.

In addition, witness 4 provided oral evidence by telephone. She elaborated on the information within the report in her oral evidence, confirming that it was very common for children to be specific about what they will eat in different environments, for instance one food at home and one food at school and variety is better.

In relation to food being cooked specifically for the child, witness 4 was clear that it would have to be prepared in a particular way. The child is hyper- sensitive to the way foods look, texture, smell and taste. The look of food is crucial as to whether it will be accepted. If food is not cooked to the same texture and colour as in the home context he will be reluctant to eat it. It would be very difficult for school to replicate home cooking and maintain consistency every day, therefore having different food in school and home is a better option all round.

In relation to witness 1's evidence that she does not believe that anxiety is necessarily related to the school environment whereas the appellant believes that it is, witness 4 preferred to rely on the parental report. She confirmed she had not seen

the child at school but using previous experience of working with children like the child and frequently seeing autistic profiles and eating difficulties, it is common for them to experience anxiety per se and around transition, for example from home to school or school to home. It was evident to her that getting the child in to school had become increasingly more difficult. She could not comment on whether something at school was causing that, but no difficulty in coming home from school was reported which indicated that it may be some issue regarding school.

Witness 4, relying on parental reporting, was aware that there had been an increased level of anxiety between Primary 2 to Primary 3. The child's vocal tics indicated a rise in anxiety.

In relation to sensory sensitivity, witness 4 was clear that the child's overall sensory diet needs to be varied and sensory assessment is crucial. She could not stress enough that ARFID is driven by sensory issues. Foods are chosen on texture, smell and taste and accordingly a sensory assessment is essential. Additionally, his appetite and ability to recognise appetite is significantly impaired. Accordingly, it is not just the sensory characteristics of food which are an issue but recognising hunger; without appetite there is little motivation to eat. In addition, sensory sensitivity relates to anxiety i.e. as sensitivity increases so does anxiety and as anxiety increases so does sensory sensitivity. The more anxious the child becomes the more others will notice a difference in his food intake and the more likely that foods will be rejected. Witness 4 was clear that it is crucial to understand the sensory profile to show what sensory issues exist and how to respond to them i.e. what can be offered to the child that he could tolerate and cope with?

It was witness 4's position that normally an OT would do a sensory assessment, a sensory abilities/difficulties assessment. Occasionally a speech and language therapist trained in sensory intervention could carry out such a report, but she would normally expect it to be done by an OT.

Witness 4 had made it clear that she would provide advice to school B if requested. She confirmed in her evidence that she would be prepared to do that. The costs are £100 per hour for a written report or telephone advice or to visit. She had no difficulty in engaging with the school but had not been requested to do so.

In relation to the installation of a kitchen in school, witness 4 had given that matter some consideration. She understood why the school were considering that and understood why it might seem sensible to provide the child with particular foods. However, she felt that it was a risky strategy for the following reasons:

a) The child has variable patterns of acceptance of food which rotate around home and school. Some foods drop off his list of foods without warning and it is hard to predict what will be next. He bases his choices around beige and chocolate. It is difficult to predict what he will want to have next.
b) There are no guarantees that he will eat in school and school may need to experiment. One food may be acceptable one day and not another. There is a danger if he is over exposed to food stuff that could cause anxiety. A different pressure may arise with each food.

c) A lack of consistency leads to danger. Almost anything can put the child off food and this is a risky strategy.
d) It will be incredibly difficult for the school to cook exactly the same way every day in the same way as it is difficult to do that at home and it may contribute to hyper sensitivity and hyper vigilance. It is a risky strategy and won't necessarily increase the child's food intake.

Witness 4 was able to confirm that she had compared the child's profile with other young persons with similar eating and ASD profile in her case load. The child would fit in the top 2-4% of severity of the children that she sees. She sees many young persons with ARFID and around one half to two thirds have ASD varying in severity. Only a very small proportion of those have complexities and severity of eating issues similar to the child. This includes a pattern of ASD which is quite severe and limited use of language. So, the child is at the most severe end of ASD and that has an impact upon him. He has a long-term reliance on formula milk which is very difficult to change and move on. He has additional issues with reflux and there are questions about his development in relation to which he is undergoing genetic assessment. Most children that she sees with that profile are in special school. It is more unusual to be in mainstream. That does not mean that it cannot be managed in mainstream with support but eating improves generally when there is a wraparound response to eating and ASN.

Witness 4 considered the benefits of school A school to be the availability of specialised input, the way the environment is designed and maintained is sensory and there is an all-round approach of understanding. She could not comment on the setting in the child's current school.

In cross examination, witness 4 confirmed that she presumed the child was in a state primary school with special needs input. The community resource hub was described to witness 4. She could not comment on how the child would respond to that as children respond to these environments differently but as a guide what was described as the community resource hub would tick all the boxes for an educational setting to suit autistic spectrum disorder profile, but she was hesitant to endorse the environment because of the reported anxiety which suggested to her that the child is not currently settled. If the parental reporting provided to witness 4 was correct the anxiety related to school and no matter how good the intervention was within school B primary it did suggest to witness 4 that it was not working for the child. Her view was that until his anxiety is addressed, no progress will be made with eating.

With reference to the school providing a kitchen and preparing food, the respondent's representative suggested that witness 4's position about that would be the same whether the child attended school B or another school. Witness 4 confirmed that most children she deals with the same or similar profile to the child do not eat food which the school provides. They take food in to the school, such as a lunch packed or occasionally they will accept food. She has never known before a school to build a kitchen and that she felt it was an unusual strategy which carries no guarantees. She considered that a better strategy would be to think of different ways of providing different foods so that the child can access them, for instance food from home. This would be easier to implement and carries less risk of extra pressure. Her view that it was better for food to be provided by home rather than at school. She

considered a number of reasons why it was unusual for the school to take the view that building a kitchen was the solution to the child's problem. It is also unusual for children with the child's profile to accept cooked food in school. They are more or likely to accept food provided by home to be eaten in school. That is an easier strategy to implement. All of this depends on good understanding of the child's sensory issues so that the correct food can be planned. Until the child reduces reliance on formula milk it will be hard to introduce new food stuffs. This shouldn't happen until he his placement is decided so that he is settled, and further anxiety can be avoided as he will not be receptive to the change from formula milk if he is anxious.

The respondent's representative enquired as to whether witness 4 considered that the child will be likely to encounter a problem with eating wherever he attends school. Her position was that the strategy should be that the child has a food in school agreed by home regardless of the educational setting. Her objection to the idea that a kitchen being provided by the child and staff cooking for him would be the solution is not about where the kitchen is, it's about the strategy involved as it is possible that it would increase the child's anxiety. The issue is not about cooking the same food in home and at school but trying to get the child to accept different foods if possible and that will not be possible until his arrangements are stable. Witness 4 agreed that different food preparations may occur at any school, but this is a very complex matter which requires specialist input. She described a staged process whereby staff require to find food which was safe and preferred, and accessible to the school. That tends to be what is packaged and sent to school with the child. Occasionally a child may decide to accept something from the school menu, but it cannot be predicted. While the child experiences additional anxiety it is unlikely to happen. Until his anxiety has lessened no strategy regarding food will work.

Witness 4 was clear that she would expect the following professional input:

a. An occupational therapist to engage in sensory work and it is usually a combination of both direct and indirect therapy.
b. Speech and language therapy. The connection between language and eating is not simple, but as communication improves the child is likely to express his wishes more and better understand his preferences. His anxiety would therefore be lessened to better communicate.
c. Dietician involvement is also important as there is a risk of the child losing weight.
d. The child also requires some support for anxiety through local child and adolescent and mental health service
e. Advice for the school, for the parents and for the child individually as he gets older is essential ideally to be provided by a child psychologist.
f. Overall monitoring of the child's health is also required by a paediatrician whose involvement is extremely important

In questioning by the tribunal, witness 4 confirmed that the professionals involved should work together on a multi-agency approach. She would have hoped and expected that, given the child's needs and age, a multi-agency team would have been in place, but she understands that resources are stretched. From her professional experience she would say that all the professionals are equally

important in relation to the child. Monitoring the child's weight is as important as his communication difficulties. A paediatrician is the best to have an overview and they have the gateway access to other services.

Witness 4 also confirmed to the tribunal that in her experience she was of the view that she would wish a sensory profile to be prepared. She understood from the appellant that it was due to happen but unfortunately, she does not expect it as it is difficult to obtain. Without a sensory profile however, it is difficult for her to advise families about food and how to stabilise ARFID. Changes in what people do and physical environment are often the most significant developments which impact on food issues and have a general impact on anxiety, engagement, food and social relationships.

Witness 4 emphasised that it was important that the team around the child worked with the child and his parents. There was a great need for consistency between home and school with both not necessarily having the same routines. It would be common to have two different sets of routines but communication about how the child functions daily in relation to food is important. She was of the view that most parents know their child better than any professional and can intuitively guide any professional on what suits the child best.

In relation to the impact in the child of any major transition in terms of his anxiety levels, witness 4 said that there is evidence, and it is her clinical experience, that sometimes-large transitions are easier to manage than small ones. There is no reason to think that the child's transition to a new school would have a negative impact. Sometimes the possibility of new routines is a positive thing and there is a great deal of evidence about how it can work. The key is to manage it in a stabilising, consistent, progressive way with parents and professionals ahead of the game in the way it is to be managed.

In re-examination witness 4 confirmed that it is always beneficial if a child can receive regular daily (at least) support from specialised services. If any intervention is delivered throughout the school day by all school staff that tends to be better. Children in special schools get a wraparound approach which seems to be beneficial. The child is in the top 2-4% of severity and witness 4 is a national specialist. She sees families from all over the UK and Europe. He is in the top category of her more complex case load and would benefit from the wraparound specialist support.

Witness 4's evidence was clear and highly credible. She is a nationally recognised expert in her field. She understood the complexity and severity of the child's additional support needs, and she was clear that it was unusual for children with such needs to be in mainstream provision, even such as is provided for the child. She clearly explained to the tribunal the fundamental requirement for the child to ensure that his anxiety is addressed so that he can address food issues and engage fully in his education. The tribunal found witness 4's evidence to be highly persuasive.

Witness 3

Witness 3 is a chartered psychologist and educational psychologist. He provided curriculum vitae at A130 and his written report is contained within A114 to A129. He adopted that report as his main evidence and prefaced his oral evidence by making it clear that his report is entirely independent. Although instructed by the child's parents, his evidence is to assist the tribunal to reach a decision and is entirely independent.

Witness 3 had met the child at home, observed him, spoken to his parents, interviewed school staff at school B and the head of education at school A. He had visited both schools.

Witness 3 confirmed in his report that one requirement in the management of the child is clear boundaries i.e. what he can and cannot do in everything. He needs a clearly defined environment. His parents feel that the child needs a firm caring and teaching environment so that there is no ambiguity for him. They are not looking for an easy-going environment; they want clear set out boundaries so that the child is expected to stick to the rules. Witness 3 agreed that was the correct approach. For children with ASD in general, staff would always be looking to reduce ambiguity or distractions, not controlling but structuring the environment. Witness 3 had seen it in the way that the child's father interacted with him at home and it was reasonable to expect, as any parent would, that such an environment could be created at school.

In relation paragraph 6.6 of witness 3's report when he had concluded that there are areas beyond the professional competence of the staff and that the child has exceptional needs, he confirmed that school B school are doing the best they can. He had no criticism of staff at school B. He has been an educational psychologist for over 40 years and could not recall a situation where staff had been asked to deal with such complexities as the child has in a mainstream environment. He felt the staff at school B were doing extremely well but the challenges there were very significant. He had questioned whether too much was being asked of the staff and although he did not have a definitive answer he felt that on balance, having taken all factors in to account, the staff were required to have expertise in areas that were normally beyond their professional competence - such as dealing with feeding and toileting issues. He felt these were immense challenges for any educator and were more fundamental issues to be resolved for the child than his learning disability. If the issues surrounding his feeding and toileting are not managed this will lead to health problems and, if so, his education will fall apart. He provided evidence that the challenge facing parents and professionals surrounding the child are terrific challenges and although that does not mean it cannot be done within school B, the current arrangements are all very precarious. Accordingly, witness 3 had formed the view that theoretically it was possible if everything else was working as it should that the child's needs could be met at school B, but the challenges were very high, and anything altered could tip the balance of being able to achieve the necessary standard of provision. For instance, if there was a power cut, staff were off or there were toileting or health issues. If everything worked properly and was always working perfectly it would be possible for his needs to be met at school B, but it would require a lot of "fingers being crossed" and systems to be in harmony.

Witness 3 also felt that the parents have been driving things forward for the child regarding his digital communication, and food preparation and that is very demanding for school staff as his needs are constantly changing. He had seen around school B and was well aware of the additional facilities and the context in which the child attends school. He knew about the community resource hub, although he had not specifically referred to that in his report. He was taken around school by the depute and head teacher and was shown all areas with the provision being fully explained to him. He has expert knowledge of the levels of staged intervention and took all of that knowledge in to account when preparing his report. The school staff explained very clearly what was offered for the child, what they planned for the future and they provided him with an informed opinion.

Witness 3 was clear that staged intervention will not change the nature of the difficulties and what is required for the child. Increased levels of support are what is needed for the child. School B have offered a good level of intervention but it is a huge challenge for the staff, who are doing extremely well, but witness 3 had concerns about sustainability of the placement.

At school A the staff are at huge advantage. They have onsite specialist's provision for eating disorders and the challenges presented by ARFID can be met through experience and resources. Facilities onsite are much better for the child than on a need arising basis. Witness 3 provided this evidence on the basis that he has worked in the Local Authority for 30 years and knows how the residential school facilities compare with what is available in local authority placements. School A has a wealth of experience of ASD children and particularly those with eating disorders and toileting difficulties. Putting together everything, including the onsite facilities, experience, training, ASD suitable environment, led him to conclude that it was more likely that school A would be able to meet the child's needs than school B. He was very clear however that school B were doing the best that they could and that it had been difficult to make a judgement one way or the other, but he felt his conclusion was reasonable that school A was most likely to meet the child's needs.

Witness 3 confirmed in cross examination that he had a good discussion about preparation of food in the premises and the approach towards eating disorder. The school has significant experience of eating disorders. It was suggested that the provision of the installation of the new kitchen at school B would mean that the provision in relation to food intake would be similar at both schools. He was clear that it is not the catering that is the issue. Specialism comes about in the approach that is taken to manage eating habits and how they deal with the child in relation to eating. There is a degree of similarity if school B was able to adapt food and have flexibility and offer the same as school A, but it is the specialist approach which is more important.

In relation to toileting issues, witness 3 confirmed that school A have experience of such matters as they have a significant number of ASD children with such problems. They deal with it through encouragement and providing staff to support the child. This would be part of the care plan and education and management of the child. It would be part of the day's work within school A.

Witness 3 had sight of witness 4's specialist clinical psychologist diagnosis. He acknowledged that witness 4 is an expert in relation to food issues and that she has a very specialist practice. If she described the child's food disorder as very severe then he would not contradict that. Taking together as a whole he was asked whether he considered the child's problems to be exceptional. His view was that other children have this level of need, but one would be hard pushed to find a child with this level of complexity within a mainstream setting, even in supported provision in mainstream. The child's needs are very challenging. He was of the view that this should not fill the child's parents with dread. There are children with more severe problems, but not seen out with a specialist resource. Sustaining the child at school B would be at the absolute limit of resources of the school and staff.

The tribunal found witness 3 to be a highly credible and persuasive witness. He had weighed up provision in both schools. He had, quite correctly, acknowledged the good work done by school B Primary and the efforts made by them, but he was clear that the child's needs are such that in the longer term it is unlikely they will continue to be met in school B, and that school A is more likely to meet the child's needs for all of the reasons detailed in his report.

The appellant

The appellant gave detailed oral and written evidence. Her statement is provided at A133 to A135.

In addition to the information contained within her statement, the appellant clarified that there have been 3 speech and language interventions in respect of the child since August 2017. She was unsure whether these had been sessions or consultations but knew that school had accessed information on 3 occasions regarding the child. No direct work had been done with the child on a one to one basis since August 2017. She was aware of the benefit to the child of one to one speech and language therapy. In Primary 1 a therapist had come once per week to help the child use PECS and his word use had increased rapidly. The appellant had attended every session with the child, so that there was consistent approach from home to school on a one to one basis. No member of staff attended the sessions as the staffing levels did not allow for it and accordingly there was not consistency of approach in home and school.

When the speech and language therapist retired there was no one to replace her and the child regressed without that input directly from speech and language therapy. A new therapist was appointed in August 2017. She had not met the child and had said that he should be moving on to pixon. She gave a pixon board to the appellant and showed her how to use it. No one to one work was done with the child in relation to pixon and he has never used it.

In January 2018, the appellant had sought further advice from the speech and language therapist who said that she would try to use digital communication. She met the child, assessed him as being able to use an app and then provided an iPad on loan for the child to use. Unfortunately, the child is not interested in it. The child

however wants to talk, and at home the family practise talking, pronunciation, syllables, language construction and the appellant uses recording videos and repeating which is easier than forcing the child to use a digital app.

Witness 1, depute head teacher had run a programme in school entitled “verbal behaviour analysis programme” for an hour every week. She had trained the child’s teacher and a volunteer to do this programme with him. The appellant had asked to be present at some of the sessions and had been allowed to attend one morning, but after that was asked not to go back as the child had become upset because she was in school. The child had been using language well until that programme was introduced and then he appeared to regress. The appellant had asked for the programme to stop. The information had not been passed to witness 1 and so the programme continued until the start of Primary 2. The family had spent the summer breaking the habit of using repetitive words, which he had learned on that programme, and as soon as he started back at school the programme was reintroduced to him.

In relation to social inclusion, the appellant feels it would be very beneficial for the child to be involved in sport. He is active, flexible and loves movement and sport. A smaller school would help, as the larger school environment is too busy for him to feel safe and secure to engage in sport and activities. The larger school is very noisy, and he is very sensitive to that. He likes to sing and dance, but he never takes part in any parties or plays, and they don’t adapt things to enable him to engage in school.

On several occasions the appellant has communicated her ideas for social inclusion to the school to witness 1 or the head teacher. Shortly before Christmas she had found out that the child was no longer doing PE. He had been screaming at the appellant when she was packing his gym kit. He used to love doing gym and no one had made her aware of his change in approach. The child was not in a good place at the time as he was starving himself and was emotionally struggling. Following that miscommunication with the school a communication book was put in place to help make sure that information was being passed back to the family. No negative comments are put in the diary, these are given verbally. The appellant has a concern that some information is withheld from her. She referred to the incident detailed at A5. She had been unaware that the child had been assaulted by another child until that child’s mother apologised to her. The child had been in a terrible state following this incident and was refusing to go to school, waking up at night, being angry at home and attacking the appellant. The school had consistently said that nothing had happened at school, and when the appellant discovered that in fact an incident had taken place, she was really upset. She had been unable to address the child’s concerns as she was not aware of the incident. Further the child had an injury to his shoulder, but she was told it was caused when he ran in to a door. The injury did not seem to accord with the description of the event. She had not been informed of this injury and when she spoke to the head teacher and presented photos of the injury to her she received an apology and an admission that she should have been informed of the incident. She asked to be shown the door that the child had injured himself on but that has never happened. The previous week the child had had an injury which looked like a bite mark on his shoulder and no information had been given from school. There were therefore two concerning incidents when the child appeared to

have been injured and the school have denied that the appellant had conversations about her concerns.

If the school cannot be honest with the appellant, she feels that the relationship cannot work. The child is vulnerable and cannot communicate fully his concerns or his wishes. He cannot go home and tell his mum what is wrong, and accordingly, the appellant emphasised that it is imperative therefore that she has trust in those looking after the child at school.

The appellant confirmed that she provides 150% support to the school. The school's passport which was produced at T19 was drafted by the appellant although some help was provided from the school, but the appellant feels that the school do not listen to her enough about the child's needs.

At T36 and T37 attendance reports it was noted that the child's attendance at school this year had been better than last year. The appellant had considered that there was more agreement and understanding about how the child's eating can impact on his health and more structured guidelines were in place to help keep him healthy. The school were 100% supportive with that and if the child is off sick he has a gradual return which is supported by school. On one or two days every week, the child is collected early from school due to his eating difficulties. However, the new set up in school helps the child. Before January he was moving around from room to room. The teacher at the community resource hub made room 8 in to a classroom, and that has helped the child's anxiety.

The community resource hub was described to the appellant as a specialist resource hub. That causes her some confusion because she understands that consists mainly of room 8 and there is no specialist input. There is a support for learning teacher and support assistants. The child and 3 other children are generally in the resource. One child cries a lot. That is not a good mix for the child as he has sensory issues in relation to the noise. If it becomes too much for the child to cope with, the children are all timetabled separately. The appellant accepted that the child's anxiety at the school is not as intense as it was before Christmas, but it is still an issue.

In relation to the child's eating disorder, the appellant considers that she begged the school for help and they didn't know what to do. She had gone to her GP and the educational psychologist had referred the child to the school doctor. The paediatrician had said that it was not acceptable that the child was still taking a bottle and she wanted something done about the child's mindset around food. She wanted the speech and language therapist, dietician and CAMHS to work with him directly and an assessment to be done regarding ADHD. CAMHS had sent her a questionnaire and also sent one to the school. The clinical nurse at CAMHS had come to the house and suggested that the answers to the questionnaire filled in by the family pointed to ADHD but the school response didn't, so accordingly no diagnosis of ADHD was given. This made little difference to the child as no medication for ADHD could be given to him.

The clinical psychologist and clinical nurse at CAMHS met with the appellant on one occasion and had a discussion. The approach they suggested regarding eating was similar to what the appellant was doing. They also suggested a stepping stones

group for the appellant to attend regarding behavioural management for children with ASN. The appellant managed to attend once before the child became unwell and she was unable to attend the remainder of the course. The appellant spoke to her social worker, who organised for CAMH training to come out to the house which was helpful particularly to assist her older son who was struggling with the child's behaviour.

The appellant is not satisfied with the various professionals involved with the child. The educational psychologist recently attended a meeting in February but had no previous involvement with the child. She had never met, observed the child or spoken to the appellant about any issues at home.

An Educational Psychologist had visited the school in November at the appellant's request. She had sent an email to the educational psychologist because she was concerned about the child's vocal tics and urinating in school. She felt that input was needed from the educational psychologist who had then gone out and spent an hour in the school and spoken to here thereafter. She was informed that the educational psychologist had given the school ideas, that the child wouldn't leave the room and was petrified and so she had suggested "mindset" but the appellant did not know what this was.

In relation to R95 - 96, minute lodged by the appellant, she explained that the educational psychologist was the first point of contact with the child when the family moved to live in Scotland. At that time the child was in transition from nursery to primary 1. He had moved from a different country and the family had taken him out of nursery to concentrate on therapy. At the meeting on 27th June 2016, she had been assured that school B was capable of meeting the child's needs. That meeting had been very informal, and it was the last time that the appellant saw the educational psychologist except when she saw him at a meeting with witness 2 about the placing request. He had undertaken to do a sensory profile and then had been absent due to ill health. A sensory profile has not been done to date.

The meeting in June 2016 was followed by a meeting between the appellant and Dr M in August. She tried to get him referred to the correct specialist. He was referred to a metabolic doctor and tested for all sorts of conditions, but none were identified so there was no need for further screening. Thereafter, the child had a meeting for the first time at CAMHS in November 2017. There was concern about his high levels of lactic acid. Medical tests are still being undertaken in that regard.

When the educational psychologist visited the school at the request of the appellant, school staff were not communicating the child's difficulties. The appellant was receiving information from the pupil support assistant when she asked her because she knew something was wrong, but witness 1's position had been that the child's behaviour was not anxiety related and she had other interpretations.

The appellant accepted that she is not qualified to say whether the child's behaviour is anxiety related or not, although his actions seem to point towards it. She acknowledges that a qualified person needs to observe him and give an opinion as anxiety can present differently in different people. He is very anxious about eating and that affects every aspect of his life.

The appellant is clear that she requested a CSP in June 2017. The CSP is produced at A6. She had seen it briefly at the MAAPM and had not been given the opportunity to have input into it. She said she needed to go over it with her husband and was made to feel uncomfortable about not signing off on it that day.

The appellant does not agree fully with the CSP as there is no support around the child's eating disorder outlined; although she had requested that the CSP be held off until witness 4 could provide input. There is no input from the occupational therapist. Despite that fact the CSP was prepared in December 2017, this is meant to be a legal document specifying what needs are to be met in August 2017. The appellant was told that speech and language therapy (SALT) would be provided in the community. However, there was no community speech and language therapist available and accordingly the child's case was not transferred. SALT is in school doing training and consultation but not one to one work with the child.

The creation of a sensory profile through assessment by an OT has been discussed since Primary 1 and is not in place. It has not been done. The family have moved forward a bit as witness 1 has sent the child's teacher on sensory training and she is keen to learn about that and tries her best, but she is not able to do sensory integration therapy or do an OT assessment.

The appellant accepts witness 4's report entirely and accepts that the staff at school B try their best, but they do not accept the underlying problem of anxiety. It may be that school B can keep him stable, but no progress will be made with his food disorder of trying to work out a way to get him on to other foods, fluids or supplements. This is a significant issue not only for nutrition but also because he cannot be encouraged to take medicines except through suppository. Accordingly, if he needed antibiotics he would require to be admitted to hospital.

The appellant felt that she had suggested everything she could to school B. She had suggested a blended placement so that specialist input re eating and speech and language therapy in school A could be provided to the child. This was refused by the Local Authority.

The appellant is concerned that the child is isolated and lacks opportunities for social integration. He has a cousin with whom he interacts well, and it appears that he can interact with children if he is in an environment where he feels safe and comfortable. This is not possible in school B because the school is always too busy with the number of pupils, nursery mum's and babies and lots of things happening to upset the child. Even in the community resource hub he sits next to the nursery so outdoor play can be very noisy, leading him to become very annoyed. If he is constantly worried about when other children are going to cry or make a noise he is not able to feel safe or make friends. He spends most of his time in the bubble room. The appellant has only been there once or twice when she has gone to pick up the child, but she is aware that he tends to go there when things are becoming too much, and he is spending the majority of his time there at this point in time.

The appellant could not accept witness 2's assessment of the community resource hub as being the same as a specialist school. She understood the evidence provided

by witness 2 to indicate that there would be specialist support staff and qualified ASN staff. Throughout the child's time at school B, the appellant has not met anyone with that level of experience.

In relation to the person centre planning meeting held in February the appellant felt that the benefit of implementing these actions for the child would be that he would have a quieter entrance and exit from school. The ABC chart should have been done long before now as the appellant had requested them in October November when the child's levels of anxiety were very high. She was trying to monitor patterns of anxiety. She had asked for charts to be sent to her so that she could look for patterns. Her social worker had been in full support of that and had suggested that it was appropriate for her to ask the school to do that. Despite her request she has not seen any copies of the ABC chart.

The appellant had been told that a CSP did not suit the child's needs and that it was for children with extensive complex difficulties. She was told this by the head teacher. The appellant had brought it up again at a MAPPM meeting and the appellant had been asked to submit a statement in support of it. She did that before June 2017 and the CSP was not prepared until December. Despite the minutes of MAPPM meetings indicating parental concerns in October 2017, no meeting was arranged to discuss those concerns until February 2018.

The respondent felt that unnecessary delays were very common in all aspects of the child's care. The educational psychologist had told the appellant to stop using the expression "eating disorder" which had caused her to seek out a diagnosis as she was so concerned. Only when she produced the report from witness 4 did the school take it seriously.

The appellant has always had an issue in relation to witness 1's behaviour analysis type teaching method. She uses rewards to motivate as she believes it works with the child. This is contrary to the belief of the appellant. The child has an underlying anxiety condition regarding control and extreme avoidance behaviour. He needs to be assessed by a psychologist to see what the best teaching technique would be.

The appellant spoke directly to the child's teacher at the end of December and advised that it might be best if he was given more choice to give him control and listen to him in relation to his choices. In the first week of the new term the teacher had indicated that this was really working and that the rewards were really good. The appellant had questioned that, as a reward base system was not supposed to be used with the child. The appellant's concern is that the child will associate compliance with requests with rewards. Recently he had blood removed in hospital. He didn't like it, but he accepted it had to be done. The doctor praised him and gave him a car. The next day he was begging to be taken to get his blood taken again so that he could get another car. He would refuse to go to the toilet or brush his teeth after the first week he was back at school after the Christmas term as he associated rewards with making demands. He needs honest communication by the school as it is very hard to work out patterns or problems arising unless the appellant has clear and honest information. The appellant is petrified that the child ends up associating food with reward. She is concerned about methods used to encourage the child to

eat in school. School say that no rewards are given but they don't see choosing the activity or fun thing as being a reward.

The appellant had to ask the school to stop the toileting routine they had in place as they were doing something which caused the child to hold on to his urine for about 30 hours. The appellant had to be creative and use urine bottles to avoid toilets. The appellant spoke to the school and they wouldn't believe her. The appellant had to ask them to stop doing whatever they were doing as it was making the child worse.

When the appellant visited school A, her immediate impression was that they seem to have a better knowledge of autistic spectrum disorder. They are accredited by the national autistic society and go beyond expectations. They have a respectful and inclusive ethos and there are a number of onsite therapies to help the children. If they don't have one onsite they will find one. They use a holistic approach and respect the rights of the child and parents, and work with parents to be consistent in the home and school approach. In school A, the child would be in a small class. He has visited there, and he loved it. He likes to explore, and the environment was ideal for him. The transition to a new school should go smoothly if it is done at the right pace.

Having met the staff at school A, the appellant's view was that the child would be educated holistically and however necessary to adapt to his needs. He learns well if not thinking of his learning as a task. The child would benefit from being in a class which is mixed with non - ASN pupils so long as there are no babies or crying. In school A, the nursery is separate from the school.

The appellant felt that her views had not been taken seriously until she made an application to the Tribunal. She had never been given the chance to work on the educational plan with the school or agree a CSP. The school disregard her feelings and opinions and fail to take in to account that although she is not a teacher she is the child's Mum, and knows him well. She wanted the child to go to school to receive education. She feels now that she has to be everything to the child, Mum, nurse, OT, speech and language therapist, dietician. She is not a specialist, she wants these decisions to be made in a place where people are qualified to make them.

In relation to the issue of transport to school A (both time and cost) the appellant was clear that if the child is granted a place at school A, the family will move. They are currently in rented accommodation and intend to buy once the child's school arrangements are settled. They have no need to stay in school B and would not have the child at school 25 miles away from home. They would terminate the lease in their property and move to live near school A if the child is placed there.

The tribunal asked whether the appellant had been reassured by the evidence provided in relation to the community resource hub. She acknowledged the great commitment from the school, but it was not enough for the child now. To move forward, the appellant feels the child needs more structured controlled environment and at some points in the future he may be able then to move to mainstream. She does not feel that the child is included within the school and neither is she. She is a believer in mainstream education and inclusion and would support that. She has tried her best to be as supportive as she can be to the school.

In cross examination, the appellant confirmed that she had lost a lot of respect and trust in school staff when the child sustained injuries which were not discussed or disclosed to her. She appreciates the efforts very much that have been made by the child's teacher, who has no specialist qualification but is willing to learn and tries very hard to meet the child's needs.

The appellant provided evidence as to how the child shows anxiety. She advised that he has developed vocal tics which show when he is anxious (short intakes of breath). This had started in Primary 2. He would express vocal tics travelling to or from school, during school or when he was coming home. The appellant believes that the tics started because of the situation in school and the whole environment in August 2017. There had been a considerable regression in Primary 1 to Primary 2.

In the last week of school before the Easter holidays in April 2018, the child was spending a lot of time in the toilet before school. The appellant had thought that was due to the diet and he was late for school a few mornings. He was then refusing to go horse riding and was really upset. He normally loves horse riding. He had been there the previous week and he said that a child was crying. On the last day of term 29th March, the appellant had been called to collect the child from school. He was in a dreadful, distressed state. The school had said that the environment was too noisy for him. The child had come home hysterical for at least an hour and a half after school and it affected him in to the Easter break. As a result, the family had to cancel a holiday.

The child's weight has also reduced which indicates a decrease in appetite which is usually an indicator of anxiety, illness or stress. After school he was still sitting in the toilet crying and saying "home home" when he was at home. When it was explained to him it was the school holidays he was relieved. No information was available to the appellant as to what had caused the distress in school other than it was noisy. Her concern is that if the school don't know what has happened to cause the child's distress it would be very difficult for them to formulate a plan to deal with it. The incident of 29th March is not unique. The appellant said she has been required to collect the child as times in the past year when he has been upset and the school cannot calm him.

The appellant was clear that it is always a reason for upset if the child is over stimulated and hyper, but he was an "emotional wreck" on 29th March and was with his pupil support assistant and his teacher in the sensory room. It was apparent that he was very distressed. He was sobbing, shaking and crying uncontrollably. No reasonable explanation was given to the appellant, but she could not pursue the matter further because she needed to get the child home. His teacher had said that she would telephone or send a message to discuss matters, but she had not heard from her as the holidays had started.

The initial MAPPM meeting due to take place in March had not taken place as no health professionals turned up and has now been rescheduled.

In relation to the email from the educational psychologist at R99 the appellant did not know what the educational psychologist meant by her reference to a sensory

meltdown on 29th March, nor did she have any knowledge of a similar incident mirrored at home. In relation to the reference to a plan to reduce recurrence, the appellant made it plain that no one in school appeared to know what had happened in the first place and therefore they would not be in a position to plan to reduce a recurrence if they did not know what the trigger has been.

The MAPPM meeting which took place on 29th March lasted around an hour. It followed a meeting on 15th March which had taken place between the teacher the class teacher, the appellant and the head teacher who was a minute taker. Changes to the child's timetable had been discussed. Swimming had been added once a week to twice a week and providing for the disabled was increased from once a fortnight to once a week. The idea of a café day had also been explored in order to address inclusion. A weighted pencil had been provided by the appellant and she had discussed the use of that in school. The issue of rewarding the child for carrying out tasks had also been discussed. The appellant undertook to provide the tribunal with a copy of the new timetable.

The draft minutes of the meeting were lodged by the appellant at A174. Nothing was discussed at that meeting about the child's fundamental issues regarding toileting and nutrition.

The meeting on 29th March was attended by speech and language therapy, the appellant and her husband, the class teacher, and two-minute takers who were not introduced to the appellant. As the health professionals were not there, they just had a general discussion. CAMHS, paediatricians, dietician and OT were expected to attend, and no reports were sent in in their absence.

Riding for the disabled appears to be breaking down at present but the appellant is not clear why. In relation to the owl therapy and outdoor learning, these have been looked at by the school and are due to start. In relation to music and movement the appellant was not sure how these would help the child, but she was happy for them to be introduced. The speech and language therapist intended to do more consultancy with the school and emotional literacy, and the appellant had still not seen the ABC charts.

In respect of the comment that sensory strategies were now in place, the appellant had clarified with the occupational therapist in the week before providing evidence to the tribunal that the sensory diet in place is from information obtained in August 2017. New forms are required to have the sensory diet updated as the child's needs have changed since last August. These sensory strategies have been put in place from OT recommendations regarding the sensory diet. That came about when the appellant had received a sheet at home which she completed in August 2017. The school staff completed the questionnaire as well and the sensory diet was prepared on OT recommendations from that. No OT assessment has been carried out. The OT attended school for half an hour in February or March, without the knowledge of the appellant and provided the teacher at the community resource hub with some ideas for strategies she could attempt at school. The visit between the OT and the school was not discussed with the appellant and she was unclear whether the OT had met directly with the child. No report or list of recommendations followed that meeting in school between the OT and staff, but new forms were sent out to the

appellant to complete to enable the OT to do an updated assessment. However, the OT allocated has indicated to the appellant that she cannot do sensory integration therapy as she is not qualified to do it.

Out with school, the appellant met with the OT, psychologist and clinical nurse in the first week of April 2018. This was an informal meeting to see what help could be obtained for the child as the school were not involved in that meeting. No further support or guidance about eating is being provided. The dietician can advise the appellant about the child's percentiles and weight but not regarding his food issues.

The child's weight is down, and his height weight ratio is extremely low because he is very tall for his age.

The child's tolerance to babies and children crying is becoming worse and on several occasions in the community he has had to be restrained by the appellant. This makes the family scared to go out together and means that the child misses out on social integration. The OT felt that there was nothing she could do to assist but referred the appellant to a private occupational therapist for further work. This is the kind of therapy that could be carried out at school A. An updated sensory strategy is awaited by the appellant, and psychologists are waiting to spend time with the child to diagnose whether he has anxiety or avoidant behaviour disorder. All of this information has been shared with the school to enable a joint approach.

In cross examination the appellant confirmed that she wants the child to attend school A mainly due to the experienced staff who would be there onsite to assist with his eating disorder and put in pace multiple strategies which are available to meet that. No other therapy is going to be of any use if the child is not eating. He needs to be in an environment where his eating disorder is properly managed.

The appellant also advised the tribunal that the iPad which had previously given to the child has now been withdrawn from him as funding had not yet been obtained. She remains concerned to ensure that the child is given a means to communicate. The appellant had contacted the head teacher to request help for funding the iPad but had been told that she would be unable to do that as the child had a pixon to communicate. It became apparent at the meeting on 29th March that the speech and language therapist had been present when the pixon board was used in connection with food again, despite the appellant's views about that. The pupil support assistant had been keeping a kinder egg away from the child until he used his pixon board to ask for chocolate. This incident further undermined the appellant's confidence in school staff as they had denied they were using the pixon board as a reward in this way.

The appellant acknowledged that the school is very good at modelling speech. They speak clearly with the child and have a natural way of communicating clearly. The child is quite good at picking up phrases and the school work well with him in that regard.

On further examination by the panel, the appellant confirmed that the child's needs are more complex than the needs of her older son who was educated in mainstream school with special support. She had hoped that the child would be able to be

educated in mainstream environment but the environment at school B was too busy and too noisy. He has been unable to progress with his eating disorder. The appellant feels she has done everything to support the school, but most therapies were suggested late in the day from the PCP meeting which took place immediately before this tribunal commenced. Everything that has been suggested by the appellant by way of access to school A therapies or joint placement has been refused. The appellant was very clear that the co-ordinated support plan for the child does not meet his needs. There is nothing in that plan to support his eating which is the fundamental issue. CAMHS say there is nothing they can do, and the school say there is nothing they can do. For the CSP to work, someone has to say specifically what they are going to do, identify a need and provide the support for it. That still has not been done.

The appellant confirmed her belief in inclusive education and confirmed that if the child was doing well at school A and was able to move in to mainstream, with the barriers to his learning being overcome, she would want that to happen if it was right for the child. She feels that in school B he was thrown in at the deep end and is now in a mess. He started off being able to cope more than he can now. His main barriers are eating, sensory issues, emotional understanding of himself. He is very clever and does not forget what he learns but sometimes he learns the wrong things. For example, he had access to a Grand Theft Auto game in school, so he came home swearing. The appellant was advised that he had accessed the game on the iPad of a member of staff. It was completely unacceptable to the appellant for the child to be exposed to this.

The appellant feels that it is not beneficial to the child to be put in an environment where he could attack babies and children. He is learning negative behaviour because of his anxiety. He is earning rewards for doing tasks. The appellant does not agree with it and still has doubts about how appropriate it is that this continues to happen. The appellant is firmly of the belief that the child is being held back in his ability to communicate. She cannot understand why he has waited so long for digital education. In addition, he wants friends. He cannot integrate with others unless he feels safe and secure. The appellant was clear that school A is not a miracle school, but he is not progressing at school B and she wants him to move forward. She feels that a placement at school A is the best opportunity for him to do that.

The appellant provided compelling evidence, giving credit to school B where she considered it to be due and clearly expressing her concerns for the child's future if he remains in education there. She made it clear to the tribunal that her primary concern is to reduce the child's anxiety and allow him to be educated in an environment where he can learn with his peers. His eating disorder will not be addressed until his anxiety is addressed and that requires an environmental change.

Reasons for Decision

Written submissions were lodged for both parties and are within the tribunal papers. These were fully considered by the tribunal in reaching a decision.

The tribunal required to consider the evidence and decide whether the ground of refusal relied upon by the respondent existed at the date of the tribunal Hearing. The tribunal concluded that, based on the evidence led the ground of refusal relied upon did not exist as at the date of the tribunal and accordingly the child requires to be placed in the specified school, namely school A.

The burden of establishing that a ground of refusal exists at the date of the hearing is on the respondent. In this case the respondent required to satisfy the tribunal that the conditions of paragraph 3(1)(f) of Schedule 2 to the Education (Additional Support for Learning) Scotland Act 2004 applied. The parties' agreed that condition 3(1)(f)(i) and (iv) applied. The tribunal required to determine whether paragraphs 3(1)(f)(ii) and (iii) also applied.

The respondent relied upon the evidence provided by witness 1 and witness 2. The respondent also suggested the witness 3 had provided evidence that provision at school B was slightly better than what he initially understood to be the case. On reviewing the evidence of witness 3, the tribunal did not form that conclusion from his evidence. Witness 3, who is an expert in his field was clear that school A had specialist resources and was better placed to meet the needs of the child overall. He considered the decision to be finely balanced but felt that school B was at the upper limits of its capacity to meet the child's needs and relied upon everything working perfectly in harmony to continue to meet those needs to a reasonable standard.

The appellant relied upon her evidence and the expert evidence provided by witness 4 and witness 3, both of whom were considered by the tribunal to provide compelling evidence. They have the necessary credentials to give their evidence creditability. Their reports were clear, and their oral evidence compelling.

The respondent did not discharge the burden of proof as the evidence provided, for the reasons stated above in relation to each of the respondent's witness's evidence, did not find satisfy the tribunal, or persuade us that the decision to refuse the placing request was justified. We were not satisfied on the evidence provided by the respondent that all conditions in s3(1)(f) applied.

The tribunal followed the reasoning in the Inner House case of *City of Edinburgh v MDN* (2011) CSIH 13 where it was stated "when looking at a child's additional support needs, these needs require to be stated in a more general, all-encompassing and indeed holistic way, rather than by endeavouring to separate out educational support on the one hand and Social Work on the other". In this case, it is impossible to separate the child's health needs from his educational support needs. His anxiety and eating difficulties fundamentally influence to his ability to engage in education and engage with his environment. These needs are so severe that they require expert assessment and appropriate direct specialist input. Such specialist input is not available as required by the child at school B.

School A have confirmed that they are willing to admit the child (T18). Where the authority receives such a request they are under a duty to place that child in line with their parents' wishes and to meet the fees and other necessary costs of attendance at the specified school, subject to paragraph 3 Schedule 2 of the 2004 Act. Paragraph 3 sets out the prescribed circumstances in which that duty does not

apply. Those circumstances are also known as grounds of refusal. In this case the authority relies upon grounds 3(1) (f), as referred to above. The tribunal concluded on the basis of the evidence provided from the appellant, and the expert witnesses led on her behalf, that the child is not receiving an adequate and efficient education directed towards his personality and talents, as is required in terms of the Education Scotland Act 1980.

The tribunal agreed with the submissions of the appellant that school A is a suitable school with a wealth of experience in dealing with pupils with additional support needs and noted experience in the management of eating disorders. School A can provide specialist staff to assist with such therapeutic work as the child requires to progress and to meet his full potential. Evidence in support of that position was provided by witness 4 and witness 3. The child is at the most extreme level of severity for a child with avoidant restrictive food intake disorder, all as confirmed by witness 4. Both she and witness 3 considered that a child with the complex needs of the child required education in specialist education provision. The specialist reports lodged by witness 4 and witness 3 provide ample, credible and balanced evidence in support of the child's placement within a specialist school environment. That need for specialisation and access to necessary services has not been met at school B in such a way as to ensure that the child receives an adequate and efficient education directed towards his personality and talents.

In relation to paragraph 3(1)(f)(ii) the authority required to satisfy the tribunal that they can make provision for the additional support needs of the child in a school, whether or not a school under their management, other than the specified school. The tribunal is satisfied that it is not possible for the authority to make provision for the additional support needs of the child in school B. There is evidence of delay in organising essential assessments from speech and language therapy, occupational therapy and accessing educational psychology. The tribunal accepted the appellant's significant concerns regarding the lack of communication between school and home on matters of significance, particularly in relation to injuries sustained by the child and in relation to the use of rewards. The lack of input from professional services to implement strategies to meet the child's needs was also a concern to the tribunal and indicated a lack of clear understanding of the level of the child's educational and support needs. Witness 2 provided evidence to the tribunal that the resource hub was a specialist resource to meet the support needs of pupils within the council. However, the specialist input which the child required is not easily accessed in the hub and had as a matter of fact been lacking in relation to the child.

It is evident that school B school cannot fully manage the child's eating disorder. At the time of the tribunal hearing the appellant was collecting the child at lunch time 1 or 2 days per week. The child's anxiety in relation to attending school had increased and there had been incidents at school which the school could not explain, resulting in the child being collected when in a distressed state. The child's anxiety is evidenced to his parents at home. He has vocal tics, enuresis and challenging behaviour.

It was a matter of considerable concern to the tribunal that at a multi-agency meeting on 27th June 2016, in advance of the child commencing Primary 1, the appellant was advised that school B would be able to meet all of the child's additional support

needs including the preparation of a sensory profile following referral to occupational therapy. Such an assessment has not yet been undertaken.
The child's sensory issues are fundamental to the management of his additional support needs as well as his ARFID. The sensory diet in place for the child currently is based on information obtained in August 2017. No information has been obtained from a formal assessment to inform a sensory profile.

It is of significant concern that a CSP was requested in June 2017 and not prepared until December 2017. The authority's witness, witness 1 appeared to lack understanding of the purpose of a CSP. The CSP which was prepared did not mention the child's eating disorder, its impact upon him or any approach to address same.

Witness 1 described the community resource hub where the child is currently educated as flexible and responsible and being able to adjust to meet his needs. The child's needs however remain unclear to school B, as the essential assessments required to identify those needs and identify the support required to meet those needs remains outstanding. It is not clear from the evidence provided, that any of the staff within the community resource hub have specialist training in relation to managing ARFID, and the tribunal accepted the unchallenged evidence of the appellant that the community resource hub teacher is not specially trained in additional support needs. Witness 2 attempted to persuade the tribunal that the community resource hub is the equivalent to a special school and that the services available were on a par to that expected at any special school, including school A. This is not borne out by the evidence of witness 3 or the appellant.

The tribunal was informed that the assessment upon which school B based provision of the child's support needs had been done by the educational psychologist. The tribunal was advised that this assessment was a working document. Initially this document was not provided with the tribunal papers but was lodged, upon request by the tribunal. It consists of a list of bullet point summarising a discussion which took place. There is a section headed action. The actions listed describe the child's additional support needs and his likes and dislikes. It is not a formal assessment of the child's needs and does not provide adequate information in relation to the management of the child's very complex additional support needs. It is an indication of the lack of understanding at school B of the level of complexity and severity of the child's needs.

The tribunal was concerned about the evidence of witness 1 that support was responsive for the child rather than ad hoc, and was not persuaded regarding her evidence that the child had access to a bespoke service. A reactive approach to providing support is not effective in meeting the child's additional support needs. Specialist, appropriate assessment is required to identify the child's specific needs and address the appropriate strategies and supports to meet those needs. Witness 3 described the child's needs as being exceptional. He described the child's needs as being beyond the school's competence. Various resources have been identified as potentially assisting in meeting the child's additional support needs. However, these resources have not been provided by school B.

The appellant's evidence is that the child is not getting on well at school. He is struggling daily. He is being collected early and spending most of his school day in the sensory room. Despite the best efforts of school B staff, the school is not able to fully meet the child's additional support needs.

In Schedule 2, paragraph 3(1)(f)(iii) the tribunal requires to consider whether said section applies i.e. that it is not reasonable having regard to both the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii) to place the child in the specified school.

The tribunal accepts the appellant's position that having regard to the respective suitability and to the respective cost of the provision for the additional support needs of the child, it is reasonable to place him at school A. Witness 3's report is supportive of the placement at school A on balance. The tribunal considered witness 3's report to be highly creditable and to be fair and impartially given. He had formed an opinion having taken into account the respective provision at both schools and with a full understanding of staged intervention and provision within mainstream and specialist residential education provision. On balance he formed the view that the provision at school A was most likely to meet the child's needs. In his experience he considered it would be difficult to identify children with the child's level of needs within a mainstream school environment, even such as supported provision within mainstream. He identified the child as being "at the far end of complexity" in terms of his additional support needs. To meet the child's needs within school B all systems would require working harmoniously, and they would require to adapt efficiently as the child's needs change. Witness 3 expressed real concern as to the sustainability of such a placement. He acknowledged the limit to the resources of the school and staff at school B in terms of the extent to which the child's needs could be met there. Witness 4 raised concerns about the suitability of school B for the child. She has considerable experience, all as detailed in her credentials lodged in the tribunal papers. In her experience most of the children and young people who suffered from ARFID and had similar eating profiles and similar ASD difficulties to the child were already in an independent special school. She considered the child to be in the top 2-4% of severity in terms of ARFID. Her experience is national, and she holds a complex case load due to her specific expertise. In her experience eating patterns of children with ARFID generally improve with a wraparound service, consistency of educational support, availability of specialist input and an environment which was both ASD friendly and sensory appropriate, all of which could be achieved within school A. In her view, the interventions currently in place in school B were not working - as evidenced by the child's anxiety and the fact that he was not settled in school. In her opinion the child's anxiety requires to be addressed fundamentally before any strategies to alleviate his eating disorder could be effective. Witness 4 believed issues in relation to the child's eating were likely to happen wherever he attended school; however what was important was how these issues were dealt with. The independent special school was the best place to deal with the child's eating disorder given the availability of the specialist input required to manage this. Witness 4 considered that the child's transitioning to school A could be managed without causing the child significant detriment.

Witness 2, conceded that school A school could meet the child's needs but remained of the view that school B could also meet the child's needs and therefore was the preferred placement, with the additional advantage of allowing the child to be educated within his local community. She appeared to the tribunal to have a view that the community resource hub would be able to meet the child's needs throughout school, and to underestimate the professional opinion of witness 3. She acknowledged that school A school has an in-house doctor, medical staff, dietician and speech and language therapist allocated to the school, to which the child would have access. Such direct, onsite input is not available at school B. It is likely that such direct onsite input would be of substantial advantage to the child to assist to address his fundamental difficulties, which are causing significant barriers to learn

It was witness 4's view that school A was wholly suitable to the child as it offered him an opportunity to be educated within an environment where he is comfortable, feels safe and nurtured. The tribunal accepted witness 4's evidence in this regard, which was fully supported by the appellant and by witness 3.

Accordingly, the tribunal concluded that school A school is the most suitable.

In relation to cost, the parties had entered in to a joint minute confirming that the cost for attendance at school A per annum is £23,370.00 as a basic cost with transport costs of £38,000.00 per annum. During evidence, the appellant made it clear to the tribunal that transport costs will not be an issue as she and her family will move to live close by school A in order to be near for the child and to avoid him requiring travelling. The tribunal accepts the appellant's evidence in this regard. The base cost therefore in relation to attendance at school A is £23,370.00. The basic cost with additional provision required for the child at school B is approximately £9,000.00 per annum. This expenditure does not fully meet the child's complex and severe needs.

The child's additional support needs are such that the cost of placing him in school A can be justified considering the suitability of the placement and the benefits it will bring to him to meet his severe and complex needs.

The tribunal concluded that it was reasonable having regard to both the respective suitability and to the respective cost of the provision for the additional support needs of the child in school A and school B to place the child in school A.

Accordingly, the tribunal, being satisfied that the conditions in 3(1)(f) do not all apply in respect of the child, finds that the grounds for refusal of the placing request do not exist and exercises powers in terms of Section 19 (4A)(b). The tribunal overturns the decision of the respondent and requires the respondent to place the child at school A immediately.