



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The appellant sought the placement of her daughter, aged 15 who has been diagnosed with an autism spectrum disorder (“ASD”), anorexia nervosa, trauma and Obsessive Compulsive Disorder (OCD), at an independent, purpose built school specifically designed with meeting the needs of children with complex additional support needs (ASN). The respondents refused the request, deciding to place the child instead at their secondary school within an additional support needs (ASN) base attached, dedicated to children with additional support needs arising from a variety of conditions including ASD. The appellant has referred that decision to the Tribunal.

Decision

2. We confirm the respondent’s decision.
3. We are satisfied that a ground for refusal of the placing request has been established (Education (Additional Support for Learning) (Scotland) Act 2004, sec 19(5)(a)(i). We are satisfied that the respondent is able to make provision for the additional support needs of the child in its secondary school (schedule 2, paragraph 3(f)(ii) of the 2004 Act. We determine that it is not reasonable, having regard both to the respective suitability and to the respective cost of the provision for the additional support needs of the child in the independent school and in the respondent’s secondary school, to place the child in the independent school (para. 3(f)(iii)).
4. We are satisfied that it is, in all the circumstances, appropriate to confirm the respondent’s decision (sec 19(5)(a)(ii)).
5. Our decision is unanimous.

Process

6. Case conference calls took place on 22 November 2019 and 17 January 2020. A two day hearing was set down for April 2020 however it was required to be adjourned on account of the Covid-19 restrictions and advice from senior judiciary at this time. A further case conference took place on 4 August 2020. The hearing was conducted by teleconference

following agreement at the case conference of 4 August 2020.

7. The papers consisted of T1 to T37; A1 to A98, and R1 to R98. Additional documents were lodged by the respondents prior to written submissions following a direction from the tribunal [see paragraph 8]. There was no objection by either party to receipt of any of the documents lodged. The papers included a joint minute of agreed facts and an independent advocacy report which recorded the child's views. The child did not wish to attend the hearing.
8. We issued a further direction at the conclusion of the oral evidence for parties to lodge written submissions to the tribunal within 7 days upon receipt of which the tribunal reached its decision. A direction was also issued requiring the respondent to lodge an education planning document which Witness A referred to in her oral evidence before the Tribunal within 5 days, there being no objection by any party to such a direction being issued.
9. The witnesses were heard in the following order:

For the respondent:

Witness A Head Teacher of school B

Witness B Educational Psychologist employed by the respondents

For the appellant:

Witness C Head Teacher of the independent school A

Witness D Independent educational expert

Witness E appellant

10. A summary decision was issued by the tribunal on 25 August 2020.

Findings in Fact

11. We found the following facts admitted or proved:

The child

12. The child, the appellant's daughter, is a 15 year-old girl who resides with the appellant.

13. The child has a formal diagnosis of Autism Spectrum Disorder (ASD), Anorexia Nervosa, trauma and Obsessive Compulsive Disorder (OCD).

14. The child's trauma means that she is sensitive to sensory stimulation.

15. The child can find it very difficult to focus in crowded places.

16. The child is fully verbal and is able to express her needs and wants.

17. The child can find it difficult to build peer relationships although she is keen to do so. This difficulty is associated with her anxiety.

18. The child does not cope well with transitions. The child has a rigidity of thinking which can cause her difficulty and anxiety in coping with any changes.

19. The child can at times be unpredictable and can frequently change her mind about her choices and preferences.

20. The child can experience a lack of trust in professionals who work with her. The child at times finds it difficult to engage with health, social work and educational professionals who work with her. The child has a history of disengaging with professionals when she finds the circumstances of continuing to engage challenging.

21. The child can experience low mood and anxiety.

22. The child has been assessed as being at level three for Maths and English.

23. The child is articulate and intelligent and has demonstrated a particular proficiency in English. The child has been assessed as a young person who could achieve SQA qualifications. The child has aspirations to study at degree level.
24. The child attended a local mainstream school until Primary 5 stage at which point the family relocated and she moved school to another part of the country. Since this time the child has attended a number of different schools.
25. The child was removed from the care of her mother in terms of child protection measures in 2016 and placed in residential care for a period of time where she attended a specialist educational provision. The child has since returned to the full-time care of her mother.
26. As a consequence of attending a number of placements for her education and being out with any formal education for a lengthy period, there are significant gaps in the child's education.
27. The child was admitted as an in-patient to the child and adolescent unit of a psychiatric hospital in or around August 2018 where she was subject to a detention under the Mental Health (Scotland) Act 2003 initially and then remained as an informal patient. The child was treated at this time for an eating disorder, namely anorexia. The child was discharged from hospital in February 2019 when she returned to the care of the appellant.
28. During the child's hospital admission, she attended a specialist school provision attached to the hospital. This provision was dedicated to providing in-patient children and young people with an education during their hospital admission. The child performed well during her time at this school provision and gained ASDAN qualifications in bronze, silver and gold.

Assessment of child's needs and planning

29. A number of multidisciplinary team ("MDT") meetings took place at the hospital where the child was being treated to discuss amongst other things plans for the child's future schooling arrangements. On 23 October 2018, 9 November 2018, 5 December 2018 and 5 February 2019 such meetings took place. At these meetings a number of different educational options were discussed and considered. The meeting on 5 February 2019 was attended by staff employed by the respondent including an educational psychologist and teaching staff.
30. Prior to the child's discharge from hospital on February 5, it was agreed by the appellant, the medical and nursing in-patient team, the respondents and the child that School B would be the most suitable educational placement for the child upon her discharge and that she would commence at this provision as soon as possible.
31. Prior to the child's discharge from hospital, Witness A and the Principal Teacher of the Base where it was proposed the child would attend within school B visited the school unit attached to the hospital where the child was being educated. Both staff members reviewed the child's work and discussed issues around the child's education with the Head Teacher of the hospital school unit in order that arrangements could be made for the child's placement and ongoing education within school B.
32. At the last MDT meeting on 5 February 2019 before the child's discharge took place, it was agreed that the child would start at the secondary base on 6 February 2019. It was further agreed by the professionals in attendance that the child required a period of stability and that she would be gradually exposed to the school day and would attend for 1 ¼ hours each day from 9.15 am. The child at this time was also to adhere to a strict eating plan in order to manage her anorexia and the timings of her school attendance were agreed in order to accommodate this.
33. Staff within school B developed a plan in February 2019 with a focus on gradually building up the child's school timetable. It was agreed between the respondents, the appellant and the child that the child's reintroduction to education would start slowly allowing there to be a general build-up of routine. It was the intention of the team that this gradual introduction back into formal education would allow the child to slowly develop relationships with staff and peers.

34. The Principal Teacher within the Base of school B developed a plan listing the specific days that the child would attend school and detailing the staff member who would be teaching the child at this time.
35. The staff within school B made certain adjustments to accommodate some of the child's sensory needs including dispensing with the requirement for school uniform and the provision of one to one lessons being provided to the child where appropriate.
36. The child initially appeared settled and happy with her new timetable and the arrangements in place between February and April 2019. Over the Easter holiday period the child's anorexia deteriorated and she experienced further weight loss. School B prepared a further plan that outlined the child's ongoing attendance arrangements.
37. From the time of her hospital discharge and over the course of her attendance at school B, the child received medical care and treatment from the Intensive Home Treatment ("IHT") team. The child's mental health remained fragile and arrangements were made for her to continue with medical treatment for her anorexia whilst continuing with a slow and phased return to school in line with the agreed timetable of February 2019.
38. A further plan was developed in April 2019 in order to further to engage the child in her school attendance.
39. Staff within school B met with the appellant on 22 August 2019 to discuss a plan for the child to return to school 5 mornings per week. The appellant advised Witness A that due to the child's high volume of medical appointments, the proposal for full-time education at school B would not work for the child.
40. A Looked After and Accommodated ("LAAC") meeting took place on the 16 September 2019 attended by multidisciplinary staff involved with the child's care and education. It was the decision of this meeting that the child's placement at school B remained the most appropriate one for her. The appellant and the child did not attend this meeting.

41. On 9 October 2019, the respondent's Educational Psychologist (Witness B) prepared a report regarding the child. This report highlighted the child's needs and the strategies that should be adopted by staff to promote the child's engagement with her education.
42. The child is currently being offered one-to-one support within the Base of school B on a full-time placement. There is capacity for the child to access mainstream classes and further capacity for teachers from the mainstream provision to attend the Base and teach the child on a one to one basis.

This child's attendance at school B

43. The child's initial transition was successful and the child showed signs at the start of making positive progress. [R44-51]. The child expressed an interest in certain areas of the curriculum and engaged well with staff when she attended initially.
44. The child ran away from her mother on one occasion when she was dropped off at school by the appellant. The child was distressed and a concerned member of the public called the Police and the child was safely returned to the care of her mother.
45. Over the course of the Easter holidays in 2019, the child experienced a relapse of her eating disorder resulting in weight loss. On her return to school in April the child was more withdrawn and displayed higher levels of anxiety than when she first attended school B.
46. In around April 2019, after the Easter holiday period, the child and the appellant wrote to the respondent's Education Services requesting that the child attend school B on a full-time basis.
47. The respondents did not consider at this time that progressing to a full-time education would be in the child's interests. The respondents considered that there still required to be a general build-up of routine for the child and that a part-time attendance would be in her best interests.
48. From around Easter 2019 until the end of the summer term in June 2019, the child struggled to attend school. The child continued to be treated for her mental illness within the community. The child also continued to request a return to full-time

education over this period on a number of occasions. This request was refused by school B as it was not felt to be in the child's interests at this time.

49. On 28 June 2019 the child was offered a place at School A following a request by the child and the appellant that she attend there. The appellant made a placing request to the respondents for the child to attend school A. This was refused by the respondents by way of letter on 23 July 2019.
50. The child has refused to return to school B since the start of the new term in August 2019. The child has continued to express a view that school A is now best placed to meet her needs.
51. It is likely that the child's views on the suitability of school A have contributed, at least in part, to her decreasing levels of motivation and engagement with the provision made available in school B.
52. At a Children's Hearing on 5 August 2019, the panel endorsed the work which had been undertaken by the respondents and granted a Compulsory Supervision Order in terms of the Children (Scotland) Act 1995.
53. The staff at school B have attempted to maintain contact with the child throughout her absence. During the lockdown period of 2020, the child was provided with a Corporate Parenting tutor by the respondents on a weekly basis. There have been two staff members who have carried out this role with the child over this time. Witness A has maintained contact with these tutors. The child has developed a close and positive relationship with one of the tutors.

Present time

54. The child continues to have weekly appointments with several departments of Child and Adolescent Mental Health Services (CAMHS) including her dietician and with a Clinical Psychologist. The child meets with a CAMHS psychiatrist on a monthly or bi-monthly basis.
55. The child remains enrolled at school B. The child she was due to commence in August 2020 for her fourth year however has failed to attend.

56. The child has continued to work positively with one of the corporate parenting staff who has maintained contact with the child throughout the period of the Covid-19 lockdown. The child has progressed to being able to take a test for the first time with the support of the corporate parenting tutor where she performed well.
57. The child continues to receive treatment for her anorexia however no longer requires supervision at mealtimes.
58. The child does not participate in activities outside of school and does not socialise with any peer group. The child has developed relationships with peers from her time in care and in hospital whom she contacts on-line.

Educational provision at school B

59. The respondent has offered the child a place at the respondent's secondary school. It is proposed that this attendance comprises of the child attending at the Communication and Language base ("the Base") which is located on the ground floor and attached to the mainstream secondary school.
60. School B as a whole is attended by 900 pupils. The Base is currently attended by 32 pupils. Within this population, 6 children are in S4 and one of these six pupils is female. The base provides support to identified young people who have been diagnosed with ASD and is designed to assist them to access mainstream education within the secondary school.
61. The base comprises of four large classrooms with a sensory room and facilities to develop independent living skills including a washing machine, cooker and dishwasher.
62. The Base at school B can be accessed by a drop-off point whereby children attending the base do not require to go through the mainstream school building and can go through a different entrance.
63. When the child was attending school she would often leave at lunch time to accommodate her eating plan. This would require the child to exit the school through the main foyer. At these times the child was accompanied by a member of staff.

64. The majority of children who attend the base are educated primarily within the mainstream secondary school. Whilst pupils do not generally remain in the base on a full-time basis, several pupils do receive a full-time education within the Base.
65. The base operates flexibly allowing pupils to access the mainstream curriculum as appropriate with the support of staff members and teachers depending on the needs of each pupil. The additional support needs profile of each pupil group within the base varies although all of the pupils who attend the base have an ASD diagnosis. The child is described as currently having the most complex presentation of all of these pupils.
66. Children attending the Base are able to study and encouraged to pass National 5, Higher and Advanced Higher qualifications.
67. The Base has one Modern Studies teacher and one Maths teacher. There is further capacity for young people within the base to engage in a broad range of other subjects across the curriculum by accessing the mainstream classes. The structure of the base also allows for teachers to be brought in from the mainstream section of the secondary school to teach within the base as appropriate.
68. The base has 4.3 members of teaching staff and 8 teaching support staff. All of the staff within the base are trained and experienced in de-escalation techniques and adverse childhood experiences (“ACE’s”). All of the staff across the school, including those in the Base, are provided with training in working with children with an ASD profile. All of the staff within the base have experience in working with children with ASD. The Principal Teacher of the base has eleven years’ experience in working with children with an ASD Profile and other complex needs within the Base.
69. Most of the pupils attending the base do not attend the Base on a full-time basis. Most children are supported to access the mainstream education programme with the support of the ASN staff. One to one support is available when it is needed or required. One to one support will be offered to the child to facilitate her attendance.

Educational provision at school A

70. School A is an independent school and is managed by a charity concerned with the interests of persons with additional support needs.
71. The school is a modern purpose-built building and it comprises of: general subject classrooms; a canteen; a library; and, additional dedicated spaces for science, physical education, home economics, expressive arts, technologies, hair dressing, outdoor learning, gardening and play
72. The school has a current roll of 24 pupils, in small class sizes of a maximum of 6 pupils per class. Each class is supported in their learning by one qualified teacher and one support for learning practitioner.
73. The school has pupils ranging from 8 to 16 years of age. The majority of children within the school are male. The senior phase pupils, with whom the child would be educated, were all born in 2005 and currently comprise of two girls and two boys. All the children currently attending school A have complex learning support needs and broken education pathways.
74. All of the pupils with whom the child would be learning will be working towards National 4 Qualifications as their goal. Children who wish to are supported to prepare for accessing college after leaving school.
75. School A uses a Primary School model. This model of education comprises of each class remaining with one teacher and a support staff over the course of the school day. The model is designed to have pupils access other areas of the school on a less frequent basis to minimise the transition of pupils over the course of the school day. This has resulted in a reduction in the number of incidents of challenging behaviour within School A.
76. Each class teacher within school A teaches more than one subject. School A does not currently have teaching staff to deliver on all aspects of the curriculum at National 5 level. Each class teacher is able to deliver literacy, numeracy and science subjects to children. School A is able to seek guidance from the Scottish Qualifications Authority ("SQA") in any area of the curriculum to ensure that the staff are assessing pupils to the correct standard. School A would look to train and build capacity in any class that required additional capacity to teach any subject in conjunction with the SQA standards.

77. Teaching staff within school A do not have capacity to develop expertise across the full curricular range. The class that the child would attend should she be placed at school A will be working towards attaining National 4 level this year. Children do not tend to attain any National 5 qualifications within school A.
78. The children within school A do not all have an ASD diagnosis. Currently, one pupil has such a diagnosis and he has less than full attendance. Most of the pupils at school A have a disrupted and negative experience of education.
79. Pupils attending school A often display quite challenging behaviours. These are managed through accredited de-escalation techniques and trauma-informed practices to reduce physical intervention. There are times when classes can be disrupted because one or more of the young people are not coping and exhibit challenging behaviour.
80. Staff within school A receive core training in child protection and safety with an emphasis on a trauma informed approach to minimise physical interventions. Identified staff also receive training in other areas including one staff member who takes a special interest in Autism best practice.
81. School A has the ability and resources to assess the needs of children with additional support needs such as the child, including access to psychology. The psychologist employed by school A works alongside teaching staff and assists in the development of a weekly programme for each child. School A seeks to work in partnership with any other agencies who may be involved with a child in attendance.
82. If the child were to be placed within school A, the child will require to undergo an initial assessment process in order that plans can be put in place for her education at school A. Following such an assessment, the child would be able to start at National 4 level. It would not be usual for school A to teach at National 5 level.
83. Each class within school A is led by general subjects teacher and a support staff. An initial assessment is conducted with other members of the school staff to pull together subjects that are appropriate. This is reviewed three times per year.

Cost of each school:

84. The cost of educating the child at School B would be a minimum of £7000 per year.
85. Placing the child on a non-residential day placement basis in school A would be approximately £1349.00 per week. This would be an approximate annual cost of placing the child within this school over a 40 week school year of £53960 plus unknown transport costs.

The child's views

86. We considered the terms of the advocacy statement lodged with the tribunal on 7 February 2020 [T27-T32]. This statement contained the child's views about her preference for an education. The tribunal sought the child's views on the possibility of a placement in either school.
87. The child states that she had not felt any benefit in attending school B. In particular, the child did not feel that anything had worked well at her placement at school B. The child expressed concern that she had not had the opportunity to attend school on a full-time basis and felt that she had not been listened to.
88. The child states that she had visited the school A on two occasions and was very keen to start there. The child states that she felt that the school A had the capacity to meet her needs in a range of areas and that it would be a safe and nurturing place for her.
89. The tribunal had full regard to the views of the child in determining the issues before it.

The Oral Evidence

90. We benefitted from the provision of detailed witness statements from Witnesses A, B, C and E. None of the witnesses deviated in any significant way from their witness statements in their oral evidence.
91. We found witness D to be someone who cares deeply for her daughter and knows her well. It was clear to the tribunal that the appellant wants what is best for her daughter. The appellant spoke candidly about some of the difficulties that the child had experienced in recent years. It was clear to us that the appellant has been required to advocate on her daughter's behalf for a number of years. We gained the

impression that while the appellant was honest in all of her evidence, her interpretation of the provision available at school B was influenced greatly by the role she found herself in as advocate for her daughter. This led to a tendency for her to be overly optimistic in her views on the provision at school A and to negatively interpret some of the actions taken by staff at school B in attempting to engage the child in her education. It seemed to us that she wanted to advocate the views of the child with respect to each school. Whilst the Tribunal had sympathy with the difficult position that the appellant must find herself in, her evidence appeared to be influenced by her daughter's clear preference to attend at school A and not to return to school B. This influenced the weight we could attach to the appellant's evidence on the likely provision at school A and the existing provision at school B.

92. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given the findings at paragraphs 13 to 28 above, it is clear to us that this is the case.

Reasons for the Decision

93. The respondent relied on two grounds of refusal. Firstly, the ground of refusal of the placing request set out in the Education (Additional Support for Learning) (Scotland) Act 2004, Schedule 3, para. 3(1)(f). Of the four conditions in that ground, the appellant challenged conditions (ii) (ability to make provision for additional support needs of the child) and (iii) (it would not be reasonable having regard to respective suitability and respective costs to place the child in the special school)
94. Secondly, the respondent sought to rely on "presumption of mainstream" ground of refusal contained within Schedule 2 paragraph 3(g). In short, for the respondent to rely on this ground, it must be established that none of following exceptions apply to the provision of education for the child in a school other than a special school:
- 94.1 it would not be suited to the age ability or aptitude of the child;
- 94.2 it would be incompatible with the provision of efficient education for the children with whom the child would be educated;

94.3 it would result in unreasonable public expenditure being incurred which would not ordinarily be incurred

95. The appellant further submitted that even if the ground of refusal was established, it would be appropriate in all the circumstances to confirm the respondent's decision.

The respondents are able to make provision for the child's needs at their secondary school (2004 Act Schedule 2 para 3(1)(f)(ii))

96. This is the first of the two grounds of refusal relied upon by the respondent. This ground comprises a number of constituent parts, numbered in paragraphs (i)-(iv). The respondent must satisfy us that each of the paragraphs apply to persuade us that the ground of refusal exists. We deal with each in turn.

School A is not a public school: paragraph 3(1)(f)(i)

97. This paragraph requires that the specified school (school A) is not a public school. We are satisfied that this is the case, and this was not disputed.

Provision for the child's needs at school B: paragraph 3(1)(f)(ii)

98. This paragraph requires that the respondent is able to make provision for the child's additional support needs in a school other than the specified school. In this case, that other school is school B. We are satisfied that school B can make provision for the child's additional support needs and that this part of the ground of refusal is met.

99. The application of this paragraph is disputed. The appellant's arguments are set out in A2-A3 and within their written submission. The respondent's arguments are set out in R3-R5 and within their written submissions.

100. The main areas considered by us are set out below. These areas were considered further by us when examining the comparison exercise for paragraph 3(1)(f)(ii) on "respective suitability". In consideration of each area, where appropriate we make reference back to the relevant paragraphs in our findings in fact part of our decision. The findings in these paragraphs underpin our conclusions in the relevant area.

Assessment of need

101. As pointed out by the appellant (and as set out in the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court)), the appropriate assessment point is at the time of the hearing. We accept that the onus of establishing the ground of refusal lies with the respondent. We also accept that (again arising from the M case), that consideration should be given to the assessment of the child's needs which happened closest to the hearing. We have evidence of such an assessment in the respondent's witnesses' oral and written evidence.
102. The child in this case has very complex needs [paragraphs 13 to 28 above]. The assessment of the child's needs was itself a complex process that took place over a period of time. At the point the child commenced her placement at school B, she was receiving ongoing intensive community treatment for acute mental illness which involved attending a large number of medical appointments with mental health professionals [para 37]. At this time, staff from school B communicated and liaised with a range of multi-disciplinary professionals involved in the child's medical treatment and care. The assessment of the child's needs took place from prior to the child's discharge from hospital in February 2019 until the completion of the Educational Psychologists report in October 2019 [R15-43].
103. All of the witnesses who gave evidence to the tribunal spoke of the complexity of the child's needs. Witness A had attended meetings within the hospital where the child was being treated prior to her discharge in early 2019. Witness A, along with the principal teacher of the Base, attended the specialist school attached to the hospital where the child had attended in order to review the child's work and discuss the child's progress with the head teacher of the hospital school. It was clear to the tribunal that the goal set by the respondents following initial assessment of the child was to get the child back into education following her lengthy stay in hospital. There was a target set to gradually build up a routine for the child whilst she continued to recover from her mental illness in the community. There was a further goal of the child building up relationships with peers and staff within the school whilst being mindful of her anxiety levels.
104. There was evidence that staff from school B had made a significant effort to plan for and accommodate the child's needs. Witness A communicated with all staff members who would be working with the child around the difficulties and how they might be approached.

105. The child has now been absent from school for over a year. There was evidence from Witness A that the child's needs would be re-assessed upon her return to school. Witness A also pointed out to the tribunal that this would not necessarily distinguish the child from many of her peers. This was due to the fact that all of the children within school B had been at home for a significant period of time due to the lockdown period and many children's needs would therefore require to be re- assessed.
106. The school were aware of the child's sensory issues. Witness A spoke of how the tannoy system within school B could be adjusted to avoid any distress to the child, following a suggestion that it had previously caused the child some trauma. The school had also dispensed with the requirement for uniform for the child. There was evidence that any timetable for the child would incorporate time for medication and any appointments.

The tribunal therefore rejected the argument that very little work had been done in respect of planning for the child's education.

General environment at school B

107. The Base teaches young people with a broad range of broad complex needs. Although the child is deemed to have the most complex needs amongst her peer group at school B, all children attending the Base have an Autism Spectrum Disorder (ASD) profile. Staff within the base are highly experienced in working with pupils with an ASD profile. All staff within the base and wider school receive ASD training. All staff within the Base receive training in trauma. There is a high ratio of staff to children within the Base allowing for one to one support where it may be needed.
108. The Base has a high level of structure where unexpected changes are minimised. The tribunal considered in light of the child's complex profile that this would be beneficial to her. The timetable provided to the child could be adjusted and adapted to meet her needs on an ongoing basis essentially providing the child with a bespoke package of education in order to support her complex needs.

Academic provision at school B

109. The provision of school B is able to meet the academic needs of the child. The child has aspirations to go to university. The child will be able to access National 5 classes in subjects of her choice and can be supported to do so on a one to one basis if this is necessary. Witness D concurred in his evidence that school A could certainly meet the child's academic needs. [A68]. Witness A described how many children attending the Base have studied and passed National 5, Higher and Advanced Higher qualifications.
110. During the period of lockdown, Witness A remained in contact with a corporate parent tutor who was assigned to the child and attended with the child at home for one hour per week. The child has developed a close relationship with this tutor. Witness A described the progress that was made following the child sitting a test for the very first time in her life following this tutor's involvement during the Covid-19 lockdown period. Witness A described how school B would look to build on the child's academic ability and the existing relationship that the child had with her home tutor in order to facilitate the child's attendance at school B. The child will also now be offered the possibility of accessing remote provision as a means of continuing to facilitate her school attendance.

Specialist input at school B

111. Staff within school B will continue to seek involvement with the child's social worker, dietician and other members of the CAMHS team. Witness A spoke of school B being flexible around any appointments that the child might have

Building resilience for the child- school B

112. There was evidence from Witness B that the child requires, above all else, to build up positive relationships with staff and peers. The child's history of disengaging with professionals involved in her care has reinforced her behaviours and negatively impacted on her ability to build relationships. There was evidence that when adults persevered with the child when she sought to disengage, the child was more likely to develop a positive relationship with that adult. Witnesses A and B demonstrated a real commitment on the part of school B to look to build on such relationships and promote the child's resilience. This approach was supported of by the child's

clinical psychologist and psychiatrist within the CAMHS team who continue to provide care and treatment to the child.

Transitions at school B

113. Transitions are an issue for the child [para 18]. Staff at school B are aware of this challenge and have made adjustments in order to minimise this. In particular, the child has been offered a full-time attendance within the Base to avoid the need for her to travel to other mainstream classes.

Pathological Demand Avoidance (PDA)

114. The appellant stated that the child has a diagnosis of PDA. This was disputed by the respondents. It was the appellant's position that school B lacked any formal strategies that recognised or managed this diagnosis and was therefore unable to meet the child's needs. Witness D concluded in his report that the child also has this diagnosis, The tribunal was unclear on what basis he reached this conclusion
115. There was no material evidence, medical or otherwise to allow the tribunal to make a finding in fact that the child had PDA. In any event the evidence of Witness B was that any diagnosis would not alter the terms of the respondents' assessment.

Part-time attendance

116. We are satisfied that the part-time attendance plan was appropriate and took into account the needs of the child at the time it was implemented. It was a clear priority and goal from the early planning stages when the child was still in hospital, that the priority at the early stage of the child's attendance at school B was to promote the child to develop and foster positive relationships with peers and staff working with her. That this did not occur over time cannot be placed at the fault of the respondents.

Conclusions

117. We carefully noted the appellant's concerns over the child's experience of school B. We fully accept that there have been issues in areas such as the child's anxiety and part-time attendance. However, in our view these difficulties were perhaps inevitable. The child commenced her placement at school B immediately after her discharge from a lengthy psychiatric hospital admission. The appellant's criticisms echoed that of the child in that she wished the child to have a full-time education. It was clear from all of the available evidence that it would not have been in the child's interests to attend school B on a full-time basis given the history and the views of all of the professionals at this time. Witness A explained during her evidence that in her view there was a clear disparity between the request for full time education and the reality of child's difficulties around food as they related to her anorexia.

Reasonableness of placing the child in school A: respective suitability and cost - paragraph 3(1)(f)(iii)

General comments on the test

118. The application of the condition in this paragraph is disputed by the applicant. This paragraph requires us to have regard to both the suitability and cost of the provision for the child's additional support needs at school B and school A respectively. This is a comparison exercise. Having done so in order for this paragraph to apply, we must conclude that it is not reasonable to place the child in school A. This ground does not require us to consider cost and suitability separately and apply a reasonableness test to each.
119. The question of reasonableness must be viewed from the respondent's standpoint, an approach confirmed by Sheriff Tierney in the *M* case, at paragraph 54:
- "The matter in respect of which a decision on reasonableness is required is the placement of the child in the specified school. That placement would be made by the defenders' education authority and accordingly it seems to me that the question is whether it would not be reasonable for the education authority to place the child in that school, not whether it would be reasonable for the parent to seek to have him so placed. The two factors which have to be taken into account are suitability and cost. It seems to me that suitability involves an assessment of the respective qualities of the provisions from which [the child] will benefit in each of the two schools."

Cost

120. On cost, it is clear that we should consider the additional cost in meeting the additional support needs for the child at school B compared with the cost (the fees and, if applicable, transport cost) in relation to the prospective school (*S v Edinburgh City Council (SM, Appellant)* 2007 Fam LR 2 at paragraphs 23 and 28, as approved by the Inner House in *B v Glasgow City Council* 2014 SC 209; 2013 SLT 1050 at para 19).

School A costs

121. The costs of provision for the additional support needs of the child at School A was a matter of agreement [T39]. This cost is stated as £1349 per week plus taxi costs. We were not addressed on the costs of the taxi. The tribunal did not consider that the costs of such transport would be significant given the distances involved.

School B costs

122. The cost of meeting the additional support needs of the child at school B was not a matter of agreement. There was evidence that the average cost of educating a child or young person in a secondary school under the Respondent's control is in the region of £7000 per year. It was suggested that there was likely to be an enhanced cost in connection with a child attending the Base however no figure in this respect was available. The tribunal therefore concluded that the cost on the available figures should be used for the comparison exercise that the tribunal required to carry out. In addition, the tribunal notes that the provision at the Base where the child attends already exists and is being provided to child and others. With this in mind, we concluded that any other notional costs were unlikely to be significant.

Respective suitability – general comments

123. This exercise involves a direct comparison of the respective qualities as they relate to the child on the evidence available. We were not satisfied that school A could meet the needs of the child. For this reason, we are in no doubt that school B is more suitable than school A.

124. Evidence which was of particular value to the Tribunal in considering this question was that of Witnesses B, C and D. We will deal with this evidence separately;
125. Witness B was familiar with the provision at school A having been involved with the placement of another child there. Witness B was clear in her evidence that school A would not be an appropriate placement for the child. Witness B made reference to some of the children who attended school A who exhibited very challenging behaviour. Witness B was of the opinion that it would not be appropriate for the child to be exposed to this given her high anxiety levels. Witness B had knowledge of the profiles of some of the children who attended school A. She explained that the respondents had in the past placed children within school A when there was no other suitable provision available to them. In the case of the child, Witness B argued that suitable provision existed within school B.
126. Witness C gave detail in his evidence about the provision and pupil profile of school A. The tribunal concluded from his evidence that school A did not have the level of particular expertise that school B was able to offer in terms of the child's ASD diagnosis. Whilst most of the children within school A shared the child's background in terms of a broken education pathway, this appeared to be the only factor that the child would have in common with the majority of the children in school A. Only one child within the same age group as the child has an ASD diagnosis. There was further evidence that the pupil profile and set up of school A was such that children could be disruptive and exhibit challenging behaviours requiring the implementation of de-escalation techniques.
127. Witness D in his written and oral evidence was unable to state which provision would be more suited to the child's needs. He concluded that it was highly unlikely that the child would ever manage to benefit from a placement in School B. Witness D recommended that a residential service for the child over 39 weeks be considered. In the absence of such a facility, he favoured an options appraisal and transition trial to determine whether or not school A could meet the majority of the child's needs. Witness D's evidence focussed primarily on the level and nature of planning that in his view should now take place for the child and not around the suitability of the current provision available to the child.
128. The weaknesses that Witness D referred to in the provision available at school B were largely those identified to him by the appellant [A67]. Witness D was also clear in his conclusion that school B was a high quality provision that could undoubtedly

meet the child's academic needs. Whilst Witness D questioned whether or not school B was able to meet the child's broader wellbeing, there was no more detail given on what those specific issues might be.

129. Witness D spoke of the overwhelming challenges of the main door entrance only to the base of school B. On cross-examination he conceded that this had been an error on his part and that he now realised there was in fact a separate entrance to the base that the child could use.

Suitability – school B

130. It is clear from the evidence that the provision for the additional support needs of the child at school B is suitable. We outline our analysis of the provision there at paragraphs 59 to 69.

131. The tribunal was satisfied that there was evidence that the provision offered to the child at school B was sufficiently flexible to adapt to the educational and additional support needs of the child as required. The child would have access to a greater pool of potential peers than if she were to attend school A and ready access to subjects of her choice.

Suitability - school A

132. For the child to attend school A, a further transition and comprehensive assessment process would be required to take place in order that it could be established whether or not that the child's needs could be met within the school. This process itself would likely be detrimental to the child. [18] Although the child is expressing a clear willingness and enthusiasm to attend school A, the child expressed similar views at the start of her placement at school B. Witness B described in her evidence that a further transition or starting again for the child would likely have a negative impact on her.

133. Witness D raised a number of questions around the ability of school A and its appropriateness in meeting the child's needs. In particular, he noted that there would be compromises in extended learning opportunities for the child. Reference is also made in his report on to the challenging behaviour of a number of the pupils within the school. [A68] Witness D expressed further uncertainty around the provision of support for pupils with an ASD profile within school A. [A68]. Taken together with

all of the other evidence, the tribunal concluded that these factors might seriously undermine the child's ability to progress academically and to enjoy and develop resilience with others and engage in her education.

134. In considering the provision available in school A, the tribunal determined that it was not a suitable provision for the child. The only compelling factor before the tribunal in its favour was that both the appellant and the child expressed a very strong view that the child should attend there. This view point, whilst of importance, is outweighed significantly by all of the evidence available to us.

Conclusion on respective suitability

135. The provision in school B is more suitable for meeting the child's needs than the likely provision in school A. There are a number of concerns about the fit of school A to the child's needs. These concerns have been expressed by experienced professionals providing comprehensive written and oral evidence and with knowledge of the school.

Respective cost

136. The tribunal determined the cost differential on the available information as being in the region of £46000. In other words, it would cost the respondent £46000 more per year to fund the provision of the child's additional support needs at School A than School B. That said, there was some evidence that the figure for the child to attend school B might be higher.

Conclusion – reasonableness arising from cost and suitability comparisons

137. Considering respective cost and suitability, we have decided that it is not reasonable to place the child in school A. If we were to overturn the decision to refuse the placing request and require the respondent to place the child in school A, this would involve the child starting another transition to a school that would be unlikely to meet the child's needs. There was evidence of initial progress at school B and there is a clear plan (R15-43] to work with the child and develop and maintain positive relationships to support her to return to school on a full-time basis. Witness C in his oral and written evidence was clear that the assessment process should the child be placed at school A would be started again. We accepted the submission of the respondents here that this assessment process has already been undertaken by Witness B, a highly experienced and senior educational psychologist, on behalf of the respondents. This

assessment includes a chronology of the child's needs and the steps required in order to overcome potential barriers to her accessing the provision at school B. We did not consider that there was any benefit to the child in duplicating this process. This was especially so when the evidence suggested to us that school A would be unlikely to meet the child's needs for the reasons we have stated previously.

138. There is an additional cost implication of £46000 attached to the child attending School A. The tribunal concluded that even if it had been established that this cost differential had been significantly less, the obvious unsuitability of school A to the current needs of the child meant it would not be reasonable to place the child, having regard to the respective cost and suitability to place the child in school A.

Respondent has offered to place the child in school B - paragraph 3(1)(f)(iv)

139. The condition in this paragraph is met – the respondent has offered to place the child in school B by allowing her to continue to be educated there. This is not in dispute.

Second ground of refusal: Presumption of mainstream

140. Although the Tribunal was satisfied that a ground of refusal existed at the date of the hearing, we considered for the sake of completeness that it would be helpful to make a finding in relation to the second ground relied upon by the respondents.

Presumption of mainstream (2004 Act, Schedule 2, para 3(g)) (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 Scotlands School etc Act 2000 (“2000 Act”).

141. This ground requires the tribunal to consider the circumstances in which the presumption of mainstream applies. This ground provides that where the school in the placing request is a special school, and if placing the child there would breach the “presumption of mainstream” provided for in section 15(1) of the 2000 Act, the placing request, on that basis alone, should be refused.

142. The word “mainstream” is not defined in the 2000 Act. It is clear however that a “mainstream” school is a school that is not a “special school”. In terms of section 29(1) of the 2004 Act, a special school is a school or any class or unit forming part of a public school which itself is not a special school, the sole aim of which is to provide education especially suited to the additional support needs of children or young persons selected for attendance at that school.
143. It appeared to the tribunal that the base of school B falls within this definition. Witness B was clear in her evidence that the provision offered to the child within the Base at school B is not an adapted mainstream but a specialist provision.
144. Accordingly, the tribunal took the view that as the respondents are offering to place the child within a special school within the meaning of the 2004 Act, they are unable to rely on this presumption of mainstream argument. Accordingly, the tribunal did not consider that this ground could be relied upon by the respondents and was not therefore established before the tribunal.

Appropriateness

145. Having concluded that a ground of refusal exists, we require to consider whether, nonetheless, it is appropriate in all of the circumstances to confirm the decision to refuse the appellant’s placing request, or whether we should overturn the decision and place the child in school A.
146. In considering this question, we were required to consider all of the circumstances including those which may be relevant to the consideration of the ground of refusal, as well as any other circumstances as they relate to the child. In considering all of the evidence available to us, we are satisfied that the refusal of the placing request should be confirmed.
147. The respondents have sought to adapt and adjust their existing provision to provide the child with an individual package of education in order to accommodate the child’s complex needs. We very carefully considered the views of the child throughout our deliberations. We noted throughout that the child does not wish to return to school B but to commence a place within School A. The child’s view however has to be considered along with the evidence before the tribunal, which was compelling. The child has a history of disengaging with professionals involved in her care. In continuing to follow this path, the child is unlikely to be able to build positive

relationships and resilience. The evidence available to us suggests that when those involved with the child are able to persevere with her throughout the process of the child seeking to disengage, there may be a more positive outcome. To do otherwise, in the view of the tribunal, is likely to reinforce the child's fixed behaviours and be a backward step in the child's aspirations to achieve SQA qualifications.

Conclusion

148. The respondent's decision to place the child at their secondary school is confirmed.