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**DECISION OF THE TRIBUNAL**

**Summary of the Decision**

The tribunal confirms the decision of the authority and refuses the placing request that the authority places the child in the school specified in the placing request in terms of section 19(4A)(a) of the Education (Additional Support for Learning) (Scotland) Act 2004.

**Introduction**

1. The appellant made a reference to the Tribunal in February 2018 under section 18(3)(da)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 (“the 2004 Act”) in relation to the refusal by the respondent on 15 February 2018 of a placing request.
2. This reference relates to that placing request by the appellant for her son, the child, for a residential placement at school A which is an independent school (the specified school). Although the local authority had originally offered the child a place at one of four schools with an Inclusive Resource, including school B, the appellant advised that she had a preference for school C and the local authority offered the child a place there and therefore that is the school nominated by the authority.
3. The child has additional support needs in terms of section 1 of the 2004 Act.

**Evidence at the hearing**

1. At the hearing, the tribunal heard oral evidence for the authority from witness 1, acting support for learning leader at school C and from witness 2, now acting deputy head at school D, but at the relevant time principal teacher of language and communication classes at school E. Both witness 1 and witness 2 lodged witness statements.
2. The tribunal also heard evidence for the appellant from witness 3, head of education, school A, who spoke to his report which was lodged, as well as from witness 4, independent educational psychologist, who spoke to reports lodged, which included a summary of needs table with comparisons between school A and school B, but an updated report was also lodged following his visit to school C. The tribunal also heard evidence from witness 5, independent social worker, whose report was lodged.
3. The appellant lodged a witness statement and she gave oral evidence to support it.
4. We also had the benefit of the child’s views through two reports written by an independent advocate, dated 5 February 2018 and 16 April 2018. The appellant representative confirmed at the outset of the hearing that the child had given his consent to share these with the tribunal, and that he did not wish to speak directly to tribunal members.
5. Following two days of evidence, it was agreed that parties’ representatives would provide written submissions, and we are grateful to the appellant’s representative and the respondent’s representative for producing them in a short time frame to assist the tribunal in our deliberations.
6. The tribunal also considered a large number of other documents and reports produced in a joint file of productions, which are referred to throughout this decision where relevant, and which were all taken into account in reaching our decision.

**Findings in Fact**

1. The child is currently a primary 7 pupil at school E. He is 11 years old. He has a diagnosis of autism spectrum disorder (ASD) and other related conditions. He currently lives at home with his mother, his father and his sister.
2. He is based in the language and communication classroom, which until 16 April 2018 was headed up by witness 2. Overall his placement at school E has been successful. Up to and including most of P6, and the start of P7, the child could be encouraged and motivated to learn and participate, although his mood and motivation fluctuated frequently. He was increasingly spending time in the mainstream class. At the beginning of P7, he was fully integrated into his mainstream class with one to one support, spending up to 90% there at one stage.
3. Over the last 18 months there has been deterioration in his confidence in the mainstream classroom and the child has become anxious and stressed. Witness 2 attributes this to anxieties over the pending transition from primary to secondary. She is of the view that there has been much more conversation and dialogue with the child about the transition than pupils would usually experience.
4. The child experiences difficulties in coping with transitions. He copes best when he has sufficient time to process and come to terms with any proposed change. The lack of certainty over which school he will attend for secondary has caused or at least greatly contributed to increased anxiety on the child’s part. As a result of recent high levels of anxiety, the child has been allocated one to one support at least for his transition from primary to secondary.
5. During 2016/17, the appellant visited a number of schools to assess how they would suit the child and to discuss his specific individual needs with the professionals at each school. Following these visits, the appellant reached the view that the inclusion resource units offered by the respondent were unable to fulfil the child’s needs.
6. Consequently, on 12 October 2017, the appellant submitted a placing request for a secondary school placement at school A, an independent school for boys with additional support needs. Following a decision of this tribunal, a decision was made by the authority on 15 February 2018 to refuse the placing request.
7. Although the appellant was offered one of four schools in the responsible body area with inclusion resource units, the appellant identified school C as the most suitable of the four. This therefore is the school where the authority has offered to place the child.
8. School C is a state-funded Catholic secondary school with approximately 740 pupils. The school C inclusion resource is based within the support for learning department. They support five pupils every year from S1 to leaving age who have significant additional support needs, associated with speech, language and communication difficulties. These children belong to their mainstream classes and additional curriculum activities specific to the child’s needs are offered by a team of trained support staff and support for learning teachers. There are 4.5 teachers in the department and 8 Pupils Support Assistants (PSA). Inclusion resource pupils (IRPs) attend the majority of their mainstream subjects and are supported to access the curriculum by a PSA or additional teacher in class. These classes would have up to 33 pupils. The majority do not study a modern language and this time is used for pupils to attend the support for learning (SFL) department in their small ‘support base’ class 3-4 times per week, during which time they are taught by a SFL teacher. While IRPs will usually only spend around 3 out of 35 periods per week in that department, there is flexibility depending on the needs of the particular child.
9. School A is an independent and residential school which caters specifically for boys with autism. It currently has around 25 pupils, most of whom are residential. There are currently 11 teachers, with 16 members of the care team as well as key workers. The school has an autism accreditation. The child would attend on week-days Monday to Friday each week during term time.
10. The cost to attend school A would be between £78,086 and £79,131, inclusive of transport costs.
11. The cost to attend school C’s inclusion resource, given the recent decision to engage a one to one pupil support assistant to support transition for the remainder of his time at school E and for a transition period at school C, is £15,042, pro-rated depending on how long the transitional arrangements are in place. There are additional incidental costs to the respondent for transport of £5,044 per annum, which would be ongoing.

**The relevant law**

1. The general duties imposed on an education authority in relation to children and young persons with additional support needs are to be found in s.4(1) of the 2004 Act. The education authority must “(a) in relation to each child and young person having additional support needs for whose school education the authority are responsible, make adequate and efficient provision for such additional support as is required by that child or young person”.
2. Section 22 of the 2004 Act gives effect to Schedule 2, which disapplies the ordinary rules relating to placing requests (set out in the Education (Scotland) Act 1980) and substitutes, in relation to children and young person’s having additional support needs, the provisions of Schedule 2.
3. In terms of paragraph 2 (2) of Schedule 2 of the 2004 Act it is the duty of the authority to meet the fees and other necessary costs of the child attending the specified school. This is subject however to paragraph 3, which details exemptions from that duty, the relevant provisions being as follows:

(1)     The duty imposed by sub-paragraph (1) or, as the case may be, sub-paragraph (2) of paragraph 2 does not apply—

(a)     …..

(d)     if, where the specified school is a school mentioned in paragraph 2(2)(a) or (b), the child does not have additional support needs requiring the education or special facilities normally provided at that school,

(e)….

 (f)     if all of the following conditions apply, namely—

(i)     the specified school is not a public school,

(ii)     the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,

(iii)     it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and

(iv)     the authority have offered to place the child in the school referred to in paragraph (ii), or

(g) …..

1. If paragraphs (1)(a) to (e) apply the education authority may place the child but if paragraphs (f) or (g) apply then the education authority has no discretion.
2. This is a reference in terms of section 18(3)(da)(ii) of the 2004 Act in relation to “the decision of an education authority refusing a placing request made in respect of a child or young person.....made under sub-paragraph(2) of paragraph 2 of schedule 2 in relation to a school mentioned in paragraph (a) or (b) of that sub paragraph”.
3. Section 19(4A) states that “where the reference relates to a decision in subsection (3)(da) of that section, the Tribunal may -
4. Confirm the decision if satisfied that –
5. One or more grounds of refusal specified in paragraph 3(1) or (3) of Schedule 2 exists or exist, and
6. In all the circumstances it is appropriate to do so,
7. Overturn the decision and require the education authority to –
8. Place the child or young person in the school specified in the placing request to which the decision related by such time as the Tribunal may require, and
9. Make such amendments to any co-ordinated support plan prepared for the child or young person as the Tribunal considers appropriate by such time as the Tribunal may require”.
10. This thus sets down a two stage test, and if the tribunal is satisfied that at least one of the specified grounds for refusal exists, then the tribunal must move to the second stage. In the second stage, the tribunal must exercise its discretion and determine whether, in all the circumstances, it is appropriate to confirm the authority’s decision. The authority bears the burden of proof in this case overall (at both stages of the exercise).

**Tribunal observations on the witnesses and the oral evidence**

1. The tribunal heard first from witness 1. Although we accepted that she was a credible and reliable witness, we did not find her to be a particularly forthcoming witness. She gave her evidence in a very matter of fact way and did not elaborate even where we were looking for examples of practice at the school. For example, when asked about the recommendations made by witness 4, she said “we would be able to put those in place”. She was asked no further questions about that and she gave no further details. We got the impression that she was reluctant to express any view which might bind the authority, given, as we fully appreciated, she had no authority to make decisions about resources. Nevertheless we found her evidence to be helpful in respect of the provision available at school C.
2. We considered witness 2 to be a credible and reliable witness. She gave evidence in an open and candid way. She gave fulsome responses about the child’s progress through primary school and it was clear from her confident and unhesitating answers that she knew the child very well. She is now the deputy head of a special school but recognised the value of education in the mainstream sector.
3. Witness 3’s evidence was not particularly helpful to the extent that it was clearly important for him to present the school in the best possible light and he did not know the child. His answers were general and generic and in our view, somewhat exaggerating the benefits of the provision there, or at least not realistic about how it would meet the child’s needs specifically. For example, we found his description of the transition to the school, that after one night there the boys are very keen to return and remain, to be unrealistic. Indeed we noted that even the appellant did not expect that the child would be staying more than one or two nights at first.
4. We were particularly impressed with witness 4 whom we found to be intelligent, thoughtful, measured, balanced and insightful, who gave clear answers in straightforward language, which the tribunal found to be of particular assistance in this case.
5. We did not find witness 5’s evidence to be particularly helpful, as we did not find his report or indeed his evidence to be entirely objective. We considered that he had been overly influenced by the pleas that he had heard from the family, and noted that his evidence was not based on his own observations. In particular, we did not find his conclusion that this was a family on the brink of breakdown to be reliable when there was otherwise no expressed concerns from the other professionals involved with the family and there was no social worker appointed to them (except in relation to the respite).
6. Again the appellant produced for us a very helpful statement which she supplemented with evidence which helped us to understand from her perspective why she had decided to make the placing request which she did.

**Reasons for decision**

**Ground 3(1)(d)**

1. At the outset of the hearing, the responsible body representative confirmed that the authority continues to rely on Schedule 2, paragraph 3(1)(d) that “the child does not have ASN requiring education or special facilities normally provided at that school”.
2. He made no further reference to this ground, and in particular made no reference to this ground in his written submissions.
3. In any event, we accepted the appellant representative’s submission that this ground does not apply in this case. In particular, we accepted that the child has additional support needs arising from his ASD and that school A is a school which has specialist knowledge of ASD, noting that it holds an autism accreditation from the National Autistic Society.

**Ground 3(1)(f)**

**First stage**

1. We then considered whether the authority has satisfied us that each of the paragraphs of ground 3(1)(f) applies (set out in Schedule 2, paragraph 3(1)(f)(i) to (iv), above). We can deal very shortly with (i), that is that the specified school is not a public school because this is conceded. The authority has offered to place the child in a nominated school, namely school C, in fulfilment of paragraph (iv), which is also conceded.

**Is the authority able to make provision for the child’s ASN?**

1. Considering paragraph (ii), the question we must consider is whether “the authority are able to make provision for the additional support needs of the child in a school, other than the specified school”, that is school C. The appellant’s position is that the provision offered by school C would not meet the child’s additional support needs.
2. We heard evidence from witness 1 about the provision available at school C. Although we would have liked a fuller account of the provision available, we had the benefit of witness 4’s report in which he helpfully set out the provisions at school C in terms of the “help, interventions and support which the child requires”. Witness 1 confirmed in evidence that she thought this was a fair reflection of provision at school C.
3. Although the standard arrangement is that IRPs would spend the majority of their time in mainstream classes, with only 3-4 periods per week at the support base, witness 1 in evidence emphasised to us that they were able to be “flexible” and the provision would depend on the individual needs of the child. IRPs were supported by a pooled resource of PSAs but if a child was not able to manage, then additional adult support could be made available.
4. In terms of assistance for IRPs in the mainstream classes, witness 1 stated that subject teachers employ a range of strategies such as differentiated learning materials and visual supports. She said that they would look creatively at the seating plans in place and consider where the child may prefer to work, whether that be mid classroom or near the door for example, and such decisions are made on an individual basis; although they did not have fixed wooden workstations they did have portable workstations which could be moved around the different classes and used to minimise noise and distractions; some pupils had more flexible time tables; and pupils could be let out of classes five minutes early with support to ensure that they were moving between classes when the corridors were quieter.
5. Witness 1 said that based on the reports about the child, she saw “a pupil who needs a high level of support to access the curriculum, that is one to one hours”. She said that “with one to one support [they] would try to make any transitions effective”. We heard that in light of this the authority has engaged a full-time one to one pupil support assistant who would support the child during the transition period. Witness 1 was not able to say whether that support could continue beyond the transitional phase, and if so for how long, but if she believed that it was required she would make a request for the resources.
6. She explained however that the approach which they took was to focus on triggers and that the pupil support assistant would work very hard with the pupil to understand cause and effect of his different behaviours, and to do what they could with classwork to ensure motivation. We understood then that the focus was on interventions which would minimise the need for one to one support over time. She said that the objective and the desired aim was to work towards developing independence.
7. As an illustration of flexibility, she gave the example of an S1 pupil who is about to transition into S2 who had been particularly challenging. With additional PSA support, he was able to access the majority of the curriculum, and was only removed from a couple of classes in which he had no interest. She candidly said that it was a “big case” which “involved a lot of people”. She said that it had been a “difficult year” but that exclusions had been avoided.
8. We noted that witness 2’s view was that “in an inclusion resource with a base that the child could go to if he needed to with an experienced team and the correct resources, [this] could have a positive outcome and hopefully he would manage well”.
9. Witness 1 explained that although the pupils in the inclusion unit would associate the support base as their main place to go, it was not a “segregated base” as such, because the IRPs are “based” with their mainstream classes. Rather it is located within the support for learning department, with rooms allocated for teaching the IRPs, and where IRPs would be encouraged to return at lunch-time. Notwithstanding we noticed that in evidence witness 1 did call it the “support base” and we have used that terminology in this decision . It follows that we did not accept the appellant representative’s submission that it was clear from witness 1’s evidence that there was no base for the child to attend which was quieter with familiar adults and more predictable.
10. But the question arises whether it will be possible for the child to return to the “support base” whenever that is required. We understood from witness 1’s evidence that an IRP leaving a class early could return to the “support base” with a PSA. She recognised that a pupil may need some form of time out, and following discussion with the pupil, the PSA and class teacher, agreement could be reached about a suitable “time out place”. We understood from her evidence that pupils who left classes early would be accompanied by the PSA and could return to the support base where they would work with a teacher or another member of staff. We did not accept the appellant’s apparent understanding that if a child left after 20 minutes in a class they would not be occupied for the remainder of the period.
11. We noted in particular that witness 4 said that “it was not unrealistic to provide [for the child’s needs] in a mainstream educational setting, but he would need a lot of support and understanding”. He said that all of the provisions that he had considered (that is school B, school C and school A) did “seem in their own way to have the resources and provisions to address the child’s needs in terms of resources available to staff”. Of school C, witness 4 said that it “ticked a lot of boxes in terms of skills and resources required to meet the child’s needs”. We noted that witness 4 said that what was required was akin to the provision which existed at primary school, “no more and no less”, which of course confirms his view that it is possible for the child to be educated in the mainstream.
12. Witness 4 was however of the view that it was unrealistic at present to expect the child to cope in a large, busy secondary school, but that a gradual introduction into mainstream education was appropriate. He indicated in evidence that his needs could be met if he could spend 80% of his time at the base and 20% in the mainstream, with a view to gradually increasing his time in the mainstream. He was not convinced however, having visited the school and spoken to witness 1, that such an approach was practically possible, even given the degree of flexibility asserted by witness 1.
13. Witness 4 acknowledged then that school C did have the skills and resources to provide for the child’s needs. We understood that his misgivings related to whether the school would in practice take the necessary steps, at the crucial initial stage, which would allow his needs to be met in that mainstream setting.
14. We took the view therefore that it was not appropriate to conclude that school C was not able to provide for the child’s additional support needs. We understood his concern was a structural one, that the systems and infrastructure may not currently be sufficiently adaptive to accommodate the child’s needs. We did share therefore witness 4’s misgivings about the extent to which school C would (rather than could) meet the child’s needs, and this is a concern to which we return later in this decision.
15. However, given the evidence that we heard and looking at the situation overall, we concluded that the authority is able to make provision for the additional support needs of the child at school C, as required by paragraph (ii).

**Respective suitability and cost**

1. We then turned to paragraph (iii) which requires the authority to satisfy us that “it is not reasonable, having regard both to the respective suitability and to the respective cost...of the provision for the ASN of the child” at school A and school C, to place the child at school A.

*Respective suitability*

1. While we have concluded that the authority is able to make provision for the additional support needs of the child, we went on to consider the respective suitability of the two schools, and in particular whether school A would be more suited to meeting the child’s needs, relative to school C.
2. We heard evidence about the provision at school A. We had no misgivings that school A could meet the child’s additional support needs, and indeed we did not understand any witnesses to say otherwise. The question we require to determine however is to what extent it might be considered to be more suitable. In this regard, we gave consideration to the provisions on offer at both schools.
3. The appellant set out her concerns in her statement, and she explained why she thought that school A was more suitable. She said that the decision to request school A was taken very seriously after a lot of thought and soul searching. We considered each of her reasons in turn.

*Class sizes*

1. The appellant was of the view that the class sizes at school A were more suitable for the child’s needs. The child himself had initially indicated that the “ideal” class size was 5. As it happens that is the size of the class at school A, and the appellant thought this would allow the child to remain focussed and concentrate without distractions or becoming overwhelmed by excess noise and people. In contrast, although there would be five pupils from S1 who would be in the Inclusion Resource unit, she understood that the child would only spend up to 5 hours there and otherwise would require to attend mainstream classes where there would be up to 33 pupils.
2. Witness 4 was concerned about the child attending a large busy secondary school and this would be “throwing him in at deep end”, and was of the view, at this stage, at least, that small classes, as he had experienced at primary school, were appropriate.
3. We were advised by witness 1 that at school C, the difficulties for the child would be mitigated by the fact that, initially at least, he would have one to one support from a pupil support assistant who could identify triggers and who could remove him from class, if appropriate and necessary; that it was possible to use a portable work station to minimise distractions; that it was possible for him to leave class five minutes earlier to avoid changing classes at busy times; that initially he could attend classes for shorter periods, and he could leave with his PSA and return to base.
4. Reflecting on these factors, we considered that school A was more suitable in respect specifically of class sizes, certainly at present, for the child’s needs. We considered that this was a factor to which we should attach some weight.

*Vulnerability and self regulation*

1. The appellant is concerned that the child is highly vulnerable to targeting/ taunting/bullying and that he has difficulty self-regulating at these times. She considers that the environment at school A where adults are highly trained in ASD and the small class sizes would mean that this was more easily identifiable and immediately dealt with. In contrast at school C he would be more open to targeting given the size of the school and easily identifiable as different with or without a PSA and vulnerable to taunting.
2. We considered however that the appellant’s concerns about school C would be mitigated, initially at least, by the presence of a one to one PSA who would accompany the child in corridors and the playground. Although the appellant understood witness 1 to say to her that a child who swore or was physically violent to other teachers or pupils would be automatically excluded, we did not accept that would be the case, and we accepted witness 1’s evidence that there are no automatic exclusions and they would do whatever they could to avoid exclusions. Witness 1 made reference to their positive behaviour policy, which focusses on rewards rather than sanctions. We noted too that witness 2 had said that the child was not the most complex, violent or disruptive of pupils she had taught, but that others had managed in the mainstream (at school B).
3. We also heard that all S1 pupils complete workshops on ASN, which were delivered in a sensitive manner by SLTs and facilitated by classroom teachers and which had a positive impact ensuring peers were accepting of the IRPs.
4. On the evidence that we heard, we could not say that school A was necessarily more suitable in this regard, given the steps which school C take to deal with this issue and the provision that would put in place to support the child.

*Open space playground*

1. The appellant is of the view that school A is more suitable because it has large outside green spaces, where the child could get out at breaks and lunchtime, and where there would be adult supervision. This is in contrast to school C where there is very limited outdoor play area, and no green spaces.
2. While we accept that school A has greater opportunities for outdoor play, we were mindful that the child would be attending school A on a residential basis and that the child would have opportunities, outwith the school day, to spend time outdoors while he was attending school C.
3. We took the view therefore that this was a neutral factor when considering the respective suitability of the two schools.

*Social isolation and social interaction*

1. The appellant argues that the child feels socially isolated in the mainstream environment, and currently self-isolates. She thought that school A would be more suitable because he will not be able to continue to use the exit strategy but instead will be taught other strategies to help him rather than leave and never deal with situations, in a small inclusive peer group, where social skills are seen as part of the education. She believes that at school C there is not the same level of focus on friendships and social relationships and that education is directed mainly at academic achievement.
2. We considered that the appellant’s position was at times inconsistent, being concerned about social isolation, and the learned dependence that might result from a one to one PSA, and yet not perhaps appreciating the extent to which a place at school A would serve to reinforce the child’s extraction from mainstream education, perhaps for the long term.
3. In any event, we heard evidence from witness 1 that at school C they work very hard to identify triggers and to work towards avoiding leaving the mainstream class. We also heard about a “social skills group” which is available for IRPs.
4. Further, we noted that this was a factor which witness 4 was concerned about in relation to school A. He stated that there he would not be with “the normal adolescent peer group”, in a residential setting with a group of boys only. He said that this “weighs against the presumption of inclusion, provided in the mainstream”, but that he was “sufficiently convinced by the head to believe that they do provide lots of opportunities in the community and extracurricular to compensate for that limitation”.
5. We were not convinced. Indeed, it was this factor which perhaps gave us most concern about a placement at school A. We were concerned that extraction from the mainstream, to a residential setting, might mean that in the medium to longer term it would be unlikely or at least much more difficult for the child to re-integrate to the mainstream. We did not understand witness 4 to be saying that was best for the child. We understood him to suggest that he should have a gradual introduction into mainstream secondary education. We considered that was possible at school C (and we understood witness 4 to say that school C had the capacity to provide this but he was not sure whether it was possible).
6. We heard evidence from witness 4 that the child had a “good theory of mind”. He said that unlike many others with ASD, he makes eye contact and is able to second guess what others are thinking, although not always accurately, and he thrives on unconditional acceptance, and can appear to be socially skilled. He said that he “could perform very appropriately given…support”.
7. We were of the view that it was these features which might explain why the child could cope, and indeed do well, in the mainstream setting, as evidenced by the improvements made through primary school. Witness 2 said that “the child can be very sociable with his own peer group….and his social interaction with his mainstream peer group has increased as he has moved up through the school”. She said that she would have concerns if the child was not having interactions with mainstream pupils.
8. We were concerned that at school A there will be significantly less opportunity for him to mix with his mainstream peers. We were conscious that there he will mix with a small range of pupils with similar conditions. We did not agree with witness 4 that the compensations or additions to the curriculum or school day could be said to compensate for these limitations. Indeed nor were we convinced by the evidence of witness 3 that their answer to that, which is to ensure relevant contact through community engagement and extracurricular activities as an addition to the standard environment, was sufficient to compensate for these limitations in the child’s case.
9. We came to the view that to place the child in school A would be to deprive him of the opportunity to gradually build up his exposure to and confidence with his mainstream peers. Consequently, when it came to concerns about social interaction and social isolation, we were of the view that school C could be said to be more suitable in this regard.

*Communication and CAHMS issues*

1. The appellant expressed concern in her statement about the limited SALT that the child is now receiving, and in evidence said that she was still waiting for a meeting with CAHMS, the child having been referred 18 months ago. The authority’s position is that any input from these services would be more easily accessed from an inclusion resource. Witness 3 said that either was possible. Both are willing and able to provide or facilitate such services and therefore we considered this to be a neutral factor.

*Lack of confidence and self esteem issues*

1. All witnesses were agreed that there has been a change in the child’s confidence levels, which have dropped, and that his anxiety levels have increased over the last 18 months.
2. The appellant believes that “the very small, secure, inclusive, nurturing environment” at school A will provide positive encouragement for him to help regain his confidence. She was concerned that even with the provision of a one to one PSA in the large school environment he would not be encouraged to grow in confidence and would become dependent on the PSA.
3. Again we thought that the appellant’s position revealed something of a contradiction, in believing that the child needed the PSA, but at the same time expressing concerns about being “velcro-ed” to them and learning dependence.
4. We heard from witness 1 however that their goal was precisely to develop independence and that in general the PSAs were encouraged to assist IRPs to start a task, and encouraged them to work independently.
5. Witness 2 said that the child’s confidence increased when he was interacting with his mainstream peers, and that he was capable of stepping up and responding in a mature and appropriate way when expectations of him were high. She gave examples of his role as class monitor, of swimming monitor, and of leading the class line out recently. She said that when he is thriving in the mainstream setting, this is a sign that he is feeling confident, whereas when he loses confidence he withdraws from that situation. We understood her to say that he is happiest (and most confident) when he is with his mainstream peers.
6. While the large busy environment of a secondary school would present challenges for the child as witness 4 highlighted, we could not say that school A was more suitable in ensuring the child’s confidence could be re-built in the medium to longer term.

*Appropriate peer group*

1. The appellant stated that school A is more suitable for the child because he would be with an appropriate peer group, giving him a sense of normality, whereas in the mainstream environment at school C he will easily be identified as different.
2. The respondent’s representative highlighted concerns about how the child copes with disruptive pupils. While witness 4 said that the pupils at school A were “less loud and aggressive and challenging than witnessed in mainstream schools”, we noted that witness 5 said that despite much smaller numbers, there was likely to be more disruption at school A. Indeed, even witness 3 accepted that on occasion there would be disruptive behaviour from the four other members of the child’s class. We considered it to be axiomatic that proportionately the numbers of disruptive pupils at school A would be greater than at school C.
3. As discussed above, we had concerns about extraction from the mainstream at this stage, and a lack of role models. We had concerns that the peer group that the child would associate with at school A was limited, in that it consisted of a small group of boys with ASD. Relying particularly on the evidence of witness 2, we came to the view that the child was most likely to be able to work toward the mainstream if he were to associate with mainstream peers. In that regard, we were clear that school C is more suitable.

*Family life*

1. The appellant expressed concerns about the fact that the child is struggling to share the family environment with his sister. At school C this situation would continue with his sister being the focus of his anger and frustration and “being in constant threat of physical aggression”. This takes its toll on the appellant. She said that “the residential setting would be able to address his holistic needs while the rest of the family would have time to focus on his sister.....we would be re-energised and ready to welcome him home at the long week-ends”.
2. The appellant representative submitted at para 22, in reference to the scope of factors to be considered in the suitability test, relying on *Edinburgh Council v Mrs MDN* [2011] CSIH 13, that this required “a holistic approach, which incorporates the integration of school education and community life”. While accepting that additional support needs includes provision that is not purely educational (the appellant representative’s submissions at paragraph 24), we were of the view that the situation of the wider family was not relevant to the suitability question (although we do consider it as part of the overall appropriateness question).
3. Focussing on the child’s needs, we were aware that the appellant believes that attending school A on a residential basis will allow the child to learn to manage more independently and improve his self confidence. Again, we thought that the appellant’s views revealed something of a contradiction, because we heard that at school C increasing independence is an important objective, and would allow for a more gradual path towards independence than that which might come from living away from home.
4. Further, as discussed above, we had concerns that the small number of pupils with whom the child would primarily come into contact were all boys. We came to the view that this was more likely rather than less to assist with his future relationship with his sister.
5. There is also the issue, alluded to by the appellant, that the child might not react positively to being ‘sent away’ to school. We noted that the child has expressed concerns about being away from his family. In his advocacy statement dated 16 April he stated “I feel better than I did before about the idea of staying overnight there. I would prefer not to, but I definitely think it could be ok if I started small and worked my way up to staying over”.
6. As discussed above, we did not agree that witness 3’s optimism about settling in at school A was realistic, and indeed the appellant said that she would not expect the child to want to stay longer than a night or two initially. We heard that this is a close knit family, with very supportive parents, both with good relationships with the child.
7. We understood that the child’s father had a preference for the child not attending on a residential basis, and that were it possible, then he would want the child to attend on a day basis (that is not to say that we did not appreciate that the appellant requires to deal with the majority of the childcare). Only witness 5 talked of the advantages of the “24 hour lived experience”, but he too said that he was guarded about encouraging the use of residential care as a solution.
8. With regard to his views on school C, the child said “this school is ok”. He had concerns about the size of the playground and the fact that “there were tons of people in the school”. Interestingly, his views on the size of classroom appear to have shifted and he said “I think that 15 people is the most I could be in a classroom with at the moment”.
9. We therefore took account of the fact that the child had concerns about attending school on a residential basis and we noted that he did not say that he did not like or did not wish to attend school C.
10. We considered that it was appropriate for us to take these factors into account when assessing respective suitability. We considered that the residential factor was a factor which weighed against the suitability of school A as a placement.

*Other issues*

1. We heard that the child’s anxiety levels have been increasing over the last 18 months, and from the evidence we heard this can be at least partly attributed to the transition, but particularly to the fact that he does not yet know which school he will be attending, as highlighted by witness 4. Witness 4 said “the more supportive dialogue there is, the less stressed children become”, but that the “problem [for] the child is that there has been no clear decision and no transition process to help him to cope with transition which concerns me a great deal”. We share his concern. We considered therefore that it was more than likely that the child’s confidence levels would improve, as would his progress, once there was certainty about his secondary school placement.
2. The appellant representative submitted that witness 1’s evidence that it was “impossible to talk about what he would need until the child is in the school” meant that it was unlikely that that authority would have established the statutory ground, relying on *M v Aberdeenshire Council* [2008] SLT (Sh Ct) 126.
3. We did not accept that submission in so far as it might apply to this case. If we are considering the situation when the hearing takes place, then we know that a one to one PSA has been engaged for the child at this point. Witness 1 said that once she saw the child in situ and if she believed that the one to one support should continue then she would make an application for that. We recognised that witness 1 was being cautious because she has only met the child twice and in any event she does not have the authority to make that happen.
4. No-one can know whether the transition will be a successful one, and clearly there can be no guarantees. However we agreed with the respondent’s representative that the indications from his experience at primary school, is that when the circumstances are favourable he copes well. Consequently, the signs are that if the respondent ensures that the correct support is in place for as long as is required, then it is much more likely that the transition, and indeed the placement, will be a successful one.
5. When considered in the round, and looking at all the circumstances, we could not say that school A was more suitable, or if it was in some respects, that was outweighed by other factors pointing to school C.

*Respective costs*

1. While our conclusion in regard to respective suitability was a balanced one, we were aware that we also had to take into account the respective costs.
2. With regard to respective costs, we had heard that the cost for the place at school A was in the order of £78,000. We were advised that was inclusive of incidental costs, namely transport.
3. In *B v Glasgow City Council*, 2014 SC 209, the Inner House confirmed that the costs to authorities are the additional costs to be incurred by them if the child went to the proposed school, so that the cost of sending the child to school A must be assessed in relation to the cost of educating the child within the respondent’s area. We have heard that the authority considers that a full-time pupil support assistant will require to be engaged, at least in relation to a transitional period. We cannot say how long that transitional period might last, but on the basis of the evidence we heard, we might assume that a PSA would be required to support the child for at least this coming academic year. The cost per annum of a PSA is around £15,000, which should be off set against costs of attending school A. There is also the incidental cost of transport to school C’s which is calculated at around £5,000 (which will continue while he attends that school).
4. As was recognised, it is not possible to predict beyond that what additional support the child might need, as that will depend on how successful the transition is. We took the view that the costs for school A were likely to be costs not just for this year, but potentially for a further five years thereafter. On an ongoing basis therefore the costs of educating the child at school A are considerably higher than at school C, even if the PSA is to continue in place.

*Overall assessment*

1. We looked at the respective suitability and respective costs, but we were aware that the legal test requires us to consider these factors in the round, that is the tribunal must consider whether the extra cost of providing for the child’s ASN is reasonable, given the difference is suitability of provision.
2. We have taken the view that, although it was ultimately a balance decision, viewed in the round, school A cannot be said to be more suitable. That conclusion relates particularly to the impact which attending school on a residential basis will have on the child, as well as the fact that the prospect of the child being educated in the mainstream will become increasingly unlikely in the longer term. Even if the balance could be said to be in favour of school A on the suitability question, taking costs into account alongside suitability, we were clear that the additional cost of providing did not outweigh the extent to which school A could be said to be more suitable. We therefore concluded that having regard to respective cost and suitability, it was not reasonable to place the child at school A.

**Second stage**

1. Where we conclude, as in this case, that one of the grounds of refusal is satisfied, we are required, if we are to reject the reference and confirm the decision of the authority, to be satisfied that in all of the circumstances it is appropriate to do so.
2. If it is not appropriate for us to take into account the impact of the child living away from his family when assessing respective suitability, we nevertheless were of the view that it was a valid factor for us to take into account when considering overall whether it was appropriate to confirm the respondent’s decision, and clearly we were of the view that it supported a conclusion that the respondent’s decision was appropriate.
3. In regard to this question, the appellant representative argued that it was not appropriate to reject the reference because we should take account of the impact of the decision on family life. However, with regard to concerns about family life, as discussed above, we did not accept witness 5’s conclusion that this was a family on the brink of breakdown. There was a notable absence of the same level of concerns from other professionals and we noted in particular that there was otherwise no social work involvement with the family and therefore no professional concerns for the child’s sister.
4. While we recognised that in some respects school A could be said to be more suitable, on balance we have concluded that in all the circumstances, applying the legal tests, that the authority’s decision to refuse the placing request is appropriate.

**Concluding remarks**

1. While we have confirmed the decision of the respondent after careful consideration of all the circumstances, we do have some misgivings about the extent to which the respondent will in practice take the necessary steps to meet the child’s continuing needs. In particular, we were concerned that the flexible approach which witness 1 discussed might not be sufficiently flexible to accommodate the child’s needs.
2. This was not a clear cut decision for us when it came to the suitability question. We were conscious that the child will find any transition exceptionally difficult. We did note that concerns were expressed by witness 2, which we considered to be valid, that the child has been exposed to much more discussion and indeed uncertainty around the transitional process than might be usual. We noted that witness 4 had particular concerns about the fact that a decision about where the child will go has still not been made. We anticipate that the situation will change once a final decision has been made.
3. Further, we were of the view that with effective support the child could do reasonably well in school C, and this would give him the best opportunity to be educated in the mainstream in the longer term, and to ensure that he is “well equipped to function in the post-school world”. However, we agreed with witness 4 that additional steps required to be put in place to ensure that the placement was successful. He was of the view that his transition to mainstream classes from a support base should be gradual, and he indicated that the starting point should be 80% in the base and 20% mainstream classes (rather than the other way round). Whether this is possible is a matter for the education authority, but we are clear that we would expect to see robust adjustments in place for as long as they were needed to facilitate this gradual transition for the child.
4. We were of the view that if the necessary steps are not put in place, then the placement may not be successful. We noted that a one to one PSA has been identified as required for the transition, and we understand from witness 1 that she will make application for that role to be continued should she believe that it is required. Clearly the authority has the wherewithal to make that happen and we would expect the correct support remains in place for as long as it is needed. Witness 4’s report is a valuable resource as a starting point. However, we considered that it may well be that the safeguard of a CSP, which will include legal requirements in respect of the co-ordination of all of the child’s needs, is required to be put in place to ensure a successful transition and the child’s successful integration into the mainstream and the post-school environment in the medium to longer term, which we assume all those with an interest in the child’s success and well-being agree is the desired goal.