



1. Reference

The appellant made a reference on 23rd July 2018, under Section 18(3)(da) of the Education (Additional Support For Learning) (Scotland) Act 2004 as amended by the Education (Additional Support for Learning) (Scotland) Act 2009 hereinafter referred to as “the 2004 act”, against a decision by the respondent confirmed in writing on 24th May 2018 to refuse a placing request made by the appellant in respect of her daughter, the child born November 2009.

Decision of the tribunal

The tribunal hereby confirms the decision of the respondent first intimated by letter dated 24th May 2018 to refuse the placing request.

The tribunal, in terms of Section 19(4A) (a) of the 2004 Act is satisfied that:

1. One or more of the grounds specified in paragraph 3(1) of schedule 2 of the said 2004 act exists.
2. In all the circumstances it is appropriate to confirm the decision to refuse the placing request.

The decision of the tribunal is unanimous.

Preliminary Issues

In advance of the tribunal hearing, 2 conference calls took place between the convener and the parties’ agents, on 11th October 2018 and 19th November 2018. As a result, a joint minute of disputed issues was produced (E280) and joint minute of admissions (A278) lodged prior to commencement of the hearing

At the case conference of 19th November 2018, the respondent’s representative, solicitor for the respondent raised concerns that a large volume of productions which appeared to her to be irrelevant had been lodged by the appellant. The parties agreed to discuss further which productions were necessary and for those which

were irrelevant to be withdrawn. The productions contained within the A bundle for the appellant are the productions retained within the case papers.

At the case conference of 11th October 2018, an advocate had been appointed to ascertain from the child whether she wished to express her view in relation to the reference and, if so, to obtain her views. At the case conference of 19th November 2018, it was noted that the child was meeting with the advocate that day and that a report would be lodged in advance of the hearing.

Subsequently the appellant's representative, solicitor for the appellant sought to have the advocacy worker called as a witness to the tribunal. This motion was refused in hoc statu in advance of the hearing on the basis that the role of the advocate is to support the child to participate in the proceedings and not to provide evidence to the tribunal. The motion was not renewed at the hearing.

The advocacy statement obtained is contained at T67 to T69. The advocacy Worker found the child to be very engaged and able to express a clear view. However, prior to meeting the child, the appellant had advised the advocate that the child would not cope with knowing about the tribunal Hearing or the possibility of moving school, and she had therefore not told the child about the reference. The appellant had expressed a strong view that such knowledge would be detrimental to her wellbeing. Accordingly, the advocate did not mention the tribunal proceedings to the child nor discuss with her the possibility of attending the proceedings.

The views of the child as contained within the advocacy report were noted by the tribunal. However, the tribunal wish the child to be given the opportunity to attend the tribunal, engage in the process and be aware of the matters to be decided which directly affect her and express her views directly. Arrangements were made for the child to be supported by a family friend and advocacy worker to attend the hearing and accordingly the child's views were obtained directly and recorded in the proceedings.

The case conference notes of 11th October and 19th November 2018 are contained within the hearing papers.

Summary of Evidence

The tribunal considered the appellant's case statement and productions all contained within A1 to A282. The tribunal also considered the respondent's case statement and all productions contained with R1 to R40.

The parties lodged joint minute of admissions at A278 and joint minute of disputed issues at A280.

The appellant lodged two authorities upon which she intended to rely, namely reference D15/2012 Decision of The Additional Support Needs Tribunal for Scotland and *City of Edinburgh Council v MDN 2011 CSIH13*.

The respondent lodged list of authorities referring to the 2004 Act Sections 22 and Schedule 2, and Standard and Schools Act Etc at 2000 Section 15.

In addition, the tribunal heard oral evidence from:

1. The appellant who had also lodged written statement which is found at A273 to A277.
2. Witness A, Inclusion and Wellbeing Manager at the responsible body. Her affidavit was also lodged with the tribunal at R11 to R13.
3. Witness B, Headteacher of School A. Witness B affidavit was lodged at R14 to R19. Witness B also lodged supplementary affidavit dated 7th January 2019 which forms number R41 to R47.
4. Witness C, Headteacher of School B, the specified school, Nursery A and Nursery B. Witness C's affidavit was contained at R26 to R28.
5. Witness D, Specialist Doctor Community Child Health (reference made to production A271 to A272 and A281 to A282).
6. Witness E, ADHD Nurse Specialist Child and Adolescent Mental Health Services who made reference to production A260.

The views of the child

Reference is made to the previous comments in relation to the obtaining of the child's views by an advocacy worker. The tribunal had discussions with the appellant and her representative at the hearing, expressing the view that it would be beneficial for the child to participate in the hearing and for her views to be known. The information regarding the child's progress at school and the report from the advocacy worker indicated that the child may be able to express views clearly and may hold clear views about the arrangements for her education. Discussions took place regarding the supports which could be made available to the child to enable her to attend the hearing, and arrangements were made for the child to meet with the

tribunal in an appropriate room, supported by an advocacy worker. The ordinary member with education expertise led the discussion with the child and the legal and ordinary members entered in to the discussion as appropriate.

The child currently attends School A and prior to August 2018 attended School C. The placing request specifies School B, Autism Unit, the Autism Unit at School B being hereinafter referred to as “the specified school.”

The child advised the tribunal that she is not attending school currently as she does not like going. She is not allowed to play with her slime (which she otherwise enjoys doing) and does not like her teacher. She advised that her teacher had accused her of copying someone else’s maths. Sometimes she feels confused in the class but is often too scared to say that the work is too hard for her. A child in her class bullies her and the teacher tells her just to get on with it.

The child talked about attending the Halloween school disco but advised that she did not like it because everyone was annoying her. She spent most of the time in the quiet room with lots of people coming and going. Some of her friends had been at the disco but she was annoyed at one friend who was removing another friend from her throughout the evening. She had attended another disco with family at a local bowling club around the same time and enjoyed that more.

Sometimes she doesn’t like doing reading in class. She likes to draw instead, and her teacher tells her to put that away. Sometimes she likes reading and sometimes she doesn’t. Equally sometimes everyone is moving around in the class and she likes that at times, but at other times does not. She feels that she gets shouted at if she is not doing her work properly. She does like the Pupil Support Worker (Teacher B) as she took a pencil out of her hand. She would like someone to help her in class but wants it to be a nice person. In her previous school she had gone out of class to do reading on her own and she liked that. She would enjoy doing more one to one work with the Pupil Support Worker if that was a different worker. Her Mum had told her that she did not have to do work with the pupil support worker, but the teacher said she had to do that. She would like to go to the sensory room with Teacher A but is not allowed to go there. Her class teacher, Teacher C is nasty to her and shouts at her. She has a loud voice. Although there is another child in the class who is autistic, it is only that child who is allowed a visual timetable. The child has her own diary and she wants to be able to write things down in her diary and not be told to put it away.

At lunchtime, she goes outside with friends and likes to eat lunch prepared by her Mum. She often has her packed lunch in the hall or the annex. She has friends at school and some friends who live nearby her, and she gets on well with some of her friends.

Teacher C doesn't give people a row in the class for touching the child's things or sitting on her special cushion and she doesn't let her play with her slime. She is not allowed to use her fidgets although they are on the desk in front of her, but she is told to put them in her bag. She used to swing in her chair but now she has a knobby cushion and she doesn't like people sitting on that. She tries not to lose golden time, by doing what she is told. She misses her Mum when she is at school and does not like School A. If she is upset, she goes to Teacher D or Teacher E (who is a support worker and is one of her favourites) and sometimes Teacher D brings her up to the class. She is happy to go to Teacher A and likes Witness B the head teacher. Witness B comes in to the class and asks how she is doing but sometimes it is hard to talk to her and often she does not like explaining how she is feeling. However, Witness B listens to her and she is one of the best headteachers that she knows.

The child talked about going to swimming lessons, which she enjoyed, and she enjoys horse riding. She likes having friends round to the house and she has a dog that she is training to be an autism therapy dog. She likes playing out in her garden with her friends and going to the park. She feels that the medicine she takes makes her feel better, but it wears off during the day. She does not sleep well and is often up late. She gets upset at school in the mornings and feels teachers pull her and push her, but she started lining up with the rest of the class not long ago and before that she had always gone into the office. If she doesn't want to go into the hall or the breakfast club, she will go into the office. She is sometimes late for school but generally when she has been having a carry on or been fighting with her sister or doesn't want to get up in the morning or take her medication. Often, she doesn't want to get up because she hates going to school. She described having "paddies" where she would have a meltdown. She told the tribunal that her Mum and Dad do not like School A, and they didn't like School C.

The tribunal asked the child what would make school better for her and she advised that her Mum had told her that she was trying to get her into a unit. She already has friends there who are the children of her Mum's friend. The child feels it would be better in school if she was in the nurture base with Teacher A. She felt things would be better if she had a weighted cat and was allowed her slime and if she could speak to her Mum when she was missing her. She understood that being at a unit meant she would get more help and have a lot of people to help her. She told us her Mum had said that she would have to fight for the place in the unit. She has not visited the school that her Mum wants her to go to, but her Mum had gone and taken some pictures which she has not seen.

Findings in fact

1. The appellant is parent of the child born November 2009.
2. The child is a 9-year-old girl with autism spectrum disorder, communication difficulties, hyperacusis, anxiety and attention deficit hyper activity disorder (ADHD).
3. The child has additional support needs in terms of section 1 of the Education (Additional Support for Learning) (Scotland) Act 2004.
4. School C is a mainstream school. The child attended there from 2014 to 2018.
5. The child is currently attending School A and is in Primary 5. She started school there in August 2018.
6. The child has an individual education plan.
7. School A is a mainstream school.
8. Transitional periods can be anxious times for the child.
9. In respect to maths and numeracy, the child requires additional support.
10. The child can have a short attention span.
11. The child requires support at times to sustain friendships.
12. The child is a vulnerable child. At School C the child was given a weighted blanket in the shape of a cat which helped to comfort her.
13. The child can have difficulty with noisy and crowded environments.
14. The child had outbursts at the start of the academic year 2017 to 2018 whilst at School C and she would scream, nip, bite and scratch at times.
15. The child suffers from anxiety.
16. The agencies involved supporting the child include a paediatrician and ADHD nurse from Child and Mental Health Adolescent Services (CAMHS).
17. The child is able to communicate verbally. To aid communication, visual aids were used at School C. This included time out and toilet break cards and a visual timetable.

18. At School A, the child has been using a visual timetable. The child is aware that if she needs to take a toilet break or go to the toilet she can do so.
19. The appellant made a placing request for the specified school. This request was refused by The responsible body on 24th May 2018 on the basis of Schedule 2 Paragraph 3 (1)(a)(i), 3 (1)(a)(ii), 3 (1)(a)(vii) and 3 (1)(g) of the 2004 Act.
20. The child requires support and opportunities that are tailored to her additional support needs.
21. The specified school has a classroom teacher and 1.75 advanced pupil support workers in each of the classes.
22. There are no places available for the child at the specified school.
23. The specified school has the capacity of 18 pupils for the academic year 2018-19. This resource is at capacity for the academic year.
24. The specified school is made up of 3 classes of 6 children.
25. The ratio of staff to pupils in the specified school is 1 teacher and 1.75 advanced pupil support worker within each class. The pupil teacher ration is in accordance with the national agreement with teachers in terms of the Scottish Negotiating Committee for Teachers handbook of conditions of service and is applied consistently across all the responsible body autism spectrum disorder specific provision.
26. If the child were to be placed at the specified school, the respondent would require to form another class at significant cost. A new teacher would require to be employed and 1.75 advanced pupil support workers at a cost of between £29,691 and £48,060 for a teacher, and between £20,745 and £23,504 for one advanced pupil support worker. This would be a total cost to the respondent of between £65,994 and £89,192.
27. There are no teachers or pupil support workers currently available to move to the specified school, whether on a full time or part time basis.
28. There is a teacher recruitment crisis within the council. The recruitment of new staff would be difficult to achieve. Other special schools within the council have unfilled vacancies. The supply list for teaching staff to date has not been able to meet demand.

29. If an additional class was created within the specified school, it would open up a further 5 places for pupils in addition to the child. However, the building at School B does not have capacity for an additional classroom.
30. The school grounds at School B do not have sufficient capacity or space to allow for an additional classroom.
31. If an extension was required to the building, the baseline costs would be approximately £250,000.
32. There is no space within the fabric of the building or in the playground to enable an extension to be built.
33. The cost to the respondent for the provision of mainstream primary school education is approximately £2,000 per pupil per annum.
34. The child's additional support needs are being met appropriately at School A.
35. The appellant has a good relationship with Witness B, head teacher at School A and raises her concerns directly with school staff in the event of any issue concerning the child.
36. The child is in a class of 33 pupils in one of two primary 5 classes. A pupil support worker works between the 2 classes.
37. The child does not require one to one pupil support throughout the school day but can on occasions benefit from individual support.
38. There are additional support rooms within School A which are attended by a number of pupils with various additional support needs.
39. The nurture room facility is available to the child. Except for her attendance in the nurture room on Wednesday 19th December 2018, following her distress at attending school during the period of the Christmas party, she had not accessed this support until January 2019. She can access support at the nurture room at any time it is available.
40. The child has achieved the first level of the curriculum for excellence in talking, listening and reading, and works between the first and second level depending on the concept being taught. She is on track to achieve expected learning levels across all areas of learning if she continues to attend school and work hard.

41. The child requires additional support in respect of maths and numeracy. Her learning is differentiated as and when required.
42. The child is supported by a computer literacy programme to improve reading and spelling. This programme can be accessed at school and home. The work to be carried out is authorised by a support for learning teacher.
43. Significant absences from school impact adversely on the child's learning.
44. The child has a number of fidget aids available to her throughout the school day. She also has a weighted cushion to support her in sitting still in her seat.
45. At times when the child arrives at school in the morning, she is upset. She is encouraged by a member of staff and comes in to school without difficulty.
46. The child has experienced some difficulties with friendships and has required support to work through these difficulties. She is able to ask for support from appropriate adults.
47. The child finds it difficult to move on from an incident with another pupil and to resolve issues within friendships. As a result, at times, she finds it stressful to remain sitting close to someone with whom she has had a difficulty. The child's class teacher changes class seating within the class at appropriate times in order to avoid difficulties arising for the child.
48. Since commencing at School A on 23rd August 2018, there have been no incidents of outbursts, meltdowns or "paddies" (the word used by The child to describe distressed behaviour).
49. There are a number of children with additional support needs within School A.
50. The child fits in well at School A and seeks out friendships. Being in a bigger class and a large mainstream school allows the child to have wider interaction with more pupils. She may struggle with friendships if placed in a smaller setting.
51. There has been one incident when the child bit her hand in School A. The appellant is concerned regarding the child self-harming and staff within School A are alert to this concern.

The Statutory Provisions

The respondent moved the tribunal to confirm the decision of the respondent in terms of Section 19(4A) of the 2004 Act.

Schedule 2 of the 2004 Act deals with the respondent's duties to comply with a placing request and paragraph 3 of said schedule provides a list of grounds upon which the respondent can rely in support of non-compliance with the duties.

Section 19(4A) of the 2004 Act states the powers of the tribunal and the 2-stage test which the tribunal must apply.

In the first stage, the tribunal requires to determine whether it is satisfied that the respondent has established that one or more grounds of refusal exist or exists. If the tribunal is satisfied, then the tribunal moves to the second stage and considers whether in all the circumstances the child should be placed at the specified school.

In the second stage, the tribunal must exercise its discretion and determine whether in all the circumstances, it is appropriate to confirm the respondent's decision.

The onus is on the respondent to establish that one or more of the grounds exist or exists and to satisfy the tribunal that in all the circumstances it is appropriate to confirm the decision of the respondent.

Reasons for decision

The tribunal considered all the evidence within the productions initially lodged together with the oral evidence from the witnesses who attended or provided evidence by telephone. The tribunal had regard to the views of the child contained within the advocacy report lodged, the oral evidence provided by the child and the submissions made on behalf of both parties.

The evidence provided by the respondent's witnesses was contained within written statements and additional evidence was provided orally at the tribunal by way of cross examination and re-examination. The evidence provided by the appellant's witnesses was restricted in nature and referred to the productions lodged relevant to those witnesses. The witnesses provided telephone evidence and were cross-examined. The appellant provided evidence orally and spoke to her witness statement.

The tribunal considered all the evidence before it and considered the ability of the respondent to make provision for the additional support needs of the child and the current arrangements for provision of said support.

All witnesses co-operated fully and to the best of their ability in providing evidence to the tribunal. There was no issue regarding credibility of the witnesses. The issues

to be decided rest on the interpretation of the evidence and its application to the relevant statutory tests.

The First Stage

The grounds of refusal were upheld as follows:

1. Placing the child at the specified school would make it necessary for the respondent to take an additional teacher in to employment (Schedule 2 Paragraph 3(1)(a)(i) of the 2004 Act.

The evidence provided by Witness C and Witness A was largely unchallenged. They provided evidence that the capacity of the specified school is 18 pupils, comprising 3 classes of six pupils each. Each class has a class room teacher and 1.75 Advanced Pupil Support Workers. The children all have severe and complex needs, and they cannot cope in mainstream education. It is a matter of contract that the ratio of staff to pupils is fixed at 6:1 for children with such needs. If the request was granted an additional teacher would be required.

Both witnesses were clear that due to staff shortages the respondent would be unable to recruit another staff member, even if it was considered suitable to do so. The supply list is empty and currently if a member of staff is ill one of the management team steps in to take the class. The staff require expertise, by way of knowledge, experience and aptitude and recruitment is a “grave issue” currently.

Witness A confirmed that pupil numbers had been exceeded by one pupil in nursery class for one terms on one occasion and it was not successful, causing detriment to that child, and others. This evidenced to her that the ratios were set for good reason and should not be exceeded.

No evidence was led by the appellant to contradict the evidence provided in respect of this matter. In submissions, the appellant’s representative suggested that the supply list changes weekly and an ASN teacher may become available, allowing that member of staff to be employed to meet the request.

The tribunal must consider the evidence as at the date of the hearing and the evidence provided was that no staff are available for supply, and the prospects of recruiting suitable staff for this role are very poor. It was not disputed that an additional teacher would be necessary if the child could not be added to an existing class. Whilst the appellant disputed that one additional pupil in the class would cause a breach of contractual rules and exceed recommended pupil numbers, no evidence was led to contradict the evidence provided by Witness A.

In the circumstances, the tribunal considers that the respondent has satisfied the onus upon them to establish this ground and finds that this ground exists.

2. 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))

Witness C was taken through the schedule of accommodation (found at R21) in some detail and described the accommodation, layout and use of each room. She was clear that there was no scope for adapting or altering the existing school accommodation. She considered the option of extending the school by building another classroom and provided details of costs, but it was clear that there was no scope to do so as there was little space around the school. The baseline cost of providing a new classroom is estimated at £250,000, according to figures provided by the respondent's Resource Manager to Witness A. However, given the restricted area available to the school, the capital cost of extra classroom provision is likely to be significantly higher.

Although the appellant's solicitor, the appellant's representative, asked some questions about the plans provided and the layout of the school and suggested alternative use of accommodation, she did not lead evidence about alternative layouts or use of school grounds to contradict the evidence provided by the respondent's witnesses.

The tribunal is satisfied on the evidence provided by the respondent that this ground exists.

3. 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

The evidence relied upon by the respondent in support of this ground was provided by Witness C and Witness A. The capacity of the specified school is 18 pupils. It is full. Exceeding capacity would breach the contractual terms of the staff employed, which agrees a pupil /staff ratio of 6:1. There is no place available to the child as at the date of the hearing.

No evidence was led by the appellant to contradict this evidence.

The tribunal is satisfied that this ground exists.

4. Paragraph 3(1)(g): If, where the specified school is a special school, placing the child in the school would breach the requirement in s15(1) of the Standards in Scotland's Schools etc (Scotland) Act 2000

It was a matter of agreement between the parties that s3 (c) of s15 did not apply in this case. The respondent relied upon the exceptions in s15(3) (a) and (c).

The respondent led extensive evidence from Witness B, Head teacher of School A, the mainstream school currently attended by the child. This evidence was contained in an affidavit, and supplementary affidavit from the witness and oral evidence given over the course of 3 days.

The tribunal was impressed by the evidence provided by Witness B. She knows the child well, and has a good relationship with the appellant. She makes efforts to ensure the child is supported in school. She communicates constructively with the appellant and the child likes her.

Witness B provided evidence about the child's swift transition into the school from School C. She acknowledged that no specific supports had been put in place when the child initially attended school, but she made it clear that any additional supports required would be provided. Initially the child had not used the nurture base, which is a small group area supported by a nurture teacher but following the use of the base around Christmas time, she had access support there in the new term commencing in January 2019.

There are several children in School A with ASD and other support needs and the resources available to support the pupils include a play therapist who attends one day per week, a nurture teacher two and a half days per week, a "superhero sidekick" scheme where a pupil can regularly meet a member of staff to discuss any problems, and a speech and language therapist one half day per week. The child has a class teacher and there is a very experienced Advanced Pupil Support teacher working between the child's class and one other.

Witness B sees the child in class, playground and at school lunchtimes and events. She links in with staff interacting with the child and monitors her progress. Her overall impression is that the child has settled in class but requires reassurance and additional support in areas of literacy and maths. Currently the child is spending long periods in the nurture base. Her class teacher will work with her there and link in with the nurture teacher to support her transition back into the mainstream class at the child's pace. She is now using a visual timetable.

The child is on track with her learning and is at the level expected of her. An Individualised Education Plan is being updated (R30-40) and targets will be set for achievement.

Witness B had taken on board recent concerns expressed by the appellant and the class teacher (teacher C) in relation to maths, and an in-depth assessment is to be undertaken to ensure that appropriate support is given in this area.

The appellant's position in evidence is that the child works at the level of a 5-year-old. This was entirely disputed by Witness B. Educationally; the child is working at a level appropriate to her age. Her social skills however are not as developed as those of her peers. She struggles with transition from home to school in the mornings and various strategies have been put in place by the school and appellant working together to address this. The child also has difficulties with other pupils at times and finds it difficult to resolve disputes and move on from disharmony. These issues are known to school staff who have a variety of strategies to support the child including restorative discussions, moving places in the classroom and having discussions with the other children involved.

The child has a support cushion in school to assist her and is allowed "fidgets" and slime to reduce her anxiety. If there are behavioural issues at home, these are generally reported by the appellant, and Witness B offers support. She has suggested referrals to Outreach services, Children's and Young persons team and Signpost, to provide support to the appellant.

The appellant raised concerns in her evidence regarding the level of support provided to the child in school. She considers that the child's autism is not understood fully by staffs, which are not trained sufficiently and do not act appropriately in relation to the child. She feels that the child has to ask for help and is expected to express her difficulties (which she finds difficult) rather than staff adjusting their approach or anticipating problems. She gave evidence that the child has self-harmed in school and has wet herself which has gone unnoticed. It is her evidence that the child does not want to go to school as she is unhappy there and she would benefit from a smaller environment, with specialist autism support. She believes staff have shouted at the child, dismissed her wish to have items around her which reduce her anxiety and allow her to be belittled and bullied by other pupils.

Witness B was surprised to learn that the child disliked school. She noted that the child had managed to engage in a number of activities she had not engaged in at School C including a Halloween disco, assembly, lining up to come in to class, music lessons and eating lunch in the lunch hall. She disputed that the class teacher would shout but is aware that the child is sensitive to noise and may feel that the teacher is speaking loudly as a result.

As regards bullying, Witness B was aware of the difficulties the child can have with other pupils and she deals with any issues which arise. She was not aware of any incident of self-harming but now that the matter had been brought to her attention, she would alert members of staff and be aware of it.

The tribunal noted the appellant's witness, Witness E, ADHD specialist, had knowledge of the child self-harming but had not discussed it with the appellant or the

child. This is a matter for Witness D to review. Self-harming is something Witness E heard of regularly as children often do it if they feel distressed.

Witness E thought it was a positive development for the child that she was now lining up with the class. She advised that working in smaller groups is likely to benefit the child as it will be less noisy and more focussed. It is not however simply a matter of the number of pupils. She needs structure, may benefit from social stories (with which the appellant advised the child would not engage) and would benefit from a visual timetable. Support strategies need to be in place for the child. She cannot necessarily identify her feelings and express them to staff, and this is a barrier to learning. She suggested use of time out, calm areas, scripted plans (to provide consistent responses) and “passport to success” (use of outreach ADHD teacher) as suitable supports.

Witness E has not formally observed the child in School A but saw her briefly while assessing another pupil. Her observation was that the teacher had dealt appropriately with the child being “fidgety” and that the child caused no disruption to other pupils.

Witness E confirmed that the appellant is pro-active in seeking help and support. Many of the strategies suggested are not specific to the child but are known to assist children with ADHD and ASD. Witness E did not recommend the provision of education for the child at one school over another.

Witness D gave evidence for the appellant. She is a Speciality Doctor in Community Child Health. She adopted the reports she had prepared (lodged at A203 and A271/2) as her evidence.

A203 provided evidence of the child’s difficulties and was written in 2018 to support a housing application.

At A271/2 Witness D outlined the issues for the child and confirmed that it was not unreasonable for a discussion to take place regarding whether a smaller class setting with specialist staff and a higher ratio of adults should be considered. She specifically advised that she was not able to recommend any particular placement or resource. In evidence Witness D was asked by the appellant’s representative whether a large classroom of 33 pupils with one teacher and a pupil support teacher was suitable. She advised that she could not answer that question as there were many factors to be considered.

Witness D told us in evidence that it is not always the case that a child with ASD gets on better being surrounded by other ASD children. Many factors are involved, and it is helpful if the child’s peers have some understanding of her needs. They do not

require to have ASD to have that understanding. The understanding of adults at home and school is helpful to the child.

In evidence Witness D confirmed that the child takes medication which will settle her for the school day, but will wear off slowly after 12 hours or so, meaning that she is likely show symptoms in the evening at home. The appellant submitted that meltdowns at home are related to anxiety in school, but no evidence was provided by Witness D to support this conclusion.

Witness D confirmed that the child has sensitivity to noise. Her ability to deal with this is not dependent on the size of a room or numbers in it but rather the strategies she has in place for coping. For example, if she has access to a quiet space, she can cope.

In relation to social interaction, Witness D provided evidence that girls in general use a lot of non-literal and body language to communicate. The child is very literal, and this leads to social interactions which are difficult. This can be addressed by those around the child using clear language and explaining what is meant by phrases or expressions. She has the ability to learn and will take on board explanations.

The child's concerns about not being listened to in school and being shouted at were put to Witness D for her view. She said that such matters were not likely to have an impact on the child's physical health but could be detrimental to her self-esteem. These perceptions could be addressed by appropriate strategies, such as preparation and going over routines.

On the basis of the evidence provided by the respondent, which was not contradicted by the evidence led from the appellant's witnesses, the tribunal is satisfied that the grounds of refusal are met in respect of s15, and that none of the exceptions in s15(3) have been established or are relevant in relation to the child.

The Second Stage

If at least one ground for refusal exists, is it appropriate in all the circumstances to confirm the decision of the respondent?

In this case, the tribunal is satisfied that the first stage has been established and the tribunal thereafter requires separately to consider the appropriateness of the respondent's decision. The onus remains on the respondent to establish that the decision is nevertheless appropriate.

The tribunal takes account of the wishes of the appellant and the child to attend the specified school. The appellant is clearly very supportive of her daughter and engages well with school and other agencies involved, all to the child's benefit. She

has given evidence in relation to her concerns that the child's condition is not understood, and her education appropriately supported at School A. If the tribunal considered this to be established, it would have little difficulty in overturning the decision of the respondent on the basis that it was reasonable and appropriate to do so.

The appellant's evidence is contained in her statement at A273-277. In summary she does not consider that the child's needs are met at School A, although she appreciates the efforts made by school staff. She is concerned that the child's anxiety is not acknowledged, nor do staff anticipate her needs. Her concerns mirrored those articulated by the child. She described the child as doing her best at school but having melt-downs at home due to anxiety. There is a lack of communication and supervision of the child in school. She engages with all supports available to support the child. She has visited the specified school, and although she accepted that many of the children there have more severe additional support needs than the child, nevertheless, she felt it was the best place to meet the child's education and social needs. She did not accept that the smaller class size may cause the child further difficulty with peers (as suggested by Witness B) as the staff would be better skilled to anticipate social interaction difficulties and manage these.

The appellant acknowledged the progress that the child had made at School A. She accepted that the child had made friends in her year group, attended the lunch hall, assembly and benefitted from emotional "check-in" from staff. She accepted that the child benefits from the nurture room and having a visual timetable, from small literacy group working and more support in maths. However, the nurture room is currently available only 3 times per week rather than full time and otherwise the child is in her usual classroom. She wanted additional nurture group times, use of social stories, better preparation of the child for activities, general and consistent reminders and checking of the child's understanding.

The tribunal is aware that the appellant considers it necessary for her daughter to attend the specified school to enable her to achieve her potential. We do not doubt that she believes her position is justified. The evidence provided in this case however supports the respondent's position that the child's needs can be adequately met within School A, for all of the reasons stated above. It may in fact be detrimental to the child in relation to her social interactions to be placed in a smaller unit. The size of class or school is not the determining issue, as explained by Witness D in her evidence. There are many factors involved and many strategies to be employed to enable the child to overcome barriers to learning and achieve her potential. These strategies and resources are available within School A.

This appeal was lodged when the child attended School C. Difficulties arose there. The child was able however to move to School A, complete a swift transition and begin to engage in a number of activities not previously enjoyed by her. Although

there have been difficulties, particularly during the Christmas period (which the appellant confirmed is often an unsettling period for the child), the school have taken on board many of the appellant's suggestions and have adapted as the child's needs become known to them from experience, which appears to have encouraged the child to attend school. She now attends the nurture base regularly and benefits from doing so. She has been provided with a visual time table. She is reaching her education targets with support. She can seek assistance from the Head teacher and is confident in approaching her. Staff are able to identify areas of the curriculum where additional support is required. A further IEP meeting is scheduled and all agencies involved will discuss additional supports required. School A appears to the tribunal to be providing education which is suitable to the ability and aptitude of the child.

The tribunal was concerned about the child's views, both as stated to the advocacy worker and to the tribunal. Although she appears to staff at school to be happy, it is concerning if she feels unfairly treated or bullied at school. The appellant is understandably concerned that the child has self-harmed and shows signs of distress at home. She wants better communication and monitoring by the school staff. Witness B struck us as a very sensitive and experienced teacher. We have no doubt that she will have listened to the child's concerns, and those of the appellant, and will take care to ensure these issues are monitored and addressed so far as possible. The greater the understanding of the child's condition by staff and others around her, the more likely she is to thrive within School A and achieve her potential. It is very reassuring to the tribunal to see the positive relationship the appellant has with the head teacher, and it is inevitable that the child will be the beneficiary of this good working relationship in the longer term.

Accordingly, on the basis of the evidence, the tribunal is satisfied that the decision to refuse the placing request is appropriate in all of the circumstances and accordingly confirms the decision of the respondent.