



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/21/0041

List of witnesses

For the appellant:

The Polish speech and language therapist ('SLT')
The appellant's educational psychologist

For the respondent

The head teacher (current school)
The National Health Service speech and language therapist ('NHS SLT')
The respondent's educational psychologist
The respondent's manager

Reference

1. The appellant is the mother of a six-year old boy currently enrolled at a mainstream primary school run by the respondent. The appellant requested that the respondent place her son at a specific special school. In March 2021, the respondent refused the request. In May 2021, the Tribunal received the appellant's reference of that decision (Education (Additional Support for Learning) (Scotland) Act 2004, sec 18(1), (3)(da)(ii)).

Decision

2. The Tribunal **confirms** the respondent's decision:
 - 2.1. The Tribunal is satisfied that a ground for refusal of the placing request exists (Education (Additional Support for Learning) (Scotland) Act 2004, sec 19(4A)(a)(ii)). In particular, it is satisfied that:
 - 2.1.1. The education normally provided at the specified school is not suited to the ability or aptitude of the child, (sch 2, para. 3(1)(b)).

2.1.2. Placing the child in the specified school would breach the requirement in the Standards in Scotland's Schools etc. Act 2000, section 15 (2004 Act, sch. 2, para. 3(1)(g)).

2.2. The Tribunal is satisfied that it is, in all the circumstances, appropriate to confirm the respondent's decision (sec 19(5)(a)(ii)).

Process

3. Case conference calls took place between the legal member and the parties' representatives in June, August and November 2021.

4. An independent advocacy worker had met the child at his home and obtained his views. The worker's report was lodged with the Tribunal. Neither party suggested any further steps be taken to seek the views of the child. In summary, the worker reported the following views:

(1) The child loved nursery. It was a small class, quiet and not busy. The child did not like school; he said school was "stupid". The child did not like crowds and busy places: the noise hurt his ears. The child did not like the teacher talking to other children. The child played with three children he named, though he found one child annoying as he was noisy. He did not eat lunch at school. He would like quiet places and small classes at a new school.

(2) With the use of "emotion cards" he indicated that some children were mean to him and that they left him out, he worried about going to school, he felt tired in the morning before going to school, he was happy with some aspects of school, he thought he appeared cheerful at school, he was brave for going to school, and he preferred quiet areas at school.

5. The hearing called for three days in November 2021. The evidence was not completed in those days. The hearing called again two days in December 2021 for this purpose. Written submissions were directed to be exchanged in draft in December 2021, and lodged in final form in December 2021 together with any joint minute of admissions. Written submissions, together with a joint minute, were lodged timeously.

6. The tribunal heard evidence from the following witnesses for the respondent:

(1) The head teacher of the child's current school, a mainstream primary school.

(2) The National Health Service speech and language therapist ("NHS SLT"). She is the child's SLT.

(3) The respondent's educational psychologist. He was chair of the respondent's Additional Support Needs Forum, which had made the decision referred to this Tribunal. He was a qualified teacher prior to becoming a psychologist. He had not met the child but had received reports and conducted discussions with those who had.

(4) The respondent's manager. He was head of education for the respondent. He was also a qualified teacher before entering local authority management. The manager had observed the entire hearing, apart from the appellant's evidence, before he gave evidence.

7. The tribunal heard evidence from the following witnesses for the appellant:

(1) The appellant's Polish Speech and Language Therapist ("Polish SLT"). She is a therapist qualified in Poland, now living in Scotland, who provides speech and language therapy principally in the Polish language. She had been instructed by the appellant to make assessments of and to provide therapy to her child. She gave evidence through a Polish interpreter.

(2) The appellant's educational psychologist. She is a neuropsychologist who undertook her professional education in the United States of America. She had a variety of psychological and teaching support experience, though her experience in schools in Scotland was confined to work in one private school. She had been instructed by the appellant to make an assessment of her child.

(3) The appellant. She gave evidence through a Polish interpreter.

In its final form, the hearing bundle consisted of pages T1 to T59; A1-A38; and, R1-R159.

Findings in Fact

8. The Tribunal found the following facts admitted, or proven on the balance of probabilities, which are relevant to the outcome of this reference:

The child's conditions and needs

(1) The child has diagnoses of autism spectrum disorder and global developmental delay.

(2) The child is sensitive to noise.

(3) The child is physically active and has little awareness of danger. He therefore requires more adult supervision than most children of his age.

(4) The child has speech and language delay. He is a six year old child with the ability, in this respect, of an average child around the level of a four year old.

(5) The child speaks in English and Polish: the latter being his parents' language.

(6) The child prefers to speak English rather than Polish, though he has a good vocabulary in both.

The child's education so far

(7) Before primary school, the child attended two different nurseries. He changed from one nursery to a second nursery ("the children's centre"). The first nursery was not meeting his needs. His development was delayed, he was non-verbal.

- (8)** The children's centre was a nursery catering both for children with and without additional support needs. It consisted of three rooms, two of which were exclusively for children with additional support needs, the other of which had a mixed cohort. The child was placed in the mixed cohort room.
- (9)** The child became settled at the children's centre. He made friends there. He made progress with his development. He spent an extra year in nursery year education, with his entry to primary school deferred for one year.
- (10)** The child is currently enrolled at a mainstream primary school.
- (11)** He is in his first year of schooling, placed in primary one, albeit that children of his age would normally have begun school the year before and be in primary two.

The current school

- (12)** The child is in a class of 21 pupils.
- (13)** Another pupil in the class has autism.
- (14)** The class has one teacher and two pupil support assistants. There is no one-to-one allocation of pupil support for the child. The child has a good relationship with his class teacher.
- (15)** The child has some therapy and/or tuition in school from:
 - a.** a National Health Service speech and language therapist,
 - b.** the education authority's communication outreach service, and,
 - c.** an 'English as an Additional Language' teacher ('EAL teacher').
- (16)** The entire teaching staff have received training from the communication outreach service.
- (17)** The school roll for the current school is 427 pupils.
- (18)** Pupils with additional support needs constitute 58% of the school roll.
- (19)** There is an electronic bell that rings for 10 seconds, six times per day at the primary school.

The child's experience with school

- (20)** The child is slightly further ahead with reading, spelling, writing and mathematics than his classmates in primary one.
- (21)** The child has begun to interact more with other children in his classroom, moving beyond parallel play.
- (22)** The child is capable of drawing detailed pictures, and can describe the story that the picture depicts.

- (23) The child likes to tell stories, and can answer questions about the stories.
- (24) The child has certain triggers which can, at times, lead to outbursts. These include transitions.
- (25) **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).**
- (26) The child has hit out or pushed others at school. The child has hit members of staff at least on two occasions. The child has hit a girl pupil on one occasion.
- (27) **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).**
- (28) The child also speaks in very negative terms about school whilst at home.
- (29) The child has disturbed sleep, and will be distressed and sleep very poorly if he knows he is going to school the next day.
- (30) The child will eat nothing at breakfast time on a school day, and will eat only a small amount or nothing at lunchtime at school.
- (31) The child has lost weight: being 34 kilograms when he started school and now at 30.6 kilograms.
- (32) The child has become more aggressive with the appellant and with his Polish SLT since he started school.

The specified school

- (33) The specified school is a special school for pre-school to secondary pupils.
- (34) The specified school is divided into year groups, except that for primary one there is instead a division covering both primary one and pre-school students. For primary two onwards, there is a smaller class for those with relatively complex needs, and a class of up to ten pupils for those with relatively moderate needs.
- (35) The specified school has pupils with a range of abilities, including verbal children. The child is similar to at least some of the other pupils there in respect of:
- a. diagnoses of autism and global developmental delay,
 - b. tendency to emotional outbursts,
 - c. delayed development in language and social skills.

- (36) The pupils' curricula at the specified school are individualised.
- (37) The child's abilities in respect of language, social skills, reading, writing and mathematics are significantly above the range of the age-equivalent pupils currently attending the specified school. Most of the pupils in pre-school/primary one and in primary two at the specified school are non-verbal.

Reasons for the Decision

Assessment of witnesses

9. The appellant's solicitor invited us to regard the head teacher's evidence with circumspection on the basis of her reluctance to acknowledge any negative impact of the child's behaviour on other pupils. That teacher did exhibit some tendency to reply to questions in a way that would portray the situation favourably, rather than a direct answer to the question. That is a habit commonplace amongst witnesses and whilst it can be unhelpful, it does not by itself indicate any lack of sincerity or integrity. There are points where the head teacher referred simply to the child's behaviour having "no impact", but she did at one point refer to an incident where the child struck another pupil as having "no lasting impact". We understand her meaning to be not that the child had no impact on others, but that it had a fairly limited or insubstantial impact. The slight imprecision in the unqualified phrasing of her other answers does not cause us much concern. No other reasons were put forward by the appellant's solicitor to doubt the head teacher's sincerity nor did we identify any. She appeared to us to be candid. The teacher readily acknowledged, for instance, the child's use of negative language about the school.
10. With respect to reliability of witnesses, so far as matters of primary fact are concerned, we note that the evidence of the educational psychologist and education manager was solely derived from other sources rather than direct observation of the child. We have exercised caution when considering evidence as to the primary facts spoken to by these witnesses, focusing on the evidence of the head teacher, the NHS SLT or comments in documentation of others with direct experience of the child. We accept their evidence as to matters such as how the nursery centre was run, and the composition of pupils at the specified school, as they ought to have close knowledge of such matters in the course of their duties.
11. We do not place any reliance upon a comment attributed by the appellant to one of the staff of the respondent's communication outreach service. The appellant's evidence was that this person said the child's abilities were at the level of a three-year old and that he would find mainstream education challenging. Comments to that effect were not contained in this person's report produced in this appeal. That person was not a witness for either party. We do not know the underlying reasoning for those comments, nor can it check whether there might be some material subtlety or qualification to what she said.

- 12.** We are faced with a difficulty in that the appellant's account of how the child presents at home is very different from the head teacher's account of how he presents at school. The representatives did not provide any reason not to accept what the appellant said about her child's behaviour and presentation outwith school, nor of what the head teacher said of this inside school. We find that the appellant and the head teacher are likely reliable witnesses as to matters outside and inside school respectively. It is commonplace for children to behave somewhat differently in school and outside of this. A child may be less inhibited with, or more ready to be dependent upon, their parent than with their teacher. The tribunal members also have experience of cases where a child will appear settled in school but distressed outside of school, where it appears the child's efforts to tolerate the school environment are taxing for them and result in problems at home.
- 13.** We also note a contrast between what the appellant reports she has been told by her son, of occasions of bullying, and the absence of any observation of this by school staff. It seems inherently unlikely that there would have been no negative incidents with other children, given how primary school children often behave. But we consider it likely that the scale of any adverse treatment of the child by other pupils is not substantial, otherwise it would have likely been noted by school staff.
- 14.** The appellant's evidence was that her son had told her he has no friends at school. The independent advocacy worker reports that when the child was asked of this he informed the worker that he played with three children he named, though he said of one pupil that he was annoying and noisy. As a disinterested dispassionate observer, we place significant reliance upon what the independent advocacy worker has reported that the child has said. The differences in the child's comments are to be attributed, in the tribunal's view, to the tendency of children to interact differently with different people or in different contexts.
- 15.** Our assessment as to the suitability of mainstream education and education at the special school for the child essentially coincides with the assessment of the respondent's educational psychologist and the respondent's manager. But that is a consequence of our analysis of the primary facts rather than being dependent upon those witnesses' opinions. The tribunal, both in view of its knowledge from other cases and because of the specialist experience of its ordinary members, is entitled to draw its own conclusions from the primary facts without having to rely on expert opinion.
- 16.** Our opinion on these points differs from the appellant's psychologist and the Polish SLT. Both these witnesses appeared to us to be conscientious professionals. However, they both lacked real familiarity with the Scottish education system and allied provision. That is a reflection of where both witnesses are in their respective careers.
- 17.** Also, the appellant's educational psychologist's views were based on psychometric testing she had administered to the child as well as a questionnaire administered to the child's parents. We were concerned that the use of psychometric tests on a young child administered by someone whom he had not met before, in a strange environment, was fairly weak evidence in comparison to the evidence of the child's progress at the

children's centre (and the, albeit fairly brief, experience at primary school). The psychologist candidly acknowledged the caution that must be employed when relying on tests with young children. She also explained that she had endeavored to administer the tests in a manner that might mitigate or avoid the distortion of his true performance brought about by his autistic traits. Whilst we trust that the psychologist acted diligently in this respect, we still consider that the real-life experience of his nursery years and brief time so far in primary is a more reliable guide as to the child's ability and aptitude.

18. Further, the Polish SLT's experience of the child was, apart from one initial assessment at home, in the course of one hour appointments at her home. She had not observed the child in a group setting. She also spoke to the child principally in Polish (he would usually reply in English). All these features would make it difficult to extrapolate as to what the child was capable of in the course of a school day (rather than an hour long appointment), in a class group (rather than alone), and taught in English.
19. We placed particular reliance on the observations of the NHS SLT. She was careful in her answers. She, quite properly, declined to give a view on the appropriate placement for the child as being a matter outwith her responsibility. The appellant spoke in her oral evidence of her confidence in the NHS SLT.

Comments on findings-in-fact

20. Whilst much of our findings are uncontentious, certain findings require some explanation.
21. Finding (6) as to the child's preferred language is based both on the Polish SLT's evidence and also the head teacher's oral evidence. The head teacher recalled that the EAL teacher introduced herself to the child in Polish, only for the child to tell her that she spoke good Polish but that he spoke English.
22. Finding (9) is based on a minute of a meeting prepared by the head of the children's centre (A025-A027) and "trackers" completed by the nursery at R047-R053. The trackers contained short descriptions of skills, and either one or more sides of a triangle was completed, or one or more boxes filled in, indicating progress with those skills, with one side of a triangle or one box marking that progress had begun, and three sides or boxes indicating progress was complete. The triangle sides or boxes were colour coded to indicate when the level of progress had been assessed. The trackers indicate progress over a range of skills.
23. Finding (16) derives from the head teacher's written statement (R062, paras. 2, 10).
24. Findings (20) to (23), (26) to (27) derive from the head teacher's oral evidence.
25. Findings (28) to (32) derive from the appellant's oral and/or written evidence, and finding (32) is also supported by the Polish SLT's oral evidence.

26. Finding (37) is derived from the respondent psychologist's and NHS SLT's evidence. The psychologist's evidence was complicated by the fact that he proceeded on the assumption that, if the child was placed at the specified school, he would be put in the division below primary two, rather than in primary two. We find that assumption unwarranted given the child's age. But after several questions on the point, his evidence was clear that the child's linguistic and social abilities were significantly above those of the pupils in both primary one and primary two. The SLT's evidence was derived from five children under her care who had been placed at the specified school. Whilst there is a limitation on what weight one should place on that small sample, its value is in providing a check upon, and confirming, the psychologist's evidence.

Education normally provided at specified school unsuited to child's ability/aptitude

27. The tribunal is satisfied that the education normally provided at the specified school is not suited to the ability or aptitude of the child, (sch 2, para. 3(1)(b)).
28. We accept the appellant's solicitor's submission that if the child was placed there he would have an individualised curriculum catered to his particular level of ability and aptitude. We also accept that, at a certain level of generality, there are some similarities between the child and the current pupils there. However, the relevant question on this branch of the case concerns the education *normally* provided. We are satisfied that the child has language and social skills which, whilst below the average for all pupils, are significantly higher than those of the current pupils at the specified school. This is so whether he were to be placed in primary two or in the group for primary one and pre-school children, and whether he were to be placed in the class for children with comparatively moderate needs or for those with more advanced needs.
29. That being so, it inevitably follows that the individualised education provided to the child would not be that normally provided at the specified school. The education normally provided at the specified school would not be suited to the child's ability or aptitude; the school does not normally provide education for children at this child's level. If the school were to provide education suited to him, it would be at a level significantly higher than that normally provided by them.

Presumption of mainstreaming

30. The tribunal is satisfied that placing the child in the specified school would breach the requirement in the Standards in Scotland's Schools etc. Act 2000, section 15 (2004 Act, sch. 2, para. 3(1)(g)).
31. Although the burden generally falls upon the respondent to establish a ground of refusal, the respondent can rely on the presumption of mainstreaming in the 2004 Act, section 15 to discharge that burden. As the duty in section 15 applies unless certain exceptions apply, which are "presumed ... [to] arise only exceptionally" (sec 15(3)), the burden must fall upon the party contending that an exception applies to establish this.

Thus, in this context, the burden is on the appellant to establish the exception. The question posed by section 15 is in the generality, referring to “a school other than a special school” rather than any particular school, such as the one the child is currently enrolled at.

- 32.** Also, there may be adaptations to the standard mainstream education, so long as this does not entail “unreasonable public expenditure being incurred which would not ordinarily be incurred” (sec 15(3)(c)). Thus, if a child was suited to mainstream education generally, with the provision perhaps of, say, an extra pupil support assistant (so long as this was not unreasonable expenditure not ordinarily incurred), then the exception would not be established, even if the child’s educational provision in his current mainstream school was unsuited to him. But the unsuitable nature of the current mainstream school might be highly material to whether it is appropriate, in all the circumstances, to confirm the respondent’s decision (2004 Act, sec 19(4A)(a)(ii)).

Whether mainstream education not suited to child’s ability or aptitude

- 33.** The tribunal is not satisfied that to provide education for the child at a school other than a special school would not be suited to the ability or aptitude of the child (2000 Act, section 15(3)(a)).
- 34.** The child’s abilities are mixed in that they are, in some respects, at or perhaps a little ahead of his current classmates, and in other respects significantly behind his current classmates. He is not currently suited to an ordinary unadjusted mainstream curriculum. But we are satisfied that, so far as academic ability is concerned, he is within the range that can be catered for, with adaptations, in a mainstream setting.
- 35.** We note the appellant’s concerns as to her son’s ability to learn in fields that do not interest him. This concern is valid. But difficulties with motivation and concentration are a common feature of children with ASD. They are potentially compatible with education in a mainstream setting, provided there is adequate staff, properly trained, using appropriate techniques. The current school operates a ‘play-based pedagogy’ for the first three years for all pupils, which appears capable of delivering education in a way that engages the child and holds his interest.
- 36.** On the basis that the child is interacting, to some extent, with other pupils in his class, including at playtime, and is participating in a multi-year group for children with additional support needs, we are satisfied that a mainstream school can meet the child’s social needs. The child’s interest in and interaction with others is limited, although that is a common feature of children with ASD and is not necessarily incompatible with mainstream education.
- 37.** We accept that the child has little or no awareness of danger. We accept that he is at real risk of leaving the school grounds, if not prevented from doing so. But we are satisfied that this is compatible with mainstream education. The respondent has provided an additional pupil support worker to enable closer supervision of the child.

The respondent has shown by this and other staff provision that the mainstream education can be adapted to meet the child's needs.

38. We note the appellant's concerns about her son learning other life skills. We note the child's recent regression to some extent as to getting himself dressed. To some extent, as noted below, this appears likely to show itself more outside of school as a manifestation of stress at school. It thus likely is a symptom of the child's current mental well-being rather than a more fundamental lack of ability. Were it otherwise, we would expect to see signs of this in school as well. We accept the head teacher's evidence that life-skills is an element of teaching in early primary school for all pupils, and does not, at least for the education authority's schools, entail a discrete element for that stage. This differs from secondary school children with additional support needs, who might be provided with specific classes on life skills such as how to complete household tasks.

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).

39. The child's presentation outside school, such as his aggression towards his mother and the Polish SLT, his poor sleep, his general distress at night and in the morning at the prospect of school, his poor eating and loss of weight, and his regression with personal skills, are suggestive of the child currently finding school challenging and stressful. The various ways the child has expressed himself negatively, in and outside of school, by word and by pictures, show that he is unhappy about certain aspects of school. This is a significant cause for concern. If this were likely an indication that some aspect of the mainstream setting was fundamentally unsuited to him, such as the larger class sizes in a mainstream school, then it would follow that mainstream education was not suited to his ability or aptitude.
40. We are not satisfied that the current indications of stress are demonstrative of mainstream education being unsuited to the child in view of the following considerations:
- (1) A transition to a new educational setting will be stressful, in the short-to-medium term, for most children with ASD.
 - (2) The manifestation of problems outside of school, which did not occur during the child's transition to the nursery centre, is not necessarily indicative of mainstream education being fundamentally unsuited to the child. A transition to a mainstream primary school setting will be more trying than a transition to a new nursery. Any mainstream school environment is likely to involve more children, fewer staff, more noise and more activity than the equivalent nursery environment. Also, the child is now a little older, so how he reacts to the stress of transition may be different simply as a result of him being at a different stage of his development.

- (3) Not enough time has passed to be able to distinguish between stress caused by transition and stress of a more intractable nature caused by the mainstream school environment.
- (4) That the child has made some progress at school, and is able to articulate some positive comments about school, show the potential of him becoming adapted to his current school.
- (5) In light of more time and experience, more might be learnt about what aspects of school the child finds discomfiting and about what might be done to adapt to that.

Whether mainstream education incompatible with efficient provision of others' education

41. The tribunal is not satisfied that to provide education for the child at a school other than a special school would be incompatible with the provision of efficient education for the children with whom the child would be educated ((2000 Act, sec 15(3)(b)).
42. We note that the statutory test requires assessment of whether education of the child would be "incompatible" with the efficient education of others. This suggests something beyond it being merely a challenge, or something that requires some adaptation. Also, we take "efficient" to mean reasonably productive: the benefit the pupils gain from the education should be proportionate to the time and resources employed. If, for instance, a substantial amount of staff time is taken up with matters other than those pupils' education, then their education is not efficient. It does not imply a perfect efficiency, so that every minute of every day aside from lunch and play-breaks is devoted to the uninterrupted tuition of all of the children.
43. That being so, we do not consider education to be inefficient where a particular pupil's needs or behaviour has some consequent effect on the education and well-being of other pupils, provided that the effect does not go beyond a certain level of intensity and/or duration and does not significantly impair the effectiveness of the education for others. After all, even in classes with no children with additional support needs, children will sometimes misbehave, or might progress at a different pace albeit within the typical range. Inevitably, that has some effect on other pupils. To take a different approach to this element of section 15 would be inconsistent with the direction within the section that the exceptions will only arise exceptionally.
44. We accept the head teacher's evidence that the child's outbursts and dramatic negative language will not have a lasting impact on other pupils. We do not consider her position, at least substantively, to be that this behaviour has no impact, but rather that the impact is manageable. The head teacher's substantive position appears plausible. We accept her evidence that no concerns have been raised by the parents of other pupils.
45. We are also not satisfied that some adaptation, such as pausing the telling of a story whilst the child leaves the room for the toilet, is such as to be of any real significance.

It does not appear to be beyond the range of the ordinary challenges of teaching a typical primary class in a mainstream setting.

Whether mainstream education would result in unreasonable public expenditure, &c.

46. The evidence was unclear as to the circumstances in which the child's continued attendance at the current school would result in an actual increase in expenditure, given the methods used by the education authority to allocate staff and set budgets. The strong possibility is that his attendance simply results in the different allocation of staff already employed with no impact on the overall budget.
47. But assuming there was some increase in expenditure, such as arising from the provision of the additional pupil support worker for his class, we have no basis to find that such expenditure is unreasonable and not ordinarily incurred. The securing of a higher staff-to-pupil ratio in response to a child's additional support needs is neither unreasonable nor only exceptionally incurred. As the provision of an additional pupil support worker might make the difference between the child's education being feasible in a mainstream setting, rather than in a more staff-intensive special school, such an expenditure does not appear to be unreasonable.

All of the circumstances

48. The respondent having established grounds of refusal, the question then arises as to whether, in all of the circumstances, the respondent has established that its decision should be confirmed. We are satisfied that the respondent's decision should be confirmed.
49. We note that the possibility of the child being placed at a language and communications class within a mainstream school campus was contemplated as an alternative to the child's entry to primary school being deferred by a year. That was not offered by the respondent, nor sought by the appellant, in the course of the current placing request. It was not suggested by either party that this might be some live, further alternative. In determining whether in all the circumstances the respondent's decision should be confirmed, we have approached it as a binary question with a binary outcome. Thus, we decide this case on the basis that if the respondent's decision is confirmed, the child will continue attending the current school, and otherwise he will be placed at the school specified by the appellant.
50. We take into account on this branch of the case that although the education normally provided at the specified school would not be suited to the child, the curriculum could be adapted to cater for his particular academic abilities. The tribunal also considers to what extent, in practice, the current school meets the child's needs (rather than the more abstract question as to whether mainstream schooling is not suited to the child).
51. For this purpose, we assume that if the child was enrolled at the special school, the child could be placed in primary two, in a moderate-needs class, despite the doubts of the respondent's educational psychologist and manager stated in oral evidence.

- 52.** The main advantages of the special school are the higher staff-to-pupil ratios, the smaller class sizes, and the comparatively calmer environment. We consider that the child would derive some benefit from these. The child seeks adult attention. The child, in common with many children with ASD, expresses a dislike of noise. Like most ASD children, he would probably find smaller groups more amenable.
- 53.** The child is significantly above the range of pupils currently at the special school for language and communication skills and also social skills, but significantly below that for his classmates at the mainstream school. Some of the child's abilities, such as with art and mathematics, appear to exceed the average child of his age. In our assessment, the disadvantage of having only peers who have significantly lower abilities than the child outweigh the challenge of being educated alongside peers who, in many respects, have superior abilities. Neither situation is perfect. But we are satisfied that the child was able to make significant progress in a mainstream setting in nursery. The child is more likely to learn, academically and socially, from children his age who have superior (rather than inferior) abilities in some respects, and whose abilities are on a par in other respects. Being schooled with pupils with a lower communicative or social ability might act as a ceiling as to the level of interaction, whereas at his current school his current abilities are a floor. The child is likely to find interaction with mainstream peers more demanding, but that is not an unequivocally negative feature.
- 54.** The child might find some advantage in the special school in that all the pupils there have additional support needs. He would not be clearly different from his classmates in the way that is likely fairly apparent at his current school. The risk of teasing or bullying on account of his ASD would be lower or non-existent. On the other hand, the reduced exposure to neurotypical children, and the reduced opportunity to learn to interact in a mainstream environment, might have longer term costs for the child's general upbringing.
- 55.** We are satisfied that the staff at the mainstream school, and especially his class teacher, are sufficiently qualified by training and experience to teach the child and meet his additional support needs. We note that all staff have been trained by the respondent's communication outreach service, that the current school has a high proportion of children with additional support needs, and that there is another autistic pupil in the child's class. The appellant stated that the child had a good relationship with his class teacher. The head teacher had often observed the class teacher interacting skillfully with the child. We also place some reliance upon the NHS SLT's observation of the class teacher skillfully managing the child's learning. Although one should not place too much reliance upon one observation, it provides some sort of check as to the teacher's proficiency. We note that the child is very attached to the class teacher (albeit perhaps to an extent that is not ideal). Again, not too much should be made of that, but it tends to support the proposition that the class teacher is proficient.
- 56.** We note the appellant's general sense that the respondent has not paid proper attention to her concerns.

- 57.** The respondent's employees appear to have given extensive and careful consideration as to the child's placement. The school and the respondent also had made real efforts to address the additional support needs of the pupils and this child in particular, through the provision of its communication outreach service, the pupil support assistants, and the provision of an EAL teacher. The school acted promptly and appropriately in providing another pupil support assistant in light of the second occasion of the child trying to leave the school. The respondent's educational psychologist and manager both impressed us with their detailed knowledge of the child's circumstances, indicative of his case having been given detailed consideration by them.
- 58.** However, we are concerned that certain basic steps that might reassure the appellant and also better inform the school have not been taken. Allowing more time for the class teacher to meet the appellant, rather than a few brief words at hand over as appears to be the present arrangement, would be valuable both for parent and teacher. We are also concerned that the respondent has not ensured it is informed of, or has omitted to consider, the child's behaviour and presentation outwith school. His manner outside school might be both a consequence of his school experience, and an indicator as to how he is getting on there. There would also be considerable merit in more detailed and individualized planning for the child and for this to be shared and regularly updated with the appellant. A 'tracker' like that completed for nursery could be devised both to assist the school and to demonstrate to the appellant what progress is being made. Considerable time and effort is being devoted, for instance, with the respondent's educational psychologist seeking updates from the head teacher around every week. It might be some of that effort could be more usefully focused on communication with the appellant, allowing the school and appellant to work in partnership for the benefit of the child. The child has expressed his dislike of noise, crowds and busy places. It seems highly likely that the environment of the primary one classroom is at times stressful for him. We heard that ear defenders are available in the classroom, but that the child had not been offered them. The appellant was not aware that ear defenders were available.
- 59.** All that being said, these are not significant factors in favour of placing the child at the special school. The answer is to address these concerns within the mainstream environment. Placing the child in the specified school would likely entail other greater disadvantages, which we have described above.
- 60.** We also note the possibility that the child's current signs of stress are symptomatic not simply of the transition to primary school, but of the inherent features of mainstream education, such as the larger class sizes. The risk of this is real. But we do not consider that the child should be placed at the special school essentially as a precaution against this. Because of the peer influence, if the child can become accustomed to mainstream school, his academic and social progress is likely to be greater than it would be in a special school. If he were to be placed in a special school now, the prospect of him returning to mainstream would be uncertain. We note that the appellant and the appellant's educational psychologist believe the child should be in mainstream education as soon as this can be accomplished. There is a risk that

delaying his integration into mainstream education till a later point will simply make this more difficult. Neither course is without its risks. On balance, we consider that remaining at the current school is more likely to be in the child's best interests.