



DECISION OF THE TRIBUNAL

Reference

1. The appellant sought the placement of her son, a twelve-year-old child with severe and complex additional support needs, in an independent residential school. The respondent refused that placement, offering instead a placement at the local secondary school with enhanced provision. 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 exists (Education (Additional Support for Learning) (Scotland) Act 2004, sec 19(4A)(a)(ii)). We are satisfied that the respondent is able to make provision for the additional support needs of the child in the enhanced provision of the local secondary school (sch 2, para. 3(f)(ii)). 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 specified school and in the local secondary school, to place the child in the independent school (para. 3(f)(iii)). We are satisfied that it is, in all the circumstances, appropriate to confirm the respondent's decision (sec 19(5)(a)(ii)).

Process

4. Conference calls between the legal member and parties' representatives took place on 17 April, 20 May and 10 June 2019. The hearing took place on 17, 18 and 19 June 2019. The hearing took place at the respondents' premises, the appellant having consented to that ahead of the hearing. The following papers were lodged, no objection being taken by either party: A19 (colour version); A110-113; R39-40, R40A, R41-R51. An independent advocacy report was also received during the course of the hearing.

Findings-in-fact

5. The Tribunal found the following facts admitted or proved:-

The child's conditions and needs



- 5.1. The child is a boy of twelve years old.
- 5.2. The child has global development delay. He has autism spectrum disorder. He suffers from epilepsy.
- 5.3. He has restricted mobility. He uses a wheelchair at least some of the time, but requires assistance and encouragement to use this only as a last resort. He has low muscle tone.
- 5.4. In school, the child spends between 30% and 75% of time mobilising in a wheelchair. When with his mother, he is able to go on walks without use of his wheelchair.
- 5.5. The child can suffer overstimulation from sound and language.
- 5.6. Sometimes the child has breakdowns in behaviour; he will throw items with which he is bored or drop to the ground when walking.
- 5.7. The child has severe delay to development of expressive language and social communication.
- 5.8. The child requires one-to-one assistance in the classroom, and requires assistance from an additional member of staff for certain purposes such as mobilising and toileting.
- 5.9. The child requires assistance with communication. He is nonverbal. He requires to communicate by means of symbols, including the Picture Exchange Communication System (PECS) and visual timetables.
- 5.10. The child is functionally incontinent, uses nappies, and requires assistance to be changed.
- 5.11. The child requires to learn self-care, toileting and basic independent life skills.
- 5.12. The child requires encouragement to eat more independently at mealtimes.
- 5.13. The child's academic progress through primary school is in line with what might reasonably be expected with competent tuition, given his level of disability, the effect of epileptic attacks, and the setback of an unsuccessful placement at a special school.
- 5.14. The child requires residential care to provide his mother with respite.



Facts about the respondent's provision

- 5.15. The local secondary school has an additional support needs base situated in a separate corridor within the school. The additional support needs base within the local secondary school has quiet and sensory rooms, disabled toilets, two dedicated enhanced provision classrooms, a sensory garden and an additional support needs playground. The local secondary school also has a swimming pool and hydrotherapy pool.
- 5.16. The classrooms within the additional support needs base are smaller than those in his primary school, but are of a typical size for a secondary school and will be adequate for the child.
- 5.17. There will be a degree of noise at the secondary school, which has the potential to be a challenge for a child, but which ought to ultimately be manageable by him.
- 5.18. If educated at the local secondary school, the child and his mother can be provided with support in the form of occupational therapy, speech and language therapy, physiotherapy, educational psychological services, and social work services.
- 5.19. Children with additional support needs are provided at the local secondary school with an individualised timetable. For this child, should he attend that school, he will have lessons in subjects such as literacy, numeracy, art, music, science, home economics, drama, and physical education, as well as time for sensory activities, speech and language therapy and hydrotherapy. He would be educated in one of the two dedicated enhanced provision classrooms within the ASN base for some of the time but where he was timetabled for specific subjects such as home economics or science, he would be taught in the mainstream classrooms dedicated for those subjects alongside other children with additional support needs. Suitable adapted lessons would be taught by subject teachers supported by additional support needs staff.
- 5.20. Should he attend the local secondary school, he will have symbolic communication used throughout the school day.
- 5.21. The child will have a dedicated support from a learning assistant with relevant training including in curriculum planning, behaviour management, manual handling and the PECS. There will also be additional assistants available to assist with tasks such as mobilising and toileting.



Additional Support Needs

5.22. The child will share a teacher with two other pupils with additional support needs.

5.23. The child is not currently receiving any support in terms of physiotherapy. The local physiotherapy department has declined to resume involvement. However, the child currently attends weekly sessions in the hydrotherapy pool and this would continue as part of the child's proposed timetable if he attended the local secondary school.

The appellant will be kept informed of the child's time at school by means of regular meetings and a "home link" (i.e. daily written information).

5.24. The child has been attending the local secondary school part-time as part of transitioning arrangements. The amount of time spent by the child at the local secondary school has gradually been increased during the school year. For the six weeks preceding the hearing, he has been spending the full time equivalent of two days at the local secondary school.

5.25. The child's attendance at the local secondary school has been proceeding in a satisfactory manner, without adverse incident.

5.26. The child is currently provided with respite care. There is respite care of 3 hours per week, residential respite care of 6 nights per month and additionally school holiday respite care. The respondent is able to make additional provision of respite care available, should it assess the child and his mother to need this.

5.27. The child will receive some assistance with learning basic life skills at respite care.

Facts about the independent school

5.28. The independent residential school is situated in another local authority area, and is one of several schools which are part of a worldwide movement run according to a particular philosophical or spiritual ethos.

5.29. Due to its location relative to the child's home, progressive transitioning arrangements by means of visits by the child and/or phased attendance at the independent school will not be feasible.

5.30. Attendance at the school without a process of transition will lead to substantial distress to the child and will affect his progress in school.



Additional Support Needs

- 5.31. The independent school has not had had a speech and language therapist in its employment for around a year.
- 5.32. The tendency of the independent school is to rely on support within the school rather than seek external assistance. The independent school uses a particular general practitioner for its pupils, who shares the ethos of the school. It does not have a regular practice of using the services of the local authority or local health board, with the exception of physiotherapy, where it seeks the advice of the local department.
- 5.33. The independent school only has access to educational psychological services insofar as it takes advantage of the input from the staff of local authorities which have children placed there.
- 5.34. The independent school uses therapies, such as colour shadow therapy, which do not have an established scientific basis.
- 5.35. The independent school makes only very limited use of symbolic communication methods, of typically around ten to fifteen minutes at the beginning of the day.
- 5.36. The independent school has minimal individualisation of its curriculum.
- 5.37. The independent school makes use of volunteers as classroom assistants, most of whom tend to move on to another facility within the movement after a year.
- 5.38. The independent school has a practice of not chaperoning children when they are being assisted by a member of staff with toileting. This is not good practice with respect to child safeguarding.
- 5.39. The quality of the independent school's provision for improving children's basic life skills is high.

Relative cost

- 5.40. The additional marginal costs incurred for educating the child at the local secondary school will be as follows (*per annum*): 1 full-time support for learning assistant (grade F) - £18,652; Respite care (outreach) of 3 hours per week - £4,009.20; Residential respite care (6 nights per month) - £49,392.00; School holiday respite care - £14,120.14. (**Total £86,173.34**)
- 5.41. There will not be additional costs in terms of a teacher or transport costs, as these would be incurred in any event for other pupils.



5.42. The additional costs for educating the child at the independent school will be at least **£120,640 per annum**.

Reasons for the Decision

Assessment of witnesses

6. We believed each of the witnesses to have given evidence honestly. We also believed each witness was reliable when giving evidence of matters of fact. Finally, we accepted the opinion evidence of the respondent's educational psychologist. Each witness gave evidence in a manner that appeared intended to be informative and helpful.
7. We were struck by the careful and considered evidence of the appellant, who appeared to avoid any temptation to tailor her evidence in a manner that might be thought to improve the prospect of us overturning the respondents' decision. The respondent's area principal learning support teacher was able to make concessions arguably harmful for the respondents' case. For instance, she acknowledged without hesitation that the amount of time the child apparently spent in a wheelchair in primary school to be inappropriate. Both she and the respondent's educational psychologist offered certain opinion evidence. Where they were inconsistent, we preferred the latter in light of her psychological expertise.
8. We found the educational psychologist's evidence to be detailed and compelling. She differed from the area principal learning support teacher in stating that, with appropriate transition management, the child could live separately from his mother for long periods. The educational psychologist also volunteered that the independent school had a particular strength in instituting basic life skills. One child (with very different needs from the appellant's son) had been placed there on this educational psychologist's advice. We thought the educational psychologist well placed to speak about the independent school, having visited it and spoken to staff in the context of the respondent's responsibilities for two of the children already placed there. We acknowledge the point made by the appellant's solicitor that there were certain limitations in that evidence as her visits and correspondence were not in the context of the potential placement of this child, and she was not shown this child's potential class. However, there was nothing to directly contradict the matters of primary fact to which the educational psychologist spoke. There was no evidence of an assessment by the independent school of the child's needs or a specific plan for his education tailored to his needs, should he be placed there. The independent school's response to the appellant's queries was put largely in general terms. For instance, there was no calculation given of how many hours of additional support the child would require.



The respondent is able to make provision for the child's needs

9. We are satisfied that the respondent is “able to make provision for the additional support needs” (2004 Act, sch 2, para. 3(f)(ii)) of the child in the local secondary school.
10. We heard detailed evidence from the area principal learning support teacher regarding the features of the local secondary school and the regime there, as well as opinion evidence from the respondent’s area principal learning support teacher and educational psychologist. Although the appellant had expressed concerns about the school in her written statement, she acknowledged in her evidence (given after hearing the respondent’s witnesses) that what was planned appeared to be good. She did not speak to any problems arising from the child’s attendance as part of the transitioning. Put shortly, we are satisfied that the local secondary school is able to provide adequate tuition and a suitable learning environment catered to his needs, by means of sufficient and properly trained staff in accommodation that is appropriate.
11. Six potential areas of particular concern raised by the appellant were the size of the classroom, noise, quality of educational provision, management of wheelchair use, the timetable the child would follow, provision of physiotherapy, and provision of care outwith school.
12. We were not persuaded that classroom size was likely to pose a problem. The child would be educated along with two other children in enhanced provision in one classroom. Where they attended particular subject matter lessons, such as home economics, these would take place separately from the mainstream classes.
13. The educational psychologist acknowledged noise could be a challenge at school, but that in her experience this could be managed for children with autism spectrum disorders. There was no reason to think this child to be in a different position.
14. The educational progress the child has made is extremely limited. However, the educational psychologist gave evidence that very modest progress such as had occurred with this child was in line with what could be expected with children with that level of developmental disability. The area principal learning support teacher spoke to an unsuccessful attempt to place the child at a special school, with the child’s progress being set back for around a year. It is also possible that the child’s epileptic fits, which had been frequent at one point, were a contributing factor. We do not need to reach a precise conclusion as to the causes of his poor progression beyond that the existence of several other possible contributing factors leads us to conclude that the child has probably not been subject to poor provision of education. We did not think any conclusion could be made that the educational provision at his primary school was inadequate, still less that any similar conclusion



Additional Support Needs

could be made as to whether future provision at the secondary school was likely to be inadequate.

15. The contrast between the extent of wheelchair use at primary school, and outside of school with the child's mother, is such as to raise concerns as to whether the child's needs to mobilise would be adequately provided for. Despite this, we are satisfied that the respondent is probably "*able* to make provision". The respondent is able to provide two members of staff to assist with mobilising. There seems to be no fundamental reason why practices or techniques cannot be learnt to ensure the child spends more time mobilising out of his wheelchair. The clear acknowledgment by the respondent's area principal learning support teacher that he should have been mobilised more satisfies us that this issue can and will be addressed.
16. We are satisfied that the curriculum planned for the child at the local secondary school has a suitable mix of subjects catered for his needs. Our impression of the appellant's evidence was that her concerns about the curriculum were largely allayed having heard the respondent's evidence. We could not identify any shortcoming in what was planned.
17. It was the view of each of the area principal learning support teacher, educational psychologist, and the appellant, that the child would benefit from further physiotherapeutic input. Certain views in evidence were ventured as to why that might be, as to whether cost or pressure of work might be a consideration, or that it was thought the child's lack of motivation precluded useful intervention. We think the correct approach is to begin with the starting point that the physiotherapy department has expressed the view that there should not be further work by them at this point. In the absence of direct contrary evidence on this point, rather than supposition, we should treat that as a professional view expressed in good faith that the child does not have a current need for physiotherapy. In any event, it is clear that the child has received physiotherapy in the past and, should he be assessed as requiring it in the future, there is an ability for that to be provided to him.
18. The appellant is a single mother, with a physical impairment. It is clear from her evidence that the appellant is tireless in caring for her child and seeking the best for him. It is also clear that these efforts must take their toll on the appellant, and that it cannot be certain that she will be able to continue this throughout his childhood. It is possible the point will come where he requires to have more substantial respite care, or to be taken into full time care provided by the respondent. In either case, we are satisfied that the respondent is able to provide this by means of provision from the respondent's social work department.



Suitability

19. We are satisfied that education at the local secondary school is more suitable for the child than education at the independent school.

20. Our evidence as to the independent school came primarily from the respondent's educational psychologist. We also had a written response by the independent school to questions put by the appellant's solicitor, an "Autism Accreditation Peer Review" and a "Standards Report and School Improvement Plan". Aspects of these documents were raised with the educational psychologist in her evidence. As we have said, we accepted her evidence both as to primary matters of fact and matters of opinion. We did not perceive there to be any significant contradiction as to primary matters of fact between these sources, and indeed on certain points (such as the educational psychologist's observation of limited use of symbolic communication) it was in line with the observations in the documents (eg. Autism Accreditation Peer Review, A79: "There is still an inconsistent use of (and in lots of cases very little) visual structure across school (and residential homes)."). If there had been any material contradiction, we would have preferred the evidence of the accredited specialist who was cross-examined and who gave evidence both of strengths and weaknesses of the school, rather than a review by persons whose qualifications are not stated, or the school's own report.

21. We regard the lack of significant use of symbolic communication (whether with PECS or otherwise) and the lack of individualisation of teaching, both witnessed by the educational psychologist, to make the independent school substantially less suitable than the local secondary school. Without this, the child's time at school will largely be without purpose, and potentially frustrating. We also think placing the child in a residential school without transitioning would likely lead to long term impact for the child. We infer this from the experience when the child was placed in a previous non-residential special school. We heard evidence that the placement broke down due to inadequate work on transitioning, with apparent long-lasting effects on his education. The difficulties of a placement in a residential school, distally located, without any transition work are likely to be so much greater. We also attach some weight to the lack of training of classroom assistants and the absence of chaperones, something we were told by the respondent's educational psychologist had been raised by her with the school but not addressed.

22. We do not think the independent school's strength in teaching basic life skills outweigh this. The independent school appears to have a superior provision to that of the local secondary school or the institutions providing residential care in the respondent's area. But this is not so significant to outweigh the likely failure to address the child's basic educational needs and the likely emotional cost to the child of the initial transfer to the independent school without careful transitioning.



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23. We do not think the school being a residential one provides a material advantage. The appellant is presently able to care for the child with the current level of respite care and the help of her daughter. However, should there be a further deterioration in the mother's health or if her daughter was no longer living with her then it is likely that the current level of support would be inadequate. Should full-time residential care be required, this can be provided by the respondents within the local authority area, where he will be able to be in contact with his mother and other family members on a more regular basis than if he was placed in the independent school.
24. We do not think the independent school's provision of therapies provides a material advantage. We accepted the educational psychologist's evidence that there was not a scientific basis for finding that these led to any benefit for those treated. We have no reason to believe the independent school would be better placed in accessing physiotherapy or in mobilising the child than the local secondary school.

Cost

25. We are unable to arrive at any finding as to the true total cost of the independent school. The finding we have made is derived from what were said in the independent school's response to be "Base costs" of £2,320 (A71). They stated that "any additional support" would be £16 per hour (*ibid*). We did not have any statement as to what level of additional support they anticipated. We are unable to make any finding on transport costs.
26. The issue is academic. On any view, the cost to the respondents will be higher if he is placed at the independent school rather than the local secondary school. Even if this was cost neutral, the greater suitability of the local secondary school would mean that it would not be reasonable to place the child at the independent school.

It is appropriate to confirm the respondents' decision

27. There are no circumstances present in this case that would make it other than appropriate to confirm a decision to place the child at a school where the respondents are able to make provision for his needs, and not to place him in the independent school preferred by the appellant where the respective suitability of the schools would make this unreasonable.

Additional Comments

28. The comments in this section do not form part of the reasons for the decision in this case. These are optional comments which are designed purely for the assistance of the parties.



Additional Support Needs

29. Our impression is that the respondent could improve how it informs and involves the appellant. We think some of the appellant's concerns expressed in writing in advance of the hearing would not have been held had she had the benefit of the detailed accounts we received in oral evidence from the respondent's witnesses in the course of the hearing. For instance, during the hearing the appellant stated that she only now understood the purpose and benefits of using PECS and other visual communication. The appellant told us that her child had soiled his clothes at school, a problem she had not encountered at home, but her offer to show the school staff how she changed his nappy to avoid this had been declined. We also were concerned that the appellant seems to have considerably more success in mobilising her son than the staff at the primary school. We suggest that staff at the secondary school take steps to observe and learn from the appellant as to how she looks after her son.
30. Although we do not think we have an evidential basis to find that the child has a current need for physiotherapy, we note the appellant's desire for advice as to what steps she might take to assist her son to allow him to continue to mobilise for as long as possible. We consider this to be a reasonable request. We suggest the respondent does what it can to encourage the local physiotherapy department to provide this.