



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/21/0086

List of witnesses

For the appellant:

Learning Disability Consultant (witness A)
Child's personal assistant (witness B)

For the respondent

Head Teacher, School A (witness C)
Educational Psychologist (witness D)
Principal Educational Psychologist and Service Manager (witness E)

Tribunal witness:

Head of Education, School C (witness F)

Reference

1. This is a placing request reference, received by the Tribunal in August 2021. It is made under section 18(1) and section 18(3)(da)(ii) of the Education (Additional Support for Learning)(Scotland) Act 2004 ('the 2004 Act'). The appellant asks the tribunal to require the respondent place the child in school C.

Decision

2. The tribunal overturns the respondent's decision to refuse the placing request, in accordance with section 19(4A)(b) of the 2004 Act. The tribunal therefore requires the respondent to place the child in school C by the end of January 2022, or on such other date as is agreed between the parties.

Process

3. A hearing on this reference took place over three days in December 2021. The hearing took place remotely, on the Cisco WebEx online platform. The reference was managed towards the hearing through a number of case management calls with the parties. Six witnesses (including the appellant) gave evidence, and we heard oral submissions. One witness (witness F) was cited to attend by the Tribunal.
4. The documents considered by the tribunal are in the hearing bundle, consisting of T001-042 (tribunal's documents), A001-136 (appellant's documents), and R001-179 (respondent's documents). Documents added to the bundle shortly before/at the hearing (with the agreement of both parties) were: Curriculum Rationale (A114-A122), Tribunal Costing (T042) and the outline submissions of the parties (A123-136; R177-179).
5. During oral submissions, there was some uncertainty around the cost calculations for transporting the child, for the purpose of the respective cost element of the ground of refusal in schedule 2, paragraph 3(1)(f)(iii) of the 2004 Act. This led to the parties clarifying the position by e-mail. However, the position on the figures remained unclear. Before deliberations were completed, the legal member therefore held a telephone conference call with the parties' lawyers. This was effectively an extension of the oral submissions stage. As a result, the cost figures were clarified and the legal member fed back that clarification to the other members of the tribunal. Both parties indicated during the call that they were content with this process as a means of concluding submissions. The findings in fact on costs below are based on the content of the joint minute of admissions, paragraphs 27-29 (T041) and the Tribunal Costing document (T042), both as clarified during the said conference call. In the document at T042 (which was agreed between the parties), the figures highlighted in green are the transport costs for each school, while the yellow-highlighted figures represent the fee to be paid for an escort to travel with the child. It was agreed that these fees should apply across a 38-week academic year.
6. In December 2021, we issued a summary decision, indicating the outcome of the reference, in order to expedite matters, especially given the time of year. This document is the full statement of the facts and reasons for the decision, under rule 48(2) of The First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366).

Findings in Fact

General findings in fact

7. The child 10 years old. He lives with his mother.
8. The child has the following conditions/diagnoses: 15q 11.2 microdeletion, Craniosynostosis, autistic spectrum disorder, global developmental delay, divergent squint, epilepsy, severe hypermobility, hypertonia, communication and speech delay and hypo and hyper sensory sensitivities. The combination of these conditions/diagnoses

(when added to trauma experience) means that the child is pre-disposed to developing serious mental illness in future.

9. The child likes firm touch and deep pressure. He needs big movements such as climbing or swinging. He enjoys visual stimulation, light, colour and movement. He needs auditory stimulation, loud noises, synchronized with visuals, echo/feedback from his own voice. He has decreased sensitivity to pain. He likes foods that are beige, crunchy and spicy with strong flavours. He dislikes the feel of some fabrics, getting his hair and teeth brushed and soft touch and soft items such as toys.
10. The child has delayed receptive and expressive language and a unique style of verbal communication. He has learned phrases and sentences which are sometimes used in the correct context. He can respond to simple yes/no questions when asked in a way he understands and has previously engaged with visual supports, Makaton and Pixon boards.
11. He requires adult support in all personal care tasks such as washing and getting dressed. **[Part of this paragraph has been removed by the Chamber President to protect the private life of the child under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
12. The child needs outdoor space with items for climbing and swinging. There needs to be flexibility in how the space is used to support the child depending on his needs at a particular time or in relation to a particular task or activity. He needs space that can provide the necessary sensory input.
13. The child, in order to do well, needs to further develop his life skills, opportunities for outdoor learning, and visual tasks and games.
14. The child needs help to develop positive and trusting relationships with key adults. Such relationships are key to the child's educational development.
15. The child was previously a pupil at school B, a small, rural, mainstream primary school managed by the respondent. He attended school B from August 2017 (primary 1), until he was withdrawn from that school by the appellant in November 2019. The child is now on the roll of another school managed by the respondent, although he has never attended that school.
16. The child has not attended school since November 2019.
17. Witness B is the child's personal assistant, engaged by the appellant under the direct payments system. He has considerable experience in caring for children with additional support needs (**ASN**), both in residential and non-residential environments. He has known the child since he was 3 months old. Witness B has been the child's personal

assistant for over six years. Witness B spends 24 hours per week with the child and an additional 12 hours with him per week during holidays. When witness B is with the child in the community, 2:1 support is needed for him.

18. The child can display distressed behaviour in certain circumstances. Triggers for such behaviour include: excessive noise, bustle, unexpected events and transitioning to something less preferred. When in the care of witness B, the child has, at times, displayed distressed behaviour on a regular basis, around 2-3 times per hour.
19. When distressed, the child will sometimes smash electronic equipment, for example iPads and Kindles. He has smashed 6 such devices.
20. The child has, during some of those episodes, caused physical injury. **[Part of this paragraph has been removed by the Chamber President to protect the private life of the child under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
21. The child has caused injury to the appellant on occasion, while distressed. These incidents happened during the period when the child attended school B. Since leaving school B, these incidents with the appellant have not happened. Following the visit to school A in September 2021, for a period of a few weeks, the child's behaviour at home became more distressed again. **[Part of this paragraph has been removed by the Chamber President to protect the private life of the child under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
22. While attending school B, the child displayed physically distressed behaviour five or six times while being observed on one occasion during a class observation.
23. The appellant withdrew the child from school B since she felt the school couldn't guarantee his emotional, psychological or physical safety. The appellant wrote to the headteacher of school B explaining these reasons. The appellant reported concerns about the use of restraint and physical intervention in relation to the child by a teacher at school B to the police. Criminal proceedings in relation to these matters followed. Those proceedings remained ongoing until recently. At the time of the hearing, it was unclear whether or not those proceedings had finally concluded.
24. A risk assessment relating to the child's distressed behaviour has been completed by witness B's employer (in his role as the child's personal assistant), and this assessment will be revisited. That risk assessment provides specifics of how to (and how not to) manage the child in certain situations. **[Part of this paragraph has been removed by the Chamber President to safeguard the interests of the child under rule 55(3)(a) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**

25. In June 2021, the appellant made an online placing request to the respondent for the child to be placed in school C. The managers of school C are willing to admit the child. By August 2021, the respondent had not intimated a decision on the appellant's placing request.

Findings in fact on school A

26. School A is a school managed by the respondent. It is situated around 27 miles from the appellant's home. School A is a Community Resource Hub which makes provision for children of primary school age with ASN, as well as mainstream primary school children.

27. There are currently 367 pupils at school A, of whom 94 have needs which would qualify as additional support needs. Of those 94 pupils, 11 have significant support needs that require the support of the Community Resource Hub (**the Hub**). School A currently has 21 teachers, 3 of whom are dedicated Additional Support Needs Teachers. There is the equivalent of 8 full-time Pupil Support Assistants (**PSA**) in school A. The Hub at school A allows pupils who have complex needs to have access to small group teaching and access to a sensory room and a life skills area.

28. Staff at school A have undergone training in autism (including through the Treatment and education of autistic and related communication handicapped children (**TEACCH**) scheme). They have also been trained in nurture, emotional literacy and regulation, autism friendly classroom practice, communication for pupils with autism (Makaton levels 1 and 2 and Picture Communication Exchange System (PECS) and Pixon), sensory behaviours, profiles, diets and circuits, early language development, early literacy intervention, cognitive abilities and epilepsy.

29. School A uses a range of visual supports for its pupils who need them, including: daily visual timetables, now and next boards, Pixon boards, social stories (for example to explain changes to timetables and processes), TEACCH system, and access to the 'Life Skills' classroom.

30. School A differentiates work according to the needs and interests of each pupil.

31. School A staff use the respondent's pre-early framework for pupils with severe and complex needs (called the Extended Early Learning Curriculum) to plan work for those pupils who are at the pre-early stage. A widely recognised and used planning, tracking and assessment resource for pupils with enhanced needs ('Learning Tracks') is used by school A.

32. School A staff use a number of tools to cater for the sensory needs of its pupils, including checklists, profiles diets, breaks and access to a tailor made sensory room.

33. All school A staff are trained in Communication, Assertiveness, Look, Measured (**CALM**) de-escalation techniques.
34. School A pupils have access to technology to support their learning, including iPads with speech and language therapy functions, to allow a non-verbal pupil to communicate and iPads with sensory apps.
35. In August 2021, witness C invited the appellant and the child to visit school A. A visit to the school by the appellant, the child and witness B took place in September 2021. The visit took place after the end of the school day, in order that the child on his first visit to a new environment would be visiting at a quiet, more relaxing, time of the day.
36. During that visit, the child was taken to see a classroom, shared learning area, therapy room, lifeskills room and the sensory room. The child coped well with the visit, and engaged with the school A staff who were available, and with the school facilities.
37. In October 2021, the respondent formally offered the child a place at school A.
38. In the event that the child attended school A, he would be placed initially in the Hub. The aim would be to introduce the child to a mainstream class, currently consisting of 29 pupils, at least to some extent, following a period in the Hub. The timing of introducing the child to a mainstream class and the split between the Hub and that class would both depend on the child's progress at school A.
39. In the event that the child were to attend school A, while in the Hub initially, he may not have exclusive 1:1 support. The support available for the child would be drawn from existing school A staff. If more support were to be required following a period at school A, the school would apply to the respondent for additional staffing.

Findings in fact on school C

40. School C is an independent charity offering education, care and therapy services for children and young people aged from 6 to 18 years on a day or residential basis. It is the founding place of an international movement which has 121 communities worldwide.
41. School C (so far as is relevant for present purposes) provides education on its estate. That estate comprises: school buildings, therapy rooms, craft workshops, a swimming pool, a farm and gardens.
42. Some school B pupils have needs that would meet the definition of additional support needs in the 2004 Act, some do not.
43. As of August 2021, school C has a pupil roll of 62, including 29 pupils without ASN. 25 school C pupils have a diagnosis of Autistic Spectrum Disorder (**ASD**).

44. School C has been accredited with the National Autistic Society (**NAS**) since 2005. That accreditation was most recently renewed in February 2020.
45. The majority of pupils attend school C in one of the 8 class groups. Currently, pupils aged between 6 years and 11 years attend one of the 3 inclusive classes, where pupils with and without ASN are taught together, with extra support or personalised activities as required. All school C pupils follow their own learning pathway with a balance of class, group and individual activities. Pupils range from early to fourth-level learners according to the Curriculum for Excellence (**CfE**). Throughout the rest of the school, the classes have approximately 6 pupils.
46. Each class is taught by a General Teaching Council (Scotland) registered class teacher and a number of support staff. Currently there are 10 teachers within school C and 31 classroom support staff.
47. In 2016, school C became a 'FairAware' school and has also held an Eco-School Green Flag since 2012, most recently recertified in May 2021.
48. School C became a Duke of Edinburgh's Award approved centre in 2012 and, since that date, 45 pupils have achieved bronze awards, 25 silver awards and 10 gold awards.
49. School C also offers the JASS (Junior Award Scheme for Schools) award and many pupils have achieved at bronze and silver level, and are aiming for gold.
50. School C is a Scottish Qualifications Authority (**SQA**) approved centre and offers a range of courses from SQA level National 1 – level National 5.
51. School C uses the Scottish Government's Getting it right for every child (**GIRFEC**) framework and uses the well-being indicators: safe, healthy, achieving, nurtured, active, responsible, respected and included, in both assessment and reporting documentation.
52. The curriculum framework at school C is designed to meet the needs of each individual pupil. It is built around four areas: CfE (designed to help pupils gain skills and attributes needed for learning, life and work), Steiner Waldorf education (a holistic approach aiming to balance practical, artistic activities and developing cognitive and emotional-social abilities), skills for life (independence, social learning, self-esteem, personalisation and choice, including a multi-professional approach to planning) and therapeutic activities (including speech, movement, therapeutic art, horse riding, therapeutic music, massage, play and counselling).
53. School C has access to an independent speech and language therapy consultant, to assist pupils in this area.
54. School C has quiet spaces, playground equipment and natural play areas, all designed to meet the sensory needs of its pupils.

55. School C can offer its pupils engagement in interdisciplinary experiences, projects and activities, in areas such as drama, art and music. Pupils can take part in national and local fundraising campaigns, in order to promote enterprise and citizenship.
56. All pupils at school C who have ASN have an individual learning pathway, recorded in the pupil's Individual Education Plan (**IEP**). This plan is produced for each child annually. It outlines long-term targets and is updated termly. Within each IEP, the curriculum for each term is outlined with specific, measurable, realistic and timely targets focussed on goals. The IEP provides general information on the pupil's needs, strengths and challenges. Curricular areas specified there are linked to the CfE levels (broken down into three sub-levels) and outcomes. Qualification and award scheme information for the pupil will also be included.
57. During academic year 2020-21, pupils at school C attained 87% of their personal outcomes (638 out of 734), as measured against the Scottish Government's GIRFEC related SHANARRI principles.
58. The majority of school C pupils are working at the early and first levels of the CfE. Where a child is working at the pre-early level, the Extended Early Level Curriculum is used to guide and track development.
59. Within each school C pupil IEP, there is a positive behaviour support plan and an individual risk-assessment. Each is updated twice per year.
60. Current school C pupils have a wide range of conditions and diagnoses, including in trauma, epilepsy, global developmental delay and ASD (table at A120).

Findings in fact on cost

61. On the assumption that the respondent would pay for all school transport costs for the child and that an escort would be required, the annual school transport figures are as follows:

School A

Transport cost plus escort (over 38 weeks): £67298.00

School C

Transport cost plus escort (over 38 weeks): £92252.22

62. There would be no additional staff (or other) cost if the child attended school A. The annual fee for the child's attendance at school C would be £35503.02.

Reasons for the Decision

General points

63. The parties are agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Given our findings in fact at paragraphs 6-14 above, we are satisfied that this is the case.
64. The respondent's refusal of the placing request is based solely on schedule 2, paragraph 3(1)(f) of the 2004 Act – the 'respective cost and suitability' ground of refusal.
65. Both parties accept that the onus of proof is on the respondent and that the assessment point for considering the ground of refusal is as at the date of the hearing. We agree with the parties views on both points, both of which are supported by case law.
66. On the oral evidence, the witnesses gave their oral evidence largely in line with their witness statements and/or reports in the bundle. We were particularly impressed by the evidence of the appellant and witnesses A and B.
67. Witness B is in an unusual position, since he has experience and qualifications in looking after children with additional support needs (see his statement at A108, para 1) as well as having extensive contact with the child as his personal assistant, across a number of years. This combination made his evidence (which was given in a measured, balanced way) particularly pertinent to some of the issues we considered, and we make reference to his evidence in a number of places below.
68. There was a part of the evidence of witness E in which it was suggested that witness A has a predisposition towards recommending placements of pupils in school C. However, we did not take this view into account for two reasons. Firstly, the opinion of witness E on this point was not substantiated by any other evidence, and seemed to us to rest only on the personal opinion of witness E. Secondly, as the appellant's representative argued, this point was not put to witness A during her evidence, so she did not have an opportunity to comment on it.

The ground of refusal

69. There are four constituent parts to schedule 2, paragraph 3(1)(f), numbered in paragraphs (i) to (iv). The respondent, in order to succeed, must satisfy us that each of the parts (tests) is satisfied, as at the date of the hearing.
70. There was no dispute that the specified school (school C) is not a public school. The evidence available indicates that this is the case. Accordingly, the test in schedule 2, paragraph 3(1)(f)(i) of the 2004 Act is satisfied.
71. There was no dispute that the respondent has offered to place the child in school A. The evidence available indicates that this is the case. Accordingly, the test in schedule 2, paragraph 3(1)(f)(iv) of the 2004 Act is satisfied.

72. The question of whether the tests in schedule 2, paragraphs 3(1)(f)(ii) and (iii) are satisfied is disputed. We will turn now to deal with each of those tests. In doing so, we reach the conclusion that neither test is met, and therefore that the ground of refusal does not exist.

Ability to make provision for the child in school A (2004 Act, schedule 2, paragraph 3(1)(f)(ii))

73. In order to satisfy this test, the respondent requires to establish that it is able to make provision for the additional support needs of the child in a school under its management. In this case, that school is school A.

74. We are not satisfied that the respondent is able to make provision for the additional support needs of the child in school A, so this test is not satisfied. We will now explain, under a series of topic headings, why we take that view.

(a) Learning environment

75. There was insufficient evidence available to satisfy us that the learning environment at school A would cater for the child's additional support needs.

76. The plan, as expressed by witness C, was that the child would initially be educated in the Hub, with a view to a possible move (at least in part) into a mainstream class. The mainstream class the child would be likely to join would be one with 29 pupils in it. There was no indication of how long it would take for the child to be introduced to a mainstream setting, or what proportion of his time he would spend in that setting (compared to in the Hub). Indeed, the evidence suggested that this would be decided depending on his progress.

77. There is insufficient evidence of the plan for the child were he to attend school A. No approximate timings were suggested for the integration of the child into the mainstream environment. There was no indication of the plan for the split between mainstream and the Hub. The example timetable for Child Z (R128) alongside that child's Sensory Profile and Diet (R126-127) are of limited value, since they do not relate to the child. They do show that a bespoke education could be put in place for the child if he were to attend school A, but there is no indication that the child's arrangements would be similar to those of Child Z. We note that witness C says in her statement that it would be 'inappropriate' to identify exactly what support the child would receive at school A (R149, final para). However, there is no firm evidence of the support he would receive even in general terms. While we appreciate witness C's point that these matters depend on progress, causing difficulties in prediction, we felt that the lack of any precision in this area meant that we could not be satisfied that the plan in place was appropriate.

78. In addition, there is uncertainty around the staffing arrangements which would be in place for the child at school A. Witness C indicated that there may not be 1:1 support in place

for the child in the Hub, since at any particular time, other pupils might be attending there with the child. In addition, there might have to be an application for additional resources made by staff at school A to the respondent, depending on how the child's education progresses.

79. Witness B was very clear in his evidence that the staffing ratio should be identified before the child were to attend school A since he could be displaying distressed behaviour shortly after attending, and the staff complement necessary to deal with that would need to be in place in advance. We agree with this assessment. Given the child's needs and evidence of the triggers for distressed behaviour, transition to a new school is very likely to lead to the early display of such behaviour. Uncertainty around staffing needs both initially and on an ongoing basis is further evidence that the planning process is inadequate.
80. We are not satisfied that a mainstream class with 29 pupils would be a suitable learning environment for the child. He has complex support needs. He has significant distressed behavioural issues. He has not been in education for the last two years. His last school environment (at school B) was a small rural school. While we accept that school A has experience and expertise in dealing with children with additional support needs (as evidenced by the findings in fact at paragraphs 27-34 above), there is no evidence of experience in dealing with children with needs comparable to those of the child.
81. The individual education plans of three children in school A which were made available to us (Child X, Child Y and Child Z, R015-045) were stated by witness C to illustrate how education is delivered in that school. However, these documents highlight the gap which would exist between the child and pupils at school A, in terms of educational needs. This is especially the case when the report from a clinical nurse (R110-113) is considered. She expresses concern about the mainstream environment for the child. She also outlines the results of an Adaptive Behaviour Assessment System scoring of the child (R111-112), in which in every category, the child is scored as being within the 'extremely low' range of ability. While we accept that the clinical nurse's report is based on information taken from the appellant, there is no evidence to suggest that that information was incorrect or unreliable. Further, the clinical nurse has stated her professional opinion on the points addressed in her report, and that carries evidential value, in the absence of an indication that her views are unreliable. We take into account the fact that the clinical nurse did not give oral evidence, but we note that witness A did give oral evidence, and the clinical nurse is part of witness A's clinical team.

(b) Management of risk

82. It is clear from the evidence that the child can present distressed and physically challenging behaviour, as set out in the findings in fact at paragraphs 18-22 above. These risks mean that when the child is taken outdoors by his personal assistant, 2 to 1 support is needed.

83. We accept that the appellant's account of the regularity of the child's distressed behaviour is different to that of witness B (the latter's evidence suggests that such behaviour is much more common than the former), but it seems to us that this could be explicable by environment. Whatever the reason, we found witness B's evidence on the causes, regularity and extent of the child's distressed behaviours to be reliable. He gave clear and confident examples of such incidents.
84. The respondent has not prepared a risk assessment for the child to cater for his attendance at school A, nor is there any evidence that such an assessment is intended. This is a serious concern for us. This concern is heightened on consideration of the respondent's overall assessment of need and placement (**Options assessment**, R057-072) completed by witness D. There is no reference in that very detailed document to distressed behaviours or to consideration of the need for a risk assessment. It is clear that the respondent would be aware of the child's distressed behaviours, since according to witness B these happened while the child was at school B. In addition, the incident which led to the appellant withdrawing the child from school B was one involving physical intervention. In any event, the input of witness B was available to the respondent. We note that, in preparing the assessment of need and placement report, witness D does not seem to have consulted with witness B as a source (see R057, 2nd paragraph under 'Basis for assessment and report').
85. If the child were to attend school A, he would be likely to be faced with the kind of triggers witness B referred to on a regular basis, in particular noise, unexpected events (especially in interactions with other pupils) and transitioning to something less preferred (as he moves from task to task, or from location to location). It is within judicial knowledge that these are all events that occur regularly within daily school education. This makes a risk assessment which is fully informed, carefully prepared and disseminated among all relevant school staff an essential part of reducing the risk of distressed behaviour. The absence of such an assessment is therefore a serious impediment to the respondent's ability to provide for the child's additional support needs at school A. Those needs include the need to reduce the risk and occurrence of distressed behaviour which, for obvious reasons, would be disruptive to the child's education.

(c) Future mental health needs

86. Witness A (consultant psychiatrist with NHS Child and Adolescent Mental Health Services (**CAMHS**)) was clear in her written and oral evidence that the child is pre-disposed to developing serious mental illness in future. In order to reduce this risk (which we would expect would be one recognised in any risk-assessment – see above), witness A has referred to the need for the child to be in an environment which caters for his emotional needs. Witness A in her evidence (again, both written and oral) also points to the need for the appellant to feel able to trust individuals who are with the child and the environment he will be in, so that her own anxiety levels can be reduced, as this can, in

turn affect the child's anxiety. All of this has clear implications for the child's future education.

87. Despite this, there is no mention of CAHMS or mental health input in witness D's Options Assessment (R057-072), either in the needs assessment or placement comparison sections. Witness E in her detailed written statement makes only passing reference to mental health input, and in doing so (in relation to the clinical nurse's report at R110) appears to dismiss the value of it (para 54 of her statement, R167). This is despite the views of the clinical nurse having been brought directly to the attention of witness E by the appellant in May 2021 (see e-mail from the appellant to witness E at R073-74).

88. This all gives us serious cause for concern. The basis of the apparent dismissal of professional mental health opinion appears to rest partly on the fact that the information for the clinical nurse's assessment came from the appellant (with no reason given as to why this is relevant) and partly on the basis that the clinical nurse had been unable to attend planning meetings to share and triangulate her assessment. Neither reason is a valid basis to leave the opinion of a mental health professional out of account, or even to diminish the impact of that opinion. Where a professional expresses a view (especially one based on a formal assessment), that view should be fully respected and taken into account, whether it comes from a medical, educational, psychological or any other professional. There is no need for each professional opinion to be triangulated before it can be relevant to an educational assessment. Nor is there any need for a professional to attend certain meetings for their view to gain validity. The approach of the respondent here is, in our view, without merit.

89. We would also point out that there are certain statutory duties on education authorities under the 2004 Act in relation to children with additional support needs (see sections 4 and 5 of the Act). This would, in appropriate cases, include obtaining information from appropriate agencies in order for them to carry out these duties, including a formal request for help (s.23(1)) with which the agency must (except in certain limited instances) comply (23(3)). There is no sense in the evidence that the respondent took the view that the onus is with it to secure information where more is needed. Rather, our sense was that the onus was seen to be on the appropriate agency to be proactive. This approach demonstrates a worrying misunderstanding of statutory obligations.

90. This means that in considering the child's potential educational placement in school A, insufficient attention has been paid to the need for detailed mental health service advice and input in planning for meeting the child's needs. This would be likely to lead to the child's mental health needs not being fully met within any education at school A. If those needs are not fully acknowledged and explored by the respondent, they are unlikely to be met within educational provision by the respondent.

(d) Conclusion on schedule 2, paragraph 3(1)(f)(ii)

91. Taking these points together, we are not satisfied that the respondent is able to make provision for the additional support needs of the child at school A. As the appellant's representative points out in his outline submissions (paras 17-18), the reference to 'the additional support needs of the child' means all of those needs, not only some of them.

Reasonableness of placing the child in school C, based on reasonable cost and suitability comparisons between schools A and C (2004 Act, schedule 2, paragraph 3(1)(f)(ii))

92. Following our conclusion on the test in schedule 2, paragraph 3(1)(f)(ii), we need not address this part of the ground of refusal. However, given the attention paid to this test in the evidence and argument, we have decided to address it.

93. For this test, we need to conduct a comparison between school A and B from two perspectives: (a) suitability of provision for the additional support needs of the child; and (b) cost of provision for the additional support needs of the child. Once those comparisons are carried out, and taking the results into account, we need to conclude on whether or not it is reasonable to place the child in school C.

94. We will consider suitability, then cost, and then conclude on reasonableness.

Respective suitability

95. We have concluded above that we are not satisfied that the respondent can (in school A) make provision for all of the additional support needs of the child. We refer to that assessment here, and those points are relevant to this test.

96. We need not reach a conclusion on whether the child's additional support needs can be met at school C (as we do for school A for the purposes of schedule 2 paragraph 3(1)(f)(ii), considered above). The test at this point involves only a comparison between the two schools. However, for the avoidance of doubt, we are satisfied that the child's additional support needs can be met at school C, for the reasons set out below.

97. As with the test in schedule 2 paragraph 3(1)(f)(ii), we will examine respective suitability through a number of factors.

(a) Learning environment

98. The evidence points to the conclusion that the learning environment at school C is more suitable for meeting the child's additional support needs than that at school A. The relevant factors here are as follows:

- a. School C is school which has been accredited by the NAS. School A is not. The child has autism. That accreditation has been recently renewed (February 2020). This in itself is a factor which is of limited value, since we accept (of course) that the needs of children with autism are met well in schools which do not have that

accreditation. But it is a factor which holds some value in this case, especially given the overall positive conclusions of the accreditation body in its most recent report about school C's provision (A055-82).

- b. The evidence of the educational environment the child would join in school C is clearer than it is for school A. Witness F confirmed that the child would join a class of five pupils or a class of 12 pupils. She was able to provide information about what a typical day might look like for the child, with examples of the activities in which he might engage. This level of specification contrasts with a lack of detail on the environment in which the child would be educated in school A (see above on this).
- c. There was stronger evidence of the staff support which would be made available in school C for the child than that available for school A. For school A, the evidence was that it was unclear whether additional PSA support would be needed, and if it was, it would be requested. In addition, witness C gave evidence that the child would not be allocated dedicated PSA support even during his time in the Hub, since the allocation would depend how many pupils were there at any one time. By contrast, witness F was clear that pupil support would be provided exclusively for the child in addition to the class teacher for the whole group. In our view, this is an important aspect of provision for the child especially as he is moving back into education in a new setting and for the first time in two years, given his needs generally and the need to reduce the risk of distressed behaviour. Further, and still on staffing, the child would be introduced to a small staff group at school C initially, and the group size would increase over time. This is an important factor given the evidence of the need for the child to bond with staff members and build trust. The evidence of how staffing would be handled at school A was generic and lacking in detail.
- d. The number of pupils in the child's class at school C (5 or 12) would be more conducive to learning than the mainstream classroom size which would be available at school A (29). We are concerned about the child's prospects of success in a large mainstream class where a minority of children have additional support needs, compared to a much smaller class where most of the children have additional support needs. We understand that it is not clear when and to what extent the child will be in a class with mainstream peers at school A (which is itself a concern, see above). However, the aim would be to introduce the child to a mainstream environment there, so we consider that as part of our assessment of comparative suitability.
- e. The strong pupil-centred (nurturing) environment at school C would be particularly suitable for the child, given his needs and vulnerabilities. The need for a nurturing environment was highlighted by witness A (A113). While an individual, nurturing approach is taken at school A (there is evidence of a nurturing approach in staff training and aims within school A), it seems to us that school C has that approach

as a key part of its ethos. That is clear from the particular strengths noted in the NAS accreditation assessment report (at A057).

(b) Curriculum

99. The blend of academic, holistic, life skills orientated and therapeutic provisions at school C (as explained in the Curriculum Rationale document at A114-122, more specifically at A115-116) would be likely, in our view, to be particularly suitable for meeting all of the child's additional support needs. This is supported by the evidence of witness B who (albeit not recently, except for the child's recent visit to school C) has professional experience of school C as well as extensive, current and regular care of the child. It is also supported by the clinical nurse's assessment of the child as having an extremely low range of ability across a number of areas which would lie at the core of a curriculum more focused on academic outcomes (for example communication, functional academics and self-direction – R111-112). The curriculum at school A, while individualized, would be more academically focused than the blended curriculum at school C.

(c) Management of risk

100. Witness F stated in oral evidence that a risk assessment would be carried out for the child, and we note that such an assessment would sit within the child's IEP. As we note earlier, there is no evidence to suggest that such an assessment is planned by the respondent in respect of school A. We explain the reasons for the importance of this factor above, and we refer to those here.

101. It is clear also from the evidence of witness F that school C has had experience of pupils who exhibit distressed behaviour not dissimilar to that exhibited by the child. We note the evidence of witness B here, who (again as someone with experience of school C and of the child) expressed the strong view that school C is a school with good experience of children who exhibit distressed behaviour.

102. By contrast, we did not get the impression from the evidence about school A that it had the same level of experience of handling distressed behaviour as that available at school C.

(d) Peer group

103. It is universally accepted (and within the knowledge of a specialist tribunal) that the formation of positive peer relationships for all children is an important part of their educational development. Consideration of the population of a school can be important evidence of the likelihood of formation of peer relationships, since it is within judicial knowledge that children do not always form positive peer relationships with their classmates; there are opportunities for forming such relationships at break times and other recreational points in the timetable.

104. We have clear evidence of the needs of the pupils at school C as at August 2021 (Curriculum Rationale document, at A119-120). This paints a picture of a school population with pupils who share some similar needs to the child's. There is no similar overview of the needs of the children at school A.
105. Further, the information of the needs of school A pupils suggests that many of those attending that school do not have additional support needs, or have needs which are milder than those of the child. 94 of the 367 pupils at school A have additional support needs and only 11 of those 94 children attend the Hub, as pupils with significant support needs. By contrast, more than half of the pupils attending school C (33 out of 62) have additional support needs, and 25 of the 62 children attending have autistic spectrum disorder.
106. At school C, the child shares other conditions with current pupils such as trauma experience, global developmental delay, epilepsy and hypermobility (A120). While the formation of peer relationships are difficult to predict in any school, given the small pupil roll at school C, and the blended curriculum discussed above, the shared needs of the children is likely to have a significant impact on the chances of development of good peer relationships. The prospects of development of such relationships at school A, which is much larger and with a population of pupils with a much smaller proportion sharing the needs of the child, are poorer.
107. Some specific evidence of peer relationship prospects comes from the fact that the child, on visiting school C, spontaneously joined an outdoor lesson for around five minutes. While this is limited evidence, it is a minor indication of the prospects of the child bonding with peers at school C. There is no equivalent evidence from school A, the child's visit there having taken place in the absence of pupils.

Conclusion on respective suitability

108. There are other areas on which school C compares favourably to school A on suitability, but we have discussed the main ones above. Taken together, there is no doubt that the suitability of provision in school C for the child's needs exceeds that in school A.

Respective cost

(a) Transport costs

109. There was uncertainty around who would transport the child to school (whether school A or C). The appellant indicated that she would do so, or organise it, so that the respondent would bear no transport costs. The respondent argued that the full cost of transport would have to be borne by it, since it would have to pay for the child's travel to school in the event that the appellant was unable to do so. A legally binding agreement

between the parties obliging the appellant to provide transport for her child was regarded as 'unethical' by the respondent. We do not see why such an agreement would be unethical. Also, we do not agree that the respondent should (for the purposes of the present calculation) be 'debited' with the full transport costs, when the evidence suggests that the appellant will arrange transport. To do so would go against the evidence. To adopt something between these extremes would be to indulge in speculation. We have to follow the accepted evidence rather than consider what might be the position if the reality turns out different from what the evidence suggests.

110. There was some uncertainty around whether an escort would need to be provided for transport to and from school. The appellant indicated that one would not be needed. There is no evidence available from which we can infer that an escort would be needed, and the onus of proving this (as with the onus generally) is on the respondent.
111. The appellant's representative suggested that we should consider the issue of costs in the context of the respondent's education and general budgets. He referred to some authority on this point. This is an interesting argument and one which adds further uncertainty.
112. Having said all of that, even if we give the benefit of all of these uncertainties to the respondent, the outcome of the comparison exercise within this test would not be different than if all of the uncertainties were resolved in favour of the appellant. For this reason, we will, for present purposes, take the former approach.
113. Given the figures above (findings in fact at paragraphs 61-62), the transport cost difference is £24954.22 more for school C than for school A.

(b) Fees

114. Again, there is some uncertainty. The evidence suggests that there will be no staffing or other cost implication if the child attends school A. The cost of attendance at school C is agreed as the annual school fees, namely £35503.02. We hold some concerns about the respondent's argument that no additional staff resource would be required if the child were to attend school A. However, we are prepared to accept that this is the case, given that some evidence was presented to this effect and it was not countered.
115. The fees cost difference is therefore: £35503.02 more for school C.
116. The total annual cost difference is therefore: £60457.24 more for the child to attend school C than school A.

Reasonableness of placing the child in school C

117. We are in no doubt that, taking into account the respective cost and suitability of schools A and C for provision of the child's additional support needs, the respondent has not established that placing the child in school C is not reasonable.

118. Indeed, placing the child in school C would be reasonable in these circumstances. School C is considerably better for meeting the child's needs from the suitability point of view. While the cost differential of over £60000 is not an insubstantial sum, in the context of a significantly better provision for a child with such profound needs, it does not tip the balance of reasonableness in favour of school A.

119. Had we reached a different conclusion on the test in schedule 2, paragraph 3(1)(f)(ii) of the 2004 Act, we would have found that the test in schedule 2, paragraph 3(1)(f)(iii) was not met by the respondent. We would still, therefore, have reached the view that the sole ground of refusal relied upon does not exist.

Overall conclusion

120. Since the respondent has failed to establish that a ground of refusal in schedule 2, paragraph 3 of the 2004 Act exists, we must overturn the decision to refuse the placing request and require the respondent to place the child in school C. We need not (and therefore do not) consider the appropriateness of placing the child in school C under s.19(4A)(a)(ii) given that we have found that no ground of refusal exists.

Additional Comments

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

122. We are concerned about the apparent lack of coordination between the respondent and CAHMS in relation to the design and implementation of the child's future education. We hope this is something which can be resolved, so that advice from mental health services can fully influence how education is delivered for the child as he returns to school and as his education continues.