



Additional Support Needs

**DECISION OF THE TRIBUNAL**

List of witnesses

**For the appellant:**

The appellant

**For the respondent**

Learning, Policy and Performance Manager (witness A)

Acting Head Teacher, Mainstream primary school (witness B)

Head teacher of the specified school (witness C)

**1. Reference**

1.1. This is a reference made under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) in respect of a decision by the education authority under section 18(3)(da) of the 2004 Act refusing a placing request made in respect of the child under paragraph 2(1) of schedule 2 to the 2004 Act.

1.2. The grounds of refusal relied upon by the education authority are:

(a) *paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act*

placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment;

(b) *paragraph 3(1)(a)(ii) of schedule 2 to the 2004 Act*

placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school;

(c) *paragraph 3(1)(a)(vii) of schedule 2 to the 2004 Act*

placing the child in the specified school would though neither of the tests set out in paragraphs (i) or (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers; and

(d) *paragraph 3(1)(g) of schedule 2 to the 2004 Act*

if, where the specified school is a special school, placing the child in the school would breach the requirement in Section 15(1) of the Standards in Scotland's Schools etc. Act 2000 (**the 2000 Act**).

## 2. Decision

2.1. In terms of section 19(4A)(a) of the 2004 Act, the tribunal being satisfied that:

(i) one or more grounds of refusal specified in paragraph 3(1) of schedule 2 to the 2004 Act exist; and

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

confirms the decision of the education authority.

## 3. Process

3.1. A case conference call took place in February 2021 attended by the legal member, the appellant, the child's father and the solicitor for the education authority.

3.2. A second case conference call took place in March 2021 attended by the legal member, the solicitor for the appellant and the solicitor for the education authority.

3.3. The reference proceeded to a hearing in two days in May 2021. The hearing took place by video conference.

**[Part of this paragraph has been removed by the Chamber President for reasons of privacy and anonymity under rule 55(3)(a)(b)(c) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

3.4. Parties lodged written submissions, as agreed.

## 4. Findings of Fact

4.1. The child is nine years old.

4.2. The child has diagnoses of Autism Spectrum Disorder (**ASD**) and Attention Deficit Hyperactivity Disorder (**ADHD**) and was assessed in March 2021 as having dyslexia.

4.3. The child struggles to work independently, needs a lot of reassurance during class, struggles to retain and read more abstract and tricky words, takes extra time to write a word and to follow an instruction and does not like loud noise. The child has ear defenders and uses them as appropriate.

4.4. The child has a significant degree of hyperactivity, distractibility and impulsivity, can become fixed on routine and become distressed if his routine is changed. He can become fixated on his interests to the point of obsession. He struggles with emotional regulation and can be overwhelmed if over stimulated. He has a literal understanding of language and

struggles to understand idioms and sarcasm. He has difficulty picking up on other people's feelings. He has significant sensory sensitivities. He struggles particularly with unstructured time at school.

4.5. The child attends his mainstream primary school from 8.55 am until 3.30 pm Monday to Thursday and from 8.55 am until 12.30 pm on Friday and has a strong attendance record.

4.6. The child is in a class of 23 pupils, has a class teacher and receives support from a pupil support worker allocated to his class for twenty five hours each week.

4.7. The child had an enhanced transition into primary 5 and selected his seating position within his classroom.

4.8. The child has access to a calm corner at the front of his class as and when required.

4.9. The child has access to a nurture room as and when required.

4.10. The child receives support from a support for learning teacher and is supported during break and lunchtimes by a family link worker.

4.11. The child attends small groups including rapid reading recovery (three times per week for 30 minutes on each occasion), mathematics rapid recovery (two times per week for 30 minutes on each occasion) and a phonological recovery group (three times per week for 30 minutes on each occasion).

4.12. The child is part of a weekly Lego therapy based intervention led by the principal teacher or depute head teacher lasting around twenty five minutes.

4.13. The child previously attended Urban Nature, an animal therapy programme, once per week and now attends Kids Gone Wild each week for approximately one and a half hours each Friday morning.

4.14. An additional support needs service member attends child planning meetings in respect of the child.

4.15. The child has additional support needs in terms of the Education (Additional Support for Learning) (Scotland) Act 2000.

4.16. The child's barriers to learning are his dual diagnoses of ASD and ADHD. He struggles to work independently and needs a lot of reassurance during tasks. He struggles to retain and read certain abstract and difficult words and takes additional time to write a word or follow an instruction. He does not like loud noise.

4.17. The child is polite, well-mannered and compliant. He engages with his classmates when he chooses to do so. His classmates engage appropriately with him.

4.18. The child claims to be unwell when he wishes to remove himself from his classroom.

4.19. The child does not go to the playground as he does not like the noise.

4.20. Staff employ over learning and repetition approaches with the child as appropriate.

4.21. The child has comprehension skills appropriate to his age.

4.22. The child has a reading ability approximately three years less than his chronological age.

4.23. The child's numeracy remains at the level expected of a child at the end of primary 4.

4.24. The child continued to attend his primary school during the lockdown during which time the class size was at a reduced level of around 8 pupils. The class was taught by a variety of teachers.

4.25. The specified school (i.e. the school specified in the appellant's placing request) is a special school, namely an autism unit resource. It shares a head teacher and a building with a mainstream primary school.

4.26. The specified school and the mainstream primary school together have a staff of 26 full-time equivalent teachers. This staff covers 16 classes in the mainstream primary school and 3 classes in the specified school.

4.27. The specified school has a maximum capacity of 18 pupils divided among three classes, each of 6 pupils. The maximum number of pupils allowed and who can be accommodated and supported in each class is 6. Each class has 1 teacher and 1.75 advanced pupil support workers allocated to it.

4.28. Class 1 in the specified school comprises four primary 1 pupils, one primary 4 pupil and one primary 5 pupil. Class 2 comprises one primary 2 pupil, two primary 3 pupils and three primary 4 pupils. Class 3 comprises two primary 5 pupils, two primary 6 pupils and two primary 7 pupils.

4.29. The cohort of pupils at the specified school have severe and complex needs ranging across significant communication and support needs, toileting and dietary disorders, health care issues and varying degrees of behavioural difficulties.

4.30. The specified school usually has three classrooms. In the course of the pandemic arrangements have been made for the specified school to use four classrooms, with one class divided between two classrooms.

4.31. The classrooms used by the specified school are purposefully small

4.32. A schoolteacher has been deployed from the mainstream primary school which shares a building with the specified school to cover staff shortage due to the pandemic.

4.33. The education authority does not have the capacity in terms of additional teachers and advanced pupil support workers to educate a pupil in the specified school additional to its existing cohort of 18 pupils.

## 5. Reasons for the Decision

5.1. The education authority relied upon the four grounds of refusal set out at section 1 above. The appellant disputed that the grounds of refusal existed.

5.2. The tribunal had in the bundle of papers before it written statements from and heard oral evidence from **witness A** (the education authority's learning, policy and performance manager), **witness B** (acting head teacher of the child's current mainstream primary school) and **witness C** (head teacher of the specified school, i.e. the school in which the appellant requested that the child be placed) and from **the appellant**. The tribunal was impressed by each. All gave their oral evidence in a straightforward manner, engaging thoughtfully with

questions put to them, seeking to answer those questions to the best of their ability and acknowledging appropriately where they could not answer questions.

5.3. The tribunal had in the bundle of papers before it (at A001) a letter from a consultant child and adolescent psychiatrist. The psychiatrist did not give oral evidence to the tribunal and so was not available for questioning. It was agreed by the parties in the joint minute of admissions that the psychiatrist “supports the Appellant’s placing request”; is of the opinion “that all children with a diagnosis of ASD may benefit from being educated in an autism resource”; “is not involved in the educational needs of [the child] and is unable to comment on his specific educational needs”; is of the opinion that the child’s “social communication difficulties, fixation on routine, literal understanding of language, struggles to understand idioms and sarcasm, struggles with emotional regulation, and difficulties understanding and picking up on other people’s feelings are common amongst children with a diagnosis of ASD”; “has not viewed [the child] in class and has not viewed his written work”; “is unable to comment on how [the child] currently presents at [the child’s current primary school]”; “is unable to comment on the supports currently in place for [the child] at [the child’s current primary school]; and has not spoken with the child’s class teacher or the head teacher of the child’s current primary school since undertaking a neurodevelopment assessment in 2020. While in its consideration of this case the tribunal had regard to the contents of the letter from the psychiatrist, in light of those agreed admissions and that the psychiatrist was not available to be questioned the weight that the tribunal could give to the views expressed by the psychiatrist was limited.

5.4. In reaching its decision the tribunal had regard to the views of the child as set out in the document at T035 and T036 of the bundle of papers before it and as commented upon by the appellant at paragraphs 40 and 41 of her written statement (A010).

5.5. The tribunal considered the documents in the bundle of papers before it, the oral evidence given and the written submissions made to it and reached its decisions on each of the grounds of refusal for the reasons given below.

***Placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment: paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act***

5.6. The **specified school** – i.e. the school specified in the appellant’s placing request – is an autism unit and is a special school as defined at section 29(1) of the 2004 Act:

“(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school,

the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance as the school, class (or as the case may be) unit by reason of those needs”.

5.7. It shares the same building with a **mainstream primary school**. The specified school and the mainstream primary school have the same head teacher, witness C.

5.8. Class sizes in special schools and units are capped in accordance with the provisions of appendix 2.9 of the Scottish Negotiating Committee for Teachers (**SNCT**) Handbook.

5.9. Appendix 2.9 of the SNCT Handbook specifies a maximum of 10 pupils where additional support needs arise from moderate learning difficulties or profound learning difficulties; 8 pupils where additional support needs arise from severe physical impairment or severe learning difficulties; and 6 where additional support needs arise from significant hearing impairment, significant visual impairment, language and communication difficulties or social, emotional and behavioural difficulties.

5.10. Witness A's evidence was that the specified school has a capacity of 18 pupils divided into three classes of 6 pupils and that the classes are capped at 6 pupils. This is in accordance with appendix 2.9 of the SNCT Handbook in line with the impairments and difficulties of the cohort of pupils at the specified school that their additional support needs arise from. Witness A was clear that the cap of 6 pupils per class is fixed and cannot be breached and that the specified school is at capacity in terms of the number of pupils.

5.11. There appeared to be a suggestion at one point in the oral evidence of witness A that at one time a "seventh pupil" was in one of the three classes. After questioning, the tribunal was satisfied that the issue arose when one pupil was transitioning into mainstream. The transition process was going so well that, unusually, before the transition process was formally completed another child was accepted into that child's specified school class. Normally this would not happen until the transition process was formally completed in case the transition process stalled or failed and the child had to be returned from mainstream placement to the specified school. That did not happen. The tribunal was satisfied that this unusual situation did not involve seven pupils actually being taught together in a class in the specified school.

5.12. Witness A explained that the education authority has no teachers – whether full-time or part-time – or advanced pupil support workers available to meet the requirements of teaching an additional pupil in the specified school, which would involve creating a fourth class. Witness A explained that there are no supernumerary teachers, that there is no supply list, that there is a shortage of teachers and that there is no scope for re-deployment of teaching staff to meet the needs of an additional pupil in the specified school.

5.13. Witness C explained that there are currently 18 pupils enrolled in the specified school with 6 pupils in each of the specified school's three classes. Witness C explained that there are no additional teachers or advanced pupil support workers currently available within the education authority on a full-time or part-time basis. Witness C explained that while there has been re-deployment of a staff member from the mainstream primary school to the specified school to cover staff shortage at that school arising from the pandemic this is only a short-term measure and is not able to continue indefinitely given the need to allocate full-time and part-time staff appropriately across the specified school and the mainstream school in the longer term.

5.14. Witness C explained that the mainstream primary school and the specified school has a staff of 26 full-time equivalent teachers covering sixteen classes in the mainstream primary school and three classes in the specified school. While some of the teachers in the mainstream primary school have the experience to teach in the specified school there is no scope to redeploy staff to cover an additional pupil in the specified school, which would require the creation of an additional class.

5.15. The parties were unable to agree whether the cap fixed for the classes at the specified school is mandatory or is a guideline only. This is a matter within the judicial knowledge of

this specialist education tribunal. The SNCT is a tripartite body comprising members from teaching organisations, local authorities and the Scottish Government. The SNCT Handbook sets out conditions of service for teachers employed by Scottish local authorities. The caps for class sizes are agreed at a national level and fixed for special schools in accordance with the requirements of the cohort of pupils in the specified school. Breaching the class size cap in the specified school would breach the education authority's legal obligations by breaching the terms and conditions of its employee teachers. The class size cap in place is in effect mandatory.

5.16. In any event the tribunal accepted the evidence of witness A that the class sizes are capped at 6 pupils in accordance with appendix 2.9 of the SNCT Handbook and cannot be breached. Further the tribunal accepted the evidence before it that class sizes are capped for good reason given the needs of the children within the classes, the support available to them and the size and layout of the classrooms used in the specified school. Increasing a class of 6 pupils to a class of 7 pupils is not a small matter. It is an increase in the class size of almost 17% and represents a very serious increase in the workload of the teacher and support staff responsible for that class. The tribunal is satisfied that such an increase would be detrimental to the teaching and support provided to all pupils in the class, including a newly placed seventh pupil.

5.17. The tribunal is satisfied that the child's placement at the specified school would cause a class at the specified school to be larger than 6 pupils and so would require the education authority to take an additional teacher into employment so as to avoid breaching its legal obligations by breaching the terms and conditions of its employee teachers and to preserve the quality of teaching and support provided to pupils.

5.18. The tribunal considered all of the documentary and oral evidence before it and in particular the written and oral evidence of witness A and witness C and of the appellant. The tribunal recognises the wish of the appellant that the child be taught in a smaller sized class. The tribunal noted that the appellant's knowledge of the specified school, albeit that a friend's child attends it, is quite general in nature. The tribunal was satisfied from the evidence provided to it that the appellant's understanding that her friend's child is in a class of seven pupils in the specified school is incorrect. In weighing the evidence before it the tribunal had regard to the professional roles, practice and experience of witness A and witness C, their professional experience of children with additional support needs and their experience of allocating pupils to appropriate teaching environments and the complex issues of deploying a cohort of full-time and part-time teachers and support staff to meet the requirements of educating pupils in various educational environments.

5.19. The tribunal was satisfied, for the reasons given above, that placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment.

***Placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school: paragraph 3(1)(a)(ii) of schedule 2 to the 2004 Act***

5.20. The evidence in respect of this ground of refusal came from witness A and witness C.

5.21. The specified school and the mainstream primary school are housed in the same building. The building is not new. A floor plan and key to the floor plan were provided at page R028 of the papers. The building comprises a lower ground floor, ground floor and first floor comprising classrooms, office space, dining rooms, PE hall and library among other rooms and spaces.

5.22. Witness A explained that there is no space in or around the specified school or the mainstream primary school to accommodate an additional classroom which would be required if a pupil additional to the existing cohort of 18 pupils in the specified school was placed in the specified school. If there was space to do so the cost would be approximately £250,000 being the figure generally used by colleagues in the planning department when calculating the cost of extending a school building. Witness A explained that it is not possible to convert an existing room into an additional classroom or to divide an existing classroom into two classrooms.

5.23. Witness C referred to the plan and explained the use of some of the spaces in the building. While witness C graduated from University in 2002 with a Master of Arts Honours Degree in Architecture the tribunal was not aware of any employment or experience that witness C had utilising this degree. The tribunal did not understand witness C to claim any expertise in the area of carrying out building work or of modifying buildings whether arising from this degree or otherwise. Witness C explained that there were no rooms in the building which could be sub-divided to accommodate an additional classroom and that there was no suitable space to extend the building.

5.24. The solicitor for the appellant questioned witness C about possible alternative uses of space within the building, use of outbuildings for classroom space and possible modification to or sub-division of spaces within the building. Witness C did not cling blindly to her position. Witness C engaged appropriately with questions and maintained her position.

5.25. The tribunal considered all of the evidence carefully. It appeared to the tribunal that in respect of the requirement or otherwise to carry out modifications to, sub-division of or extending the existing building or the prospect of modifying existing outbuildings or constructing new outbuildings witness A and witness C were being required to speak to matters outwith their own areas of professional expertise, practice and experience. It appeared to the tribunal that for these issues to be properly addressed evidence would be required from a person with relevant qualifications or experience.

5.26. It appeared to the tribunal that in respect of the practicality or otherwise of re-organising the use of rooms and other spaces within the building to accommodate an additional classroom the tribunal was not provided with sufficient detail as to how rooms and spaces were currently used and precise reasons why those rooms and spaces could not be used differently in order to accommodate another classroom.

5.27. The tribunal noted that the use of rooms has been altered so that the specified school now spreads its cohort of pupils and support staff across four classrooms, rather than three as previously, to ensure that there is sufficient space for appropriate distancing between staff and between staff and pupils during the pandemic. It was explained that this was a short-term measure and would not last indefinitely.



5.28. Nevertheless, given that it has been possible to make changes to the organisation of the use of space in the building and given that there is a wide range of rooms and other spaces in the building occupied by the specified school and the mainstream primary school, the tribunal was not satisfied on the evidence before it that such reorganisation of space could not practically be achieved to accommodate an additional classroom in the event that a pupil additional to the cohort of 18 pupils in the specified school was placed in the specified school.

5.29. For the forgoing reasons the tribunal was not able to be satisfied on the evidence before it that placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school.

***Placing the child in the specified school would though neither of the tests set out in paragraphs (i) or (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers: paragraph 3(1)(a)(vii) of schedule 2 to the 2004 Act***

5.30. Section 29(2) of the 2004 Act provides that the expression “school” has the meaning given in section 135(1) of the Education (Scotland) Act 1980 (**the 1980 Act**).

5.31. Section 135(1) of the 1980 Act provides that the expression “school” means:

““an institution for the provision of primary or secondary education or both primary and secondary education being a public school, a grant-aided school or an independent school, and includes a nursery school and a special school; and the expression “school” where used without qualification includes any such school or all such schools as the context may require”.

5.32. Accordingly, for the purpose of considering this ground of refusal the tribunal considered only the capacity of the specified school (and not the capacity of the specified school taken along with the mainstream primary school).

5.33. For the reasons given at paragraphs 5.5 to 5.18 above the tribunal was satisfied that the capacity of the special school is 18 pupils and that currently it has a cohort of 18 pupils and that placing the child in the specified school would have the consequence that the capacity of the school (the specified school) would be exceeded in terms of pupil numbers.

***If, where the specified school is a special school, placing the child in the school would breach the requirement in Section 15(1) of the Standards in Scotland’s Schools etc. Act 2000: paragraph 3(1)(g) of schedule 2 to the 2004 Act***

5.34. Section 15 (1) and (3) of the 2004 Act provides:

“(1) Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.

...

(3) The circumstances are, that to provide education for the child in a school other than a special school–

(a) would not be suited to the ability or aptitude of the child;

(b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or

(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

and it shall be presumed that those circumstances arise only exceptionally.”

5.35. In short, the education authority must provide school education to the child in a mainstream school (“a school other than a special school”) unless one of the three circumstances set out in section 15(3) of the 2000 Act arises.

5.36. It was not argued before the tribunal that either circumstance set out at section 15(3)(b) or (c) arose. See paragraphs 81 and 82 of the written submissions for the education authority and paragraphs 20 and 21 of the written submissions for the appellant. For the avoidance of doubt the tribunal was satisfied on the evidence before it that neither circumstance arose.

5.37. The circumstance set out at section 15(3)(a) was argued before the tribunal. The position of the appellant was that to provide education for the child in his mainstream primary school (“in a school other than a special school”) was not suited to the ability or aptitude of the child. The position of the respondent was that to provide education for the child in his mainstream primary school (“in a school other than a special school”) was suited to the ability or aptitude of the child. The onus, as with the other grounds of refusal, was on the education authority to satisfy the tribunal that the ground of refusal was made out (i.e. in shorthand, that placing the child in the specified school – a special school – would breach the requirement to provide education in a mainstream school).

5.38. The other grounds of refusal addressed above – whether found by the tribunal to have been made out or not – are essentially technical grounds of refusal in the sense that they do not directly address the child at the centre of this reference. This ground of refusal, it appears to the tribunal, goes to the heart of the appellant’s concerns: whether the child is placed in the right educational environment for him.

5.39. While the tribunal has considered all of the written and oral evidence before it and had regard in particular to the evidence, both written and oral, of the appellant this written decision cannot address each and every single point made in the evidence. However, it seeks to explain the reasons for the tribunal’s decision.

5.40. In considering the appellant’s position for the purpose of doing so the tribunal refers in particular to the parts of the appellant’s evidence that the appellant’s written submission specifically refers to, namely paragraphs 11, 17, 29 and 30 of the appellant’s written statement (at pages A004, A005 and A007 of the papers before the tribunal).

5.41. In short the appellant’s position is that the child only goes to school because he has to because his parents require to go to work; he does not see the educational purpose and cannot take much in due to his anxiety in the classroom; that while several of the child’s barriers to learning and the support strategies being used to address them are set out in the child’s individual education plan (**IEP**) those things help at particular times but do not help the child retain what he has learned and that fundamentally the child is in the wrong educational environment; that the child makes most progress when he has one-to-one support and when he is in a smaller group; the child is not making progress in a large, busy

and noisy classroom; the child is in the wrong environment; that while it was noted in March 2020 that the child lacks the ability to retain things he has learned at school the appellant's view is that the child is not able to learn in the mainstream environment; and that the appellant agrees with the child and adolescent psychiatrist that the child would benefit from smaller class sizes in which there is expert knowledge and understanding of Autism Spectrum Disorder.

5.42. With regard to the views of the consultant child and adolescent psychiatrist and her support "for consideration of a placement within specialist Autism provision", addressed at paragraph 5.3 above, the tribunal notes that the psychiatrist was not called to give evidence and so could not have her views scrutinised by means of questioning. Further, the psychiatrist's views are general and not based on assessment or detailed knowledge of the child's placement in his current mainstream primary school or on detailed knowledge of the specified school.

5.43. Witness A has significant experience of working in the area of additional support needs, witness B is the acting head teacher of the child's current mainstream primary school and knows the child and witness C is the head teacher of the specified school.

5.44. The tribunal notes the child's attendance rate in primary 5 of 97.77%, in primary 4 of 90.30%, in primary 3 of 96.75%, in primary 2 of 98.81% and in primary 1 of 93.84%. All appear to be good attendance rates and do not themselves give cause for concern.

5.45. The child has been provided with a number of interventions and mechanisms of support to address his anxiety and to support his learning.

5.46. The tribunal noted that a new sensory room is being fitted out at the child's mainstream primary school and is expected to be ready for August 2021. Planning for this room began some time ago. Fitting out the room has been delayed as a consequence of the pandemic. This room will be available for use by the child.

5.47. The tribunal notes that the child was provided with enhanced transition in primary 5 (involving familiarising himself with the layout of the classroom and selecting where he wishes to sit and being provided with a visual aid to key adults he would be working with) and will be offered enhanced transition into primary 6 (involving meeting his class teacher in advance, familiarising himself with his new classroom and liaison between his primary 5 and primary 6 classroom teachers).

5.48. The child is in a class of 23, has an individualised education programme, access to a calm corner (which is not specifically stated to be for the child as this would draw attention to him but is generally made most use of by the child) in his current classroom and access to a classroom assistant who is in the class all week other than Monday morning when she has clerical responsibilities. The classroom assistant is available to the child and he gets on well with her. The classroom assistant is not specifically assigned to the child, one reason being that this would potentially draw attention to the child as being different, but she does pay particular attention to this child. The child has access to the nurture room as required. These supports along with others assist with managing the child's anxiety and supporting his learning.

5.49. The tribunal noted that as a result of lockdown from January 2021 the child's mainstream primary school had reduced capacity. The child's class comprised around 8 pupils. While initially the child coped well, even though the teacher changed regularly, as

the period of lockdown progressed the child's anxiety increased and on occasion he would complain of feeling unwell. While there may well be numerous factors involved, this situation indicated that being in a small class is not in and of itself the answer to managing the child's anxiety and learning.

5.50. Witness C noted the interventions provided at the child's current mainstream primary school including rapid reading recovery, mathematics rapid recovery, phonological recovery group, access to a classroom assistant, Lego therapy and the Kids Gone Wild programme and noted that in the specified school a similar suite of interventions would be used, in particular in supporting literacy and numeracy, including the over learning approach and repetition used in the child's current mainstream primary school. Witness C's opinion on the basis of the child's assessment history which she had seen was that the child demonstrates particularly literacy challenges and that these could better be accommodated in a mainstream school with the relevant supports in place. Witness C also noted that autistic children are educated in every class in her own mainstream primary school. Not every child with autism requires to be placed in an autism resource.

5.51. Witness C explained that of the cohort of 18 pupils in the specified school in respect of language and communication skills of the 5 youngest children none had the ability to use expressive language and used signing; 3 in the middle class cannot use expressive language well; and in the senior class most do not understand cues, body language or humour. In respect of social, emotional and behavioural issues 8 used nappies and had toileting issues; 2 had diabetes and health care issues and were using insulin pumps which are significant issues in particular for children with autism (the tribunal noted that the child at the centre of this case is not administered medication in connection with his ASD or ADHD by school staff); and 6 had significant behavioural challenges including screaming, bad language and violent behaviour.

5.52. Witness B stated that child has particular issues in respect of literacy and numeracy. While the child's comprehension skills are appropriate for a child of his age or older his reading skills are at a level about three years below his chronological age. While the child can find it difficult to read a text his understanding of the material is good if it is read aloud to him. The tribunal noted that earlier this year the child was assessed as having dyslexia. The child has support in terms of spelling progression and, as mentioned above, is part of the Phonological Awareness Training spelling small group to assist with him learning to read, spell and write phonically regular words with a daily focus on reading and writing specific words. Support strategies in respect of dyslexia have been identified and shared with the child's class teacher to support the child's literacy including metacognition approaches to help the child understand the purpose of each task and putting supports in place to help the child record his written work such as clicker 8 and use of a lower case keyboard.

5.53. In respect of numeracy children are generally expected to have completed Curriculum for Excellence level 1 by the end of primary 4 but the child is still working within level 1. The child is part of a numeracy intervention small group to develop the child's recognition of number bonds to 10, 20 and 30. While it is reported that the child has progressed and become more confident in number recognition he struggles to retain concepts and so over learning techniques are used to consolidate his learning.

5.54. It was a matter of agreement between the parties that the child has a class teacher, with whom he gets on well; that he receives support from a support for learning teacher, with

whom he gets on well; that he is supported during break and lunchtimes by a family link worker; that he previously attended Urban Nature, an animal therapy programme, once per week and now attends Kids Gone Wild each week for approximately one and a half hours each Friday morning; that he attends his mainstream primary school from 8.55 am until 3.30 pm Monday to Thursday and from 8.55 am until 12.30 pm on Friday and has a strong attendance record; that he is part of a weekly Lego therapy based intervention led by the principal teacher or depute head teacher lasting around twenty five minutes; and that a member of the additional support needs service now attends child planning meetings in respect of the child.

5.55. In weighing the evidence of witness A, witness B and witness C the tribunal had regard to the professional roles, practice and experience of witness A, witness B and witness C and the various supports and interventions provided to the child in his mainstream primary school most of which, despite some complaints from the appellant that there were certain matters that she felt that she had had to bring to the attention of the school, it appeared to the tribunal were identified and provided proactively by the child's mainstream school.

5.56. In weighing the evidence of the appellant the tribunal had regard to her knowledge and experience as mother of the child and in particular her wish for the child to be taught in a smaller sized class. In weighing the views expressed by the consultant child and adolescent psychiatrist the tribunal had regard to those matters referred to at paragraphs 5.3 and 5.42 above.

5.57. The tribunal noted the child's longstanding good attendance at his mainstream primary school, the measures in place to manage his anxiety and the strategies and interventions in place to address his barriers to learning. On the basis of the evidence before it the tribunal did not accept that the child is in the wrong educational environment. The child is educated in a mainstream class and is being provided with interventions and support to address a number of issues such as improving his literacy and numeracy, particularly in light of his recent assessment as being dyslexic.

5.58. Taken as a whole, the tribunal was satisfied on the evidence of witness A, witness B and witness C that the child is appropriately placed and supported in his mainstream primary school, that it was not the case that the education provided in his mainstream primary school would not be suited to the ability or aptitude of the child and that, as none of the circumstances set out in section 15(3) of the 2000 Act arises, the education authority is required to provide education to the child in a school other than in a special school (namely his mainstream primary school).

5.59. Accordingly, the tribunal was satisfied that placing the child in the specified school (a special school) would breach the requirement in section 15(1) of the 2000 Act.

***Whether the tribunal is satisfied that in all the circumstances it is appropriate to confirm the decision of the education authority: section 19(4A)(a)(ii) of the 2004 Act***

5.60. The tribunal was not satisfied that the ground of refusal at paragraph 3(1)(a)(ii) (placing the child in the specified school would make give rise to significant expenditure in extending or otherwise altering the accommodation at or facilities provided in connection with the school) of schedule 2 to the 2004 Act was made out.

5.61. The tribunal was satisfied that the grounds of refusal at paragraph 3(1)(a)(i) (placing the child in the specified school would make it necessary for the authority to take an

additional teacher into employment), paragraph 3(1)(a)(vii) (placing the child in the specified school would though neither of the tests set out in paragraphs (i) or (ii) is satisfied, have the consequence that the capacity of the school would be exceeded in terms of pupil numbers) and paragraph 3(1)(g) (if, where the specified school is a special school, placing the child in the school would breach the requirement in Section 15(1) of the Standards in Scotland's Schools etc. Act 2000) of schedule 2 to the 2000 Act were made out.

5.62. Accordingly, the tribunal must look at matters afresh and determine whether in all the circumstances it is appropriate to confirm the decision of the education authority refusing the placing request. In doing so the tribunal must take account of all of the circumstances including those relevant to the consideration of the grounds of refusal and those that are not.

5.63. The tribunal again considered and took into account its reasons for finding that the three grounds of refusal set out at paragraph 5.61 above were made out. In particular the tribunal had regard to its reasons for finding that the ground of refusal at paragraph 3(1)(g) (if, where the specified school is a special school, placing the child in the school would breach the requirement in Section 15(1) of the Standards in Scotland's Schools etc. Act 2000) of schedule 2 to the 2000 Act was made out.

5.64. The tribunal also considered the evidence with regard to the specified school, its cohort of 18 pupils and the matters from which their additional needs arise and was of the view that given the profile of the cohort of 18 pupils in the specified school placing the child in the specified school would not in all of the circumstances be appropriate.

5.65. Having considered all of the forgoing and taking account of the fact that the tribunal has already found that the requirement that education be provided to the child in mainstream education set out at section 15 of the 2000 Act was made out the tribunal was satisfied that the child is best and most appropriately placed in his mainstream primary school accessing all of the supports and interventions referred to above rather than in the specified school (a special school). Accordingly, the tribunal was satisfied that in all the circumstances it is appropriate to confirm the decision of the education authority (refusing the placing request).

5.66. The decision of the tribunal was unanimous.