



Additional Support Needs

Reference

1. The child (born September 2010) (hereinafter referred to as “the child”) was issued with a co-ordinated support plan (CSP) by the respondent dated 16 May 2016. On 29 March 2017 the respondent notified the appellant that the CSP would be discontinued because the child was not considered to have additional support needs which require significant additional support from an appropriate agency or from the local authority exercising functions other than education, additional to the support provided by the education authority, in order to meet educational objectives in the child's school education. The appellant's subsequent request dated 30 March 2017 for a replacement CSP was refused by the respondent by letter dated 3 April 2017.
2. This reference is made challenging those decisions, in terms of section 18(3)(b) of the Education (Additional Support for Learning) (Scotland) Act 2004, as amended by the Education (Additional Support for Learning) (Scotland) Act 2009, hereafter the 2004 Act.

Decision of the Tribunal

3. The Tribunal finds that the respondent:
 - a. should not have reviewed the CSP created for the child on 16 May 2016 in terms of section 10(3) of 2004 Act;
 - b. failed, following a review of the CSP, in concluding that a plan is no longer required in terms of section 18(3)(b)(ii) of the 2004 Act;
 - c. failed in concluding that the child does not require a plan, in terms of section 18(3)(b)(i) of the 2004 Act.
4. The Tribunal therefore overturns the decision to refuse the CSP under section 19 of the 2004 Act and requires the education authority to prepare a CSP within 12 weeks of this decision, that is by 20 February 2019.

Reasons

Introduction

5. The hearing in this case resumed over a year after it had first been adjourned. The circumstances of the adjournment are set out in detail in the decision and directions following that adjournment (hereafter referred to as the note of 23 October 2017). In short, after two days of evidence on 16 and 17 October 2017, the Tribunal decided that we did not have sufficient evidence to allow us to apply the relevant legal tests, and that the best interests of the child at the centre of this reference had been lost sight of. We set out there, in some detail, the additional documents which had been referred to in evidence which we directed were to be lodged, and a list of additional documents which we directed should be produced or commissioned.
6. Despite close case management, a report from an educational psychologist which we considered to be essential remained outstanding for some considerable time after all other reports had been produced. We understood that this related to concerns expressed by the appellant about the educational psychology service of the respondent. He wanted a report to be prepared by an educational psychologist employed outwith the council. The respondent authority was not prepared to agree to such an approach and we agreed that it was not just appropriate but also necessary that the report should be prepared by the respondent's service (Rule 15 Direction). Eventually it was agreed that the report would be prepared by a member of the respondent's service who had had no previous dealings with the appellant, (a probationer), who undertook the task at the direction of the principal. That report was completed on 21 August 2018. This explains the delay in resuming this adjourned hearing.
7. At the hearing in October 2017, we heard evidence from the child's mother, and we also heard evidence for the respondent from a number of senior managers, witness 1, quality improvement manager with the authority, witness 2, team manager (child care) with the authority and witness 3, speech and language therapist.
8. At the resumed hearing we heard again from the child's mother and from the educational psychologist. We heard outline submissions from the parties' representatives which were subsequently supplemented by written submissions.
9. At the outset of the hearing in October 2017, the issues to be determined by the Tribunal were whether or not the education authority:
 - i. should have reviewed the CSP created for the child on 16 May 2016 in light of section 10(3) of the 2004 Act;
 - ii. had failed, following a review of the CSP, in concluding that a plan is no longer required in terms of section 18(3)(b)(ii);
 - iii. had failed in concluding that the child does not require a plan, in terms of section 18(3)(b)(i).

10. At the hearing in October 2018, the appellant's representative confirmed that these were all still live issues to be determined by the Tribunal, despite the passage of time.
11. Although additional documents requested at the hearing in October 2017 were lodged, despite the lapse of a year (or perhaps because of that) we did not consider that we had all of the appropriate up to date information to allow us to make a decision. Consequently, we required that certain additional documents were lodged by the respondent during the course of the hearing, and in particular the minutes of the most recent Multi-Agency Action Planning (MAAP) meetings, and the latest Individualised Education Plan (IEP).
12. It should be noted that one of the concerns which led us to seek an adjournment of the hearing in 2017 was the fact that apart from the child's mother, the professionals who we heard from had not met the child (or at least only one had on one occasion) and we decided that the child's views should be sought. Since then, new rules of procedure (The First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017) have come into force by virtue of which, at rule 44, we are required to seek the views of the child.
13. In this case the Tribunal administration arranged for an independent advocate to meet the child to ascertain her views as directed in the note of 23 October at paragraph 14. Despite meeting twice, the independent advocate was not able to obtain her views, because the child was not prepared to co-operate with her at all. We wondered why this might be, given that the child meets and apparently co-operates with many professionals, and it transpired that she had been told by her parents that she was going to speak to a lady about school. As is clear from this decision, given the child's issues with school, that turned out to be misguided. Consequently, despite seeking them, we were not able to obtain the views of the child.
14. We initially heard evidence about the situation in October 2017, and considered documents in support of the situation then. That evidence and those documents have been taken into account and have been relied upon in so far as they are still relevant. As discussed, there was a lapse of over a year before the resumed hearing and inevitably there have been developments since then, and we consider that those developments are significant. We were of the view that we require to consider the position as at the date of the resumed hearing and therefore our focus is on the current relevant evidence and latest reports.

Findings in fact

15. Based on the evidence that we heard we found the following relevant facts admitted or proved.

16. The child has a diagnosis of Autism Spectrum Disorder (ASD), Attention Deficit Hyperactivity Disorder (ADHD) as well as Global Developmental Delay (GDD). She has sensory sensitivities and rigid and inflexible repetitive behaviours. More recently, the child has been diagnosed with Selective Mutism. It is acknowledged that she has additional support needs in terms of the 2004 Act.
17. The child is prescribed a combination of medications to help her with her hyperactivity levels, anxiety levels and difficulties with sleeping. With regard to the medication for ADHD, as at 27 September 2017, the child's psychiatrist, noted post-lunch lethargy and teatime rebound hyperactivity (A9b) concluding that "evening trough levels of her medication are causing rebound hyperactivity and irritability". At that time, he also concluded that her conditions resulted in her developing "phobic avoidance tosituations where the environment is unstructured and [she] has been finding it difficult to enjoy her time at the base unit at school". He proposed adjustments to the child's medication to help to deal with some of these difficulties (A9c), which had to be discontinued due to side effects.
18. The child was also diagnosed with gum hypersensitivity by her previous dentist, who stated that this condition is not uncommon in children with ASD (see report 13 April 2015 and report of the child's current dentist dated 13 November 2017. This results in particular challenges when the child is losing teeth, and teething sensitivity is particularly acute every two to three months. When she is suffering in this way, the child's mother is of the view that the medicine which she is given for sleep and for ADHD do not work as well as they should resulting in a lack of sleep and extreme lethargy.
19. The child is currently attending Enhanced Provision at school A, where she commenced in August 2015.
20. A CSP was created on 16 May 2016, due to be reviewed on 16 May 2017. That plan identified only two educational objectives, one in respect of the child's spoken language, requiring support from SLT, as well as parents and teachers; and the other that the child "will become increasingly able to feel comfortable with various adults and communicate with them", requiring support from teachers and also social work/child care @ home staff. The plan indicated that the child should receive 2.5 hours of respite at the week-end during school time, but that objective was not implemented and became the subject of a separate reference to this Tribunal.
21. A CSP review meeting took place on 27 March 2017. By letter dated 29 March 2017, the appellant was advised that there was no longer a requirement for a CSP, which was to be discontinued within two months. The parents were advised that it had been a mistake to include the respite in the CSP. The parents' subsequent request for a replacement CSP was refused by letter dated 3 April 2017.

22. By decision dated 17 April 2017 a convener, sitting alone and considering the papers only, upheld the reference on the basis that the respondent had failed to make provision for respite of 2.5 hours. However, on the basis that the CSP was by then withdrawn, the convener found that there was no locus for the Tribunal to make any order.
23. In the meantime, the child developed school-related anxiety and negative associations with school. One catalyst for this anxiety was a particular child ("the focus pupil") who had commenced school A in August 2016. On the advice of the child's psychiatrist, a plan was developed in relation to graded exposure to the focus pupil. That was not however followed through.
24. While some progress was made in relation to the child's general development when she was being taught in Enhanced Provision in Primary 2, a change in staff personnel coincided with a deterioration of the child's progress, manifested in increasing lack of verbal communication at school, and compounded by teething sensory issues, and changes in the child's medication. During the period February to July 2017, the child went home at lunch times between 12 to 1.30 and was collected each day at 3 pm, eventually not returning after lunch.
25. The child did not return at all to school in August 2017 due to her parent's concerns about increased lethargy which coincided with changes of medicine. The child was absent from school from August 2017 through to February 2018, which the child's mother attributed to issues relating to teething and lethargy.
26. At a MAAP meeting held on 28 November 2017 attended by the social work team manager (in the chair), the head teacher, the PT support for learning, and the child's psychiatrist, GP and social worker (the child's parents being unable to attend), it was agreed that there was no physical, psychiatric or emotional welfare reason for the child not to be able to attend school at this time and that the child should be supported back into school through a phased return.
27. The child's psychiatrist recommended that environmental stress levels should be reduced to a minimum and strategies of de-escalating the child's anxiety should continue, with a view to a phased return to school. He recommended a non-stimulant medication. The child started for one hour each day and that built up within a few months to around two hours each day.
28. The child's parents found her teething issues were particularly challenging in April 2018 during the Easter holidays, again in June 2018 and again at end of the summer holidays, resulting in, inter alia, extreme lethargy. Given these challenges, and the fact that the child was refusing to go back to school (using phobic avoidance techniques) the child's mother, given what she understood to be the advice of the child's psychiatrist, was of the view that it was not appropriate to force her to return to school. Consequently, the child did not return to school after the summer holidays in 2018 until

around the third week in September. A phased return was again recommended, again with an off-set start time, and the child is currently attending school each day from 9.10 to 11 am.

29. Since returning in February 2018, the child has chosen not to communicate verbally with any teachers or PSAs, but communicates through body language and Makaton. Although the child communicates verbally at home, according to her mother, she uses receptive but not expressive language. The child's parents understood that the child would not be timetabled to be in class with the focus pupil. However, the child is due to spend time on a Tuesday and Thursday in the "Star" room with him. The child refuses to enter the class room when the focus pupil is present and remains outside with a PSA where they engage in one-to-one activities and games, entering only when the focus pupil leaves.
30. The child was assessed by paediatric occupational therapy (OT) on 3 June 2018. Recommendations were made regarding strategies for improvement. A review due in September has been postponed until December.
31. At a MAAP meeting on 29 June 2018 (R66), attended by the social work team manager (chair), the child's social worker and GP, the depute head and Enhanced Provision teacher (with apologies from the parents), it was agreed that the depute head should take over from the social work manager as lead professional; and that the child's social worker should contact her psychiatrist regarding his recommendation that the child should be at school for 2 hours.
32. The child only attended school 44 days out of a possible 287 as at June 2018.
33. In consultation with the child's psychiatrist, the SLT diagnosed selective mutism and put forward strategies to deal with this diagnosis (Report 13 July 2018 A176).
34. A further MAAP meeting took place on 17 September 2018 and was attended only by the depute head, the child's social worker and the social work team manager, with apologies from all other invitees (including the parents).
35. The child has an IEP dated April 2018, due for review October 2018.
36. The parents receive 12 hours per week respite care for the child from social work in the summer holidays. The child's parents do not currently wish to increase her time in school from two hours because the child's parents feel that she is still very tired when she returns from school.

The relevant law

37. Section 2 of the Education (Additional Support for Learning) Scotland Act 2004 states, under the heading Co-ordinated Support Plans, that a child or young person requires a plan....for the provision of additional support if:
- a. An education authority are (sic) responsible for the school education of the child or young person;
 - b. The child or young person has additional support needs arising from
 - (i) one or more complex factors, or
 - (ii) multiple factors,
 - c. those needs are likely to continue for more than a year, and
 - d. those needs require significant additional support to be provided—
 - (i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education, or
 - (ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.
38. Section 6 of the 2004 Act makes provision for identifying additional support needs and the need for a CSP in the case of children for whom an education authority are responsible, and in particular s6(2) states that where an education authority receives a request from the child's parent to establish whether the child requires a co-ordinated support plan, the authority must comply with the request unless the request is unreasonable.
39. Early review is permitted in terms of s.10 only following a request of a parent or young person, or where the authority consider it necessary or expedient to do so because of a significant change in the circumstances of the child for whom the plan was prepared since the plan was prepared or last reviewed (s.10(3)(b)).
40. Section 18 allows, inter alia, a parent to refer any decision, failure or information specified in subsection 3 to this Tribunal. Section 18(3) includes
- a. "a decision of the education authority that the child or young person—
 - (i) requires a co-ordinated support plan, or
 - (ii) following a review carried out under section 10, still requires such a plan,
 - b. a decision of the education authority that the child or young person—
 - (i) does not require such a plan, or
 - (ii) following a review carried out under section 10, no longer requires such a plan..."
41. Where the reference under s.18 relates to a decision referred to in subsection (3)(a) or (b) above, the Tribunal may
- (a) confirm the decision, or

(b)overturn the decision and require the education authority to take such action as the Tribunal considers appropriate by such time as the Tribunal may require (s.19(2)).

42. The meaning of “significant” was considered in **JT v Stirling Council (2007 SC 783)** where the Inner House held that ‘significant’ means more than ‘not insignificant’, and stated that the significance requirement relates to the level of provision not the level of the needs, and is to be judged by reference to the need for coordination.
43. The Learning Code of Practice (Revised Edition) 2010 (Code of Practice) states the following: “The Act does not define what significant additional support means but the issue has been considered in the tribunal and courts. In particular, the opinion delivered by Lord Nimmo Smith in the Inner House of the Court of Session in the case of **JT** is particularly relevant and is binding here. The use of the term significant signals the scale of the support provided..... The issue of significance thus refers to the extent of the provision. Judgments about significance have to be made taking account of the frequency, nature, intensity and duration of the support and the extent to which that support needs to be coordinated and is necessary for the achievement of the educational objectives which will be included in the plan. In particular, the support must be of sufficient duration to make it worthwhile preparing a co-ordinated support plan in order to ensure that it is co-ordinated properly.”

Deliberations and decision

44. In this case, we had to decide whether the decision of the respondent to review the CSP early complied with the legal tests regarding when early review can take place; whether the decision that a plan was no longer necessary met the relevant legal tests; and whether or not to overturn or confirm the education authority’s decision that the child does not require a CSP.

First issue: should the CSP have been reviewed early?

45. The question is whether there was “a significant change in the circumstances of the child” in regard to her need for significant additional support, since the review was prepared in May 2016. We noted that when the position was considered for the purposes of the previous reference, the convener in that case concluded that, “The review of the CSP was brought about at the request of the Social Work Department because of their difficulty in recruiting a personal assistant to provide respite for the child at weekends, not because there had been any identified change in [the child’s] needs in this area”.
46. The respondent’s representative relied in submissions on the provisions of the Code of Practice that the CSP should be kept under consideration and reviewed at least every 12 months. He relied on the fact that it was determined that the provision of respite had

been provided for the benefit of the parents rather than to meet an educational objective.

47. However, that argument does not support the conclusion that there was a change in circumstances. Indeed, it appears that the parents were advised, and witness 1 confirmed in evidence, that it had been an error, in their view, for the provision relating to respite to have been included in the CSP at all. However, the legal test relates to a change in circumstances since the CSP was created, and here there was no evidence to support any relevant change. We therefore accepted the appellant's submission that the review was undertaken as a result of difficulties surrounding resources, in particular of social work services, as opposed to any 'significant change in the circumstances of the child'.

48. We therefore concluded that the respondent was not entitled to review the CSP when it did in March 2017.

Second issue: Was the decision to discontinue in accordance with relevant requirements?

49. Even if it had been appropriate to review the CSP as at March 2017, the next question to ask is whether a decision should have been made at that time to discontinue it, that is whether it was right to conclude that a plan was no longer required.

50. The outcome of the review meeting held on 27 March 2017 was that the majority of those in attendance supported the conclusion that the nature of the child's additional support needs was no longer consistent with the statutory criteria which sets out the circumstances in which pupils are entitled to a CSP.

51. This decision was based in particular on input from SLT on 13 March 2017 and Social Work on 17 March 2017 who confirmed that the child's needs do not require significant additional support from them in order for the child to benefit from school education. The appellant's representative submitted that undue weight had been placed on the pro forma documentation, resulting in a failure to look at the matter as a whole.

52. However and in any event, it appears that the decision to discontinue was based on the view that it had been a mistake to set up a CSP in the first place, the respite being offered asserted to be to assist the parents, and not in regard to the child's educational needs, a view which the appellant's representative disputed.

53. We understood the respondent's position to be that the original CSP had been drawn up by inexperienced but well-meaning staff to placate the parents. We were of the view however that the original CSP was neither robust nor particularly relevant as it was drawn up without knowledge of all the facts. Furthermore, the parents immediately made a request for a new CSP, so that the circumstances of the discontinuation of the old CSP were essentially identical to those pertaining at the time of the request for a new CSP, discussed further in this decision.

54. However, we take the view that the time at which consideration of the question whether the child requires a CSP is to be determined as at the date of this (resumed) hearing. Although we are not aware of any case law authority, we considered that it was appropriate to rely on parallel provisions regarding placing requests, which clearly require to be determined as at the date of the hearing (**M v Aberdeenshire Council 2008 SLT (Sh Ct) 126**). We noted that the language of the section is in the present tense, ie the question is whether the child “requires” or “does not require” a plan. We did not understand either party to argue otherwise, and in particular we took it from written submissions that he agrees with that approach.

55. We were of the view that the primary focus in this case then is whether or not the criteria which require a CSP to be prepared have been met as at the time of this hearing, and therefore our primary focus is on whether a CSP is now required.

Third issue: should the education authority’s decision to refuse a CSP be overturned?

56. With regard to the respondent’s decision that a CSP is not required (because the statutory tests are not met), the respondent’s representative helpfully confirmed that there was no dispute regarding the first three limbs of the section 2 test, namely he accepted that:

- a. the education authority is responsible for the child’s school education;
- b. the child has additional support needs arising from one or more complex factors/multiple factors; and
- c. those needs are likely to continue for more than a year.

57. The respondent’s representative does not however accept that the test is met in respect of the fourth limb, namely, he does not accept that the child’s additional support needs require significant additional support to be provided by the education authority in respect of any other functions, or by one or more appropriate agencies as well as them. His position is that the support provided by the education authority through class teachers and ASL teachers, while significant, can be delivered entirely from within school A.

58. The key question in this case is whether the child’s additional support needs are “significant” as required by the section 2(d) provisions, that is in respect of input from other functions and/or other agencies leading to the requirement for coordination. We bear in mind the provisions of the Code of Practice, that significance is judged according to the “frequency, nature, intensity and duration of the support and the extent to which that support needs to be coordinated and is necessary for the achievement of the educational objectives which will be included in the plan”.

The current situation

59. We found the educational psychology report lodged to be of particular assistance for our deliberations and we observe that we found the educational psychologist to be a very helpful and well-informed witness.
60. In her report, the educational psychologist highlighted concerns about the child's negative association with school, and included strategies to address this and other symptoms, discussed below. We noted that the educational psychologist's report was prepared before, or at least without the knowledge of, the diagnosis of selective mutism. Notwithstanding, the educational psychologist agreed with that diagnosis in light of her observations, and has proposed strategies to address this.
61. She described the child's school-related anxiety, resulting in "heightened levels of sensory awareness, particularly pertaining to sudden movement and auditory stimuli. Being in busy, noisy environments can result in [the child] becoming socially anxious and she can find these environments difficult to manage, often resulting in a "fight, flight or freeze" response". She referred to the focus pupil as a particular catalyst for this anxiety resulting in the child remaining outside when he was in the Star room.
62. She was clear about the need to introduce additional strategies to promote the child's education and reduce barriers to learning. She concluded that "[the child] requires a learning environment which aims to increase her confidence and resilience in order to minimise her anxiety....". She stated that the school was taking an individualised approach which could be developed and expanded, but that the introduction of additional strategies would require the child to be at school for more than two hours each day. She concluded that there required to be collaborative working and partnerships with all key adults involved and a shared view and understanding of the child's additional support needs between all key adults. She was however of the view that could be dealt with, including the implementation of the strategies she proposed, through the IEP and through the MAAP meetings.
63. We noted at the time that it was decided to discontinue the CSP, and increasingly since, that the child's educational attainment has deteriorated and her barriers to learning, specifically her anxiety, have increased. Further, and perhaps not unrelated, the child has been receiving less education since then (not least given the number of days that she has not attended school, and the very limited number of hours she has attended when she is attending school). It is clear to us then that there is no improvement under the current arrangements. The evidence indicates that the child is more isolated, not less, as the diagnosis of selective mutism indicates. The child's mother reported that the child's anxiety in respect of certain triggers had not diminished, and so she did not expect her anxiety in regard to school, and in respect of the focus pupil, to decrease either. Further, as the appellant's representative submitted, a comparison of the IEP of April 2016 and April 2017 shows that the targets are the same or similar, and this clearly suggests that targets are not being met.

64. Further, we also noted that at the most recent MAAP meeting on 17 September 2018, only education and social work were in attendance. We noted the lead officer was invited but did not attend, although we heard no evidence why that person was invited. We are of the view, as discussed below, that there requires to input from all of the relevant agencies involved in the child's life.
65. We understood that one of the main barriers to learning in this case is the child's anxiety. The evidence suggests the child has developed negative associations with school. This is manifesting itself not least in what was termed "phobic avoidance" which she has developed in relation to attending school. This negativity is manifested in relation to the focus pupil and in the recent diagnosis of selective mutism. The educational psychologist indicated that this anxiety must be addressed before the child can focus on learning.
66. The educational psychologist also highlighted a clear difference in opinion between home and school relating to the school-based anxiety and associated triggers, recognising that it is not unusual for children to present differently at home and school. She recognised that the child's anxious behaviours escalate at home, before and after her time at school, describing the need for "decompression" time at home. She recommended incorporating decompression time into the school day.
67. The educational psychologist view was that the child needs to build up her resilience (and reduce her reliance on her parents) in order to properly and fully access the curriculum. However, she also indicated in her evidence that she believed that the fraught relations between the parents and the school was also creating a significant barrier to learning.
68. We were particularly concerned that the current pattern of limited school attendance and the child's increasingly negative view of school might result in the child becoming a school refuser. While we were clear that the current approach is not fulfilling the child's potential, we came to consider whether in the circumstances the "significance" test is met such that a CSP would be required. As discussed above, this relates to the level of provision (and not the level of needs) and is to be judged by reference to the need for coordination.

Involvement of Child and Adult Mental Health Services (CAMHS)

69. We are of the view that there is a clear need for the input from CAMHS to be co-ordinated with the input of other agencies and professionals for the reasons that follow.
70. CAMHS have a significant relationship with the parents and child over the last few years, and while their views have been shared with the parents, they have not in our view been a meaningful part of a coordinated team around the child. We note in particular that they were not mentioned in the original CSP despite that involvement. This meant that a key player was not having input to the CSP.

71. As the appellant's representative submitted, the child sees her psychiatrist regularly and his input is likely to be necessary for the foreseeable future, with the child requiring ongoing psychological input throughout her life, given her diagnosis of Global Developmental Delay.
72. In the most recent report available from the child's psychiatrist, he reported that there is an "evidence base for getting the environmental stress levels to the minimum and in continuing with strategies of de-escalating [the child's] anxiety levels so as to help [the child] attend school in a phased manner. I was of the view that [the child's] teachers and professionals involved in her care at school could help in charting out a phased induction plan...." He concluded that there should be "recommendations and plans to help [the child] reintegrate with her school placement through colleagues from Education Psychology Service and through educational authorities". The child's psychiatrist also made reference to a WISC assessment and witness 1 recognised the value of such a report, which indicates that ongoing review will be required.
73. The child's psychiatrist has proposed strategies and made recommendations to deal with her anxiety at school, for example in proposing the graded exposure to the focus pupil, and in proposals for the phased return of the child to school, in advice regarding decompression time, in strategies to deal with the selective mutism. All those involved in the child's life need to be aware of these strategies and progress monitored. Further strategies require to be adopted to decrease the child's anxiety, increase her resilience and increase the child's time attending school in order to facilitate achievement of further educational objectives. Such strategies may require to be adjusted when symptoms of anxiety are manifested, and responses appropriate to the child's needs need to be developed. We are of the view that this will require coordination between CAMHS and other agencies, and it is essential that there is input from all agencies, which can be ensured through the CSP process.
74. Perhaps critically given the "fraught relationship" between home and school, and the difference of opinion regarding anxiety triggers described by the educational psychologist, co-ordinated input from the child's psychiatrist would appear to be a valuable conduit between parents and school.
75. We were of the clear view that the necessary input from CAMHS was of the nature, frequency, intensity and duration to be classified as "significant". We consider that ongoing and co-ordinated input from the child's psychiatrist, and indeed the other NHS agencies discussed below, to all of the professionals and agencies involved in the child's education will assist in achieving the child's educational objectives.

Involvement of Speech and Language Therapy

76. Since returning in February 2018, the child has chosen not to communicate verbally with any teachers or PSAs, but communicates through body language and Makaton. This was observed by both the SLT and the educational psychologist. The SLT, in

consultation with the child's psychiatrist, concluded that the evidence suggests that the child is presenting with selective mutism.

77. Notwithstanding, the respondent's representative submitted that the support provided by SLT did not meet the "significant" test in terms of frequency, nature, intensity and duration, relying on the SLT report dated 13 July 2018.
78. That report stated that the therapist and the psychiatrist "agree that it serves [the child's] interests best if the focus remains on the strategies that can be put in place to support her. The key adults in her life can support [the child] by implementing the Sliding In technique....this may be helpful in supporting [the child] to develop her speech in school. Progress should be carefully recorded in order to monitor the effectiveness of this strategy.....in best practice, SLT and/or Education Psychology would provide advice to the key adults in a child's life to help them begin to implement the Sliding In process. For best success, it is suggested that the process should be carried out with adults with whom the child is already familiar. The SLT would be happy to attend a meeting with the key adults in [the child's] life to discuss how best to implement the strategies. [The child] would then be discharged from SLT once a plan has been formulated".
79. The educational psychologist (independently) recommended that "a longer term target could be the utilisation of the Sliding in Technique". We further understood her evidence to suggest that there should be input from all of the professions in order for progress to be made, given her conclusion that "it is imperative that the key adults in [the child's] life work collaboratively to decide on the most appropriate interventions to support [the child's] communication at school. This includes, but is not limited to, parents, key education staff and the speech and language therapist".
80. The child's mother also confirmed that while the child communicates verbally at home, and her receptive language is good, she struggles with her expressive language.
81. The appellant's representative submitted that given that there is no evidence that the recommendations from the July 2018 report are yet implemented, it appears that no one person is claiming responsibility for implementing these recommendations. This, along with the concerns about the child's expressive language, means that in her submission direct SLT input is required, and should be co-ordinated with input from other professionals.
82. We noted that selective mutism is a relatively rare anxiety disorder which can be transitory but in rare cases may persist right through a child's school life. We noted too that it is not necessarily a short term condition and that it is not necessarily easy to turn around, and this was confirmed by the educational psychologist.
83. Given that one of the child's key barriers to learning is her anxiety, currently manifesting inter alia as selective mutism, we were of the view that there would require

to be significant ongoing involvement from SLT to assist and monitor the implementation of strategies (such as the Sliding in Technique). We heard that this was likely to be a longer term target, and therefore we were of the view that SLT required to be on-going, particularly given the age of the child, and that an early discharge was unlikely. We considered that it would be beneficial for that involvement to be co-ordinated not only with educational psychologists but also with the child's psychiatrist, as well of course as the child's parents and school.

Occupational therapy

84. The child was assessed by Paediatric Occupational Therapy at NHS Grampian on 13 June 2018. The report confirmed that the child has been provided with a posture pack (angled writing slope) for use in school to define her workspace and provide forearm support whilst completing writing and drawing tasks. The report recommended that she should be encouraged to complete activities to develop her fine motor skills and to use the junior caring cutlery she had been provided with as well as recommending that the child's parents trial strategies proposed in regard to noise sensitivity.
85. There was to be a three month telephone review to evaluate progress, but the child's mother gave evidence that because of other difficulties she had not been able to prioritise these tasks and the review has been deferred until December 2018. Thus, as the appellant's representative submitted, occupational therapy continues to keep the case under review with potential for further involvement in the future, allowing for a variety of sensory sensitivities to be assessed, and strategies to be planned and implemented within the school environment.
86. We noted therefore that there is ongoing direct involvement of occupational therapy, and consider that it is important that other agencies and professionals are aware of the strategies being trialled by parents, and any progress being made, or any new strategies being proposed, and that these are also implemented at school. We were of the view that this was necessary to ensure consistency and co-ordination and to meet the child's educational objectives.

Involvement of social work

87. The respondent's representative acknowledged that support is being provided by social work, but submitted that the department is not providing any support to the child that supports her learning, at least in the context of requiring such support to be coordinated using a CSP. He submitted that the care at home through a self-directed support care package does not meet an educational need, nor require co-ordination with education to be delivered.
88. The appellant's representative argued with some force that the support provided by Children's Services is necessary to meet the educational objective of the child become increasingly able to feel comfortable with various adults and communicate with them. She submitted that this would promote anxiety-reducing skills and other social skills which would supplement her academic learning. She submitted that her relatively

unique family background (as an only child without the benefit of a close circle of relatives) heightens the child's barriers to education as she is afforded less scope to interact with other adults. This means the provision of respite is especially justified from an educational perspective, and takes on greater significance in light of the child's diagnosis of selective mutism. She submitted that the provision of respite supports a stable home-life which is especially relevant to the child's education because many of her additional support strategies depend on her parents embedding the strategies into the child's routines at home.

89. We accepted the appellant's representative's submission and were of the view that input from social work could make a significant contribution to the achievement of the child's educational objectives. We noted that the educational psychologist concluded that there was a need to reduce the reliance of the child on her parents. This was prior to the diagnosis of selective mutism, although with the knowledge of behaviours associated with that diagnosis. In respect of the first CSP, the value of the child socialising with a wider range of adults was recognised, beyond the need for respite for the parents. We considered that social work involvement with other agencies could assist in shaping the plan for respite care and ensure that this aspect of the child's life was relevant for, and contributed to, the furtherance of her educational objectives.

Implementation of the CSP

90. We were aware that the educational psychologist concluded that, "The fraught relationship between home and school may also be a contributory factor in [the child's] anxiety. [The parents] are the most important influential role models in [the child's] life and she requires their support to develop a more positive view of school. This could be achieved through [the parents] modelling positive reinforcing language about school within the home environment".
91. She also noted that "The successful implementation of the Sliding-in Technique is dependent upon a positive collaboration between parents and school. However given the fractured nature of the relationship between home and school this collaboration may be difficult. Nevertheless in order to move forward and to meet [the child's] communication needs it is imperative that home and school work together to give her the best chance to speak within her school environment".
92. We reiterate these conclusions, and would emphasise the critical requirement for the parents to provide input to the process and support for all of the professionals involved in the CSP to ensure positive outcomes.
93. Indeed, in submissions the authority stated that the restoration of positive relationships and partnership working between the child's parents and agency professionals will be necessary for a positive outcome. The Respondent's representative stated that in order for that to happen it was important for the child's parents to give consent for all professionals to work collaboratively through education psychology services, underpinned by appropriate and meaningful information sharing. The education

authority also confirmed its willingness to engage in independent mediation with a view to restoring positive relationships and partnership working to promote shared understanding of how to meet the child's additional support needs going forward.

94. We endorse those submissions, which are all the more relevant to secure the successful implementation of a CSP. We consider that it is imperative that all of the professionals identified as requiring to co-ordinate support in the CSP must be able to share information. We considered that the current nature of communications is hampering effective planning. We have heard from the educational psychologist that children's behaviour can differ between home and school and this may explain the gulf between the parents and the school's perceptions, but each needs to be respectful of the other's point of view. Progress will ultimately only be achieved by parents and school collaborating. As the educational psychologist confirmed, the parents know the child best but the school knows her within that environment. They need to come together with all of the professionals to develop a plan to minimise her anxieties within the school.

95. We also noted proposals in the educational psychologist's report regarding flexible learning pathways, such as OWL or other alternative outdoor activities. As an expert tribunal, we considered that one important strategy to address the child's anxiety regarding school and built up resilience is to consider alternative approaches to education outwith the school environment so that the child's views of school and education are not exclusively associated with that particular environment.

Conclusion

96. We have concluded that the legal test, setting out the circumstances when an authority can review a CSP, was not met because there was no relevant change in circumstances. We take the view that it follows from that that the respondent has to be said to have failed, following a review of the CSP, in concluding that a plan was, at that time, no longer required, there being no relevant change of circumstances.

97. With regard however to the key focus of our deliberations in this case, we have concluded that the respondent has failed in concluding that the child does not require a plan, and therefore that their decision in that regard should be overturned, and a CSP produced within 12 weeks of this judgment, that is by 20 February 2019.