



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/22/0034

List of witnesses

For the appellant:

The appellant - witness A
Social worker - witness B
Early years officer - witness C
Day service manager - witness D

For the respondent

Head Teacher at school B - witness E
Principal Educational Psychologist - Witness F

Reference

1. This is a placing request lodged with the Tribunal in April 2022. It is made under section 18(3)(da)(ii) of Education (Additional Support for Learning) (Scotland) Act 2004 (**‘the 2004 Act’**). The appellant asks the tribunal to require the respondent to place the child in school C.

Decision

2. The tribunal overturns the decision of the respondent to refuse the placing request. The placing request is therefore granted. The tribunal requires the respondent to place the child in the school specified in the placing request by 31 October 2022 or such other time as agreed between the parties in terms of section 19(4A)(b) of the 2004 Act.

Process

3. A hearing took place by video conference over two days in September 2022.

4. Prior to the hearing two case management calls took place by telephone in June and July 2022. During the case management calls a number of procedural matters were discussed and agreed with directions made to regulate the hearing and the pre-hearing process. A direction was issued for a joint minute of agreement. This was produced T54 –T57. Some of the matters covered in this joint minute are reflected in our findings in fact. A direction was issued that the child’s views were to be ascertained by an independent advocate. A report is produced in this regard T50-T53.
5. Prior to the hearing we were provided with a comprehensive bundle of documents T1- T57, A1- A178, R1-R188. Statements were lodged in advance of the hearing and evidence was heard at the hearing from the following witnesses for the appellant:
 - (i) Witness A, the appellant A15 – A27
 - (ii) Witness B, Social Worker A28 – A29
 - (iii) Witness C, Early Years Officer A53 – A57
 - (iv) Witness D, Day Service Manager at School C A43 – A42
6. Statements were lodged in advance of the hearing and evidence heard at the hearing from the following witnesses for the respondent:
 - (i) Witness E, Head Teacher at school B R184 –R186
 - (ii) Witness F, Principal Educational Psychologist for the respondent R187 –R188
7. The respondent raised an objection to paragraph 28 of the appellant’s written statement at A023 on the basis that this included hearsay. We allowed the evidence under reservation. We did not require to rely on this part of the appellant’s written statement and placed no weight on it.
8. After evidence had been heard the respondent sought to obtain further evidence in relation to the capacity of a new high school building being built by school C. This motion was refused. The evidence had been concluded and in our view this was a matter for submissions.
9. Following the conclusion of the hearing, written submissions were directed, with an opportunity for each party to comment on the submissions of the other. Before reaching our decision we considered the oral and written evidence contained within the bundle and written submissions.

Findings in Fact

10. The child is nine years old. The appellant is the child’s mother.
11. **[This paragraph has been removed by the Chamber President for reasons of privacy of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for**

Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].

12. The child is currently enrolled at school A, a mainstream school. The child has a sense of attachment to the mainstream school however his needs cannot be met in school A.
13. The appellant made a placing request for school C, an independent special school in October 2021. School C are willing to admit the child to the school and a place is available. The respondent refused the placing request in March 2022.
14. The child has been offered a place at school B, a special provision managed by the respondent. This offer was communicated to the child's parents in March 2022.

The child's additional support needs

15. The child has complex needs. The child has diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Anxiety, Hyperacusis, and Attachment Disorder. The child is at risk of Foetal Alcohol Spectrum Disorder (**FASD**). FASD is considered as a diagnosis for the child.
16. Due to the child's early life experiences he presents with developmental trauma. The child has a fragile sense of self and fear of failure and rejection. The child's developmental trauma impacts significantly on his sense of security and ability to learn. The child's sense of safety and security is essential in order for the child to be able to benefit from education.
17. The child is anxious and hyper-vigilant. He has not felt safe in his mainstream school. The child is not able to use any self-regulation strategies in school. The child is almost entirely dependent on the support of adults to mutually regulate his behaviour. He requires significant 1:1 adult led regulation and a lot of support to calm and settle. The child's frequent and prolonged states of anxiety may pose risk to his physiological health alongside his mental wellbeing. The child requires a high staff to pupil ratio to ensure his needs are met and would benefit from therapeutic inputs in relation to anxiety.
18. The child's history of developmental trauma and neurological needs means he experiences a heightened level of emotional arousal and struggles to regulate his emotions. This results in the child being physically and verbally aggressive towards parents, peers, and school staff. He frequently requires to be collected early from school as a result of his distressed behaviour. The child's heightened level of emotional arousal impacts his emotional and academic development.
19. When the child's anxiety is high he finds it difficult to use his parents as a safe base. The child will blame his parents for any difficulties he experiences. The child displays physical and verbal aggression towards his parents when he is unable to regulate his emotions. The level of physical and verbal aggression displayed at home is such that the family are

in crisis and there is a risk of placement breakdown. The child's experience at school has a direct impact on the level of physical and verbal aggression the child displays at home. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**

20. The child has difficulty with social situations and maintaining positive relationships with his peers. The child's relationships become problematic as he does not possess the social skills necessary to maintain friendship. The child's distressed behaviour when he becomes dysregulated can unsettle his peers. The child requires support in forming positive peer relationships.
21. The child had a relationship with child C. That relationship broke down. The nature of the breakdown in this relationship is such that contact with or discussions about child C has the effect of dysregulating the child. The child's placement at school D broke down due to the presence of child C. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**
22. The child presents with inattentive and hyperactive behaviour which present a barrier to his learning. The child is easily distracted and requires regular prompting to remain on a task. The child finds it very challenging to filter out both external distractions and background noise and internal self-distractions (thoughts). The child requires a small class setting with tailored support in order to support his learning.
23. The child has sensory sensitivities and preference. The child benefits from outdoor learning and having space available to him which would allow him to take appropriate time out from his class without becoming heightened.
24. The child finds it difficult to engage in learning. The child is working at the very early stages of First Level across all curriculum. The child cannot read or write. The child requires a heavily differentiated curriculum that is bespoke to his interests.
25. The child is significantly behind his peers academically and socially. The child has low self-esteem. The child does not like to stand out from his peers. The child is aware of a gap between him and his peers in relation to his learning. The child is upset and frustrated by this.
26. The child has a difficulty with changes to routines and transitions. The child will require an enhanced and carefully managed transition from school A into another school. The child will require a significant period of time to settle into any new school environment. **[Part of this paragraph has been removed by the Chamber President to protect 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)].

27. Any further educational placement breakdown will impact the child's behaviour within the family home. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**

School B and the child

28. School B is designed to support children with emotional, social and behavioural challenges. School B provides primary education up to the end of Primary 7. The child will require to transition from school B at the end of primary 7 to a secondary provision.
29. School B have close links with secondary provision within the respondent. School B have had success in supporting children into supported mainstream settings. Children from school B transition to a number of different secondary provisions across the respondent.
30. School B has a school roll of 48. The junior team in the school is made up of 18 pupils split into three classes. The senior team is made up of 18 pupils split into three classes. There are two enhanced support classes for children who have a learning disability. Each team has their own playground. The whole school ordinarily comes together once per week during assemblies.
31. School B organizes classes based on age, personality and academic ability. The class which has been identified for the child has two children working at pre early as they are unable to be formally assessed due to dysregulation. The rest of the class are working at early or first level of the curriculum
32. Each class has 6 children with one teacher and one pupil support assistant (**PSA**). Across the junior team there is an additional PSA and two behaviour assistants. In addition to this there is one pupil support officer for the school and one full time nurture teacher for the full school. In addition to this there is an additional teacher who provides flexible cover across the school. Each member of staff has knowledge of all children across their team allowing staff to work flexibly to provide support when needed.
33. School B provides clear boundaries, structure and routines across the school. School B provides an individualized and flexible timetable with targeted 1:1 support.
34. School B has a trauma informed approach and provides pastoral support to children. School B does not have full time staff offering therapies but has access to therapies which are brought into the school. School B has a number of organisations who support them. The school have access to music therapy students and art therapy students who complete a 6 month placement at the school. They have a play therapist one day per

week. They have a 'Relaxed kids' teacher two days per week who provides massage and 1:1 time. School B can support social work or other therapists to do life story work with children.

35. School B is located within a residential area but has access to outdoor education and learning with an outdoor learning programme. School B has access to a mini bus and regularly takes children on outings.
36. School B has a therapy dog. The child has a fear of dogs. The child's sense of safety will be impacted by the presence of a dog in the school. School B are experienced at managing situations where children have a fear of dogs.
37. School B have a nurture classroom. Pupils are provided with timetabled time within the classroom. A star chart is used within the nurture space. A star chart is not an appropriate tool to be used with the child due to his experience of developmental trauma. The child is not required to use the nurture classroom.
38. Child C attends school B. Placing the child in the same school as child C would be detrimental to the child. The knowledge of and presence of child C within school B will impact on the child's feelings of safety. The knowledge of and presence of child C will dysregulate the child. This will result in the child displaying the distressed behaviour included in paragraph 17.
39. There has been no risk assessment carried out in respect to the child's attendance at school B nor has there been a sensory assessment. There is no robust management plan in place to manage the relationship between the child and child C. There is insufficient planning for the child to transition to school B.
40. School B is 7.5 miles from the child's home address. The cost of transport to school B is £20,900.

School C and the child

41. School C provides specialist education services on a day and all year round residential basis for children between the ages of 5 and 14. From July 2022 the school will offer continuing care and learning for young people already placed at school C aged 15 to 18. The school has a total school roll of 39. The child if placed at school C would not need to transition to a secondary provision.
42. The child if placed at school C would be a day service pupil. School C has day service space for 6 children. During lunchtimes the children and young people in the day service have lunch in the day service cottage.

43. The children at school C have a range of additional support needs. The profile of needs of children at school B and school C are similar. The child's profile and level of need is similar to the standard cohort of children in school C.
44. School C have composite classes. School C have a class which would be suitable for the child with similar aged peers. All the children within this class are similar ages to the child. They are all working at the first level of the curriculum for excellence. The child is working at this level and therefore would be working at a similar level to the peers in his class. This would reduce the risk of the child feeling different from his peers.
45. Each class is supported by one teacher, a social educator and an education support worker. The school has children and family support workers who can provide support within class and additional education staff who can be used flexibly.
46. School C has facilities, staffing, and a malleable curriculum appropriate to the child's additional support needs. School C are therefore able to make provision for the child's additional support needs. School C provides clear boundaries, structures and routines across the school and can provide an individualized timetable with targeted 1:1 support.
47. School C adopts a trauma informed approach and provides therapeutic care and education to help children overcome trauma and adversity. School C provides pastoral support to children and young people from skilled staff. School C have as part of their staff group a psychotherapist, speech therapist, outdoor learning team, consultant psychologist, play therapist, music therapist, systematic practice consultant as well as music, art, PE and other subject specific teachers. Within school C they complete life story work to allow children to explore their history and background. The child would benefit from access to a therapeutic school environment.
48. School C is set in extensive grounds. Each classroom has a private garden. They have an outdoor learning programme. The school has a community allotment, an orchard, a pond area, an adventure playground, playpark and woods all as well as an abundance of open space
49. School C has experience of supporting children and young people to transition back to mainstream school and of supporting young people who reside at the school to attend the local mainstream school.
50. School C is 12 miles from the family home. The cost of transport to school C is £20,900. The travel time from the child's home to school C is similar to that of the travel time from the child's home to school B.
51. The cost for a primary day pupil to attend school C is £1755.41 per week based on a 40 week year which is a total cost of £70,216.40 per year.

Reasons for the Decision

52. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given our findings, it is clear to us that this is the case.
53. The grounds of refusal relied upon by the respondent, and maintained before the tribunal are contained in schedule 2 of the 2004 Act at paragraph 3(1)(d) and 3(1)(f). The ground at 3(1)(d) would apply if the child does not have additional support needs requiring the educational special facilities normally provided at school C.
54. The ground at paragraph 3(1)(f) is made up of a number of constituent parts, numbered in paragraphs 3(1)(f)(i)-(iv). The respondent must satisfy us that each of the paragraphs apply for the ground of refusal to exist. These are as follows:
- (a) the specified school is not a public school,
 - (b) the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,
 - (c) it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (b), to place the child in the specified school, and
 - (d) the authority have offered to place the child in the school referred to in paragraph (b).
55. The onus of establishing a ground of refusal lies with the respondent. The appropriate assessment point is at the time of the hearing.
56. If the respondent is able to satisfy us that a ground of refusal exists at the date of the hearing we must consider whether it is appropriate in all the circumstances of the case to confirm the decision. This is referred to as stage 2 of the legal test.
57. Given our findings at paragraph 58 we have concluded that the ground of refusal set out in paragraph 3(1)(d) of schedule 2 of the 2004 Act does not exist as at the date of the hearing. Further given our findings at paragraphs 59 to 92 we have concluded that the ground of refusal set out at paragraph 3(1)(f) of schedule 2 of the 2004 Act does not exist at the date of the hearing. This led us to the decision to overturn the refusal of the placing request. It is not appropriate to narrate all of the aspects of the evidence in this decision. However, we considered all the evidence placed before us, both written and oral. Our reasons for the decision follow.

The child does not have the additional support needs requiring the education or special facilities normally provided at the specified school: paragraph 3(1)(d)

58. This paragraph would apply if the child did not have the additional support needs requiring the education or special facilities normally provided at school C. We are not satisfied on the basis of the evidence that this is the case. The respondent appears to concede as much in their written submissions where they states that school C is able to make provision for the additional support needs of the child. The child has been accepted by school C. They have assessed the child and on that basis have confirmed that they can meet the child's additional support needs in school C. In evidence witness D confirmed that he considered the child's needs were in line with the education they provide and their standard pupil support. The child's educational psychologist prepared a comparative report of school B and school C (R169 – R175). In this report they conclude that school C '...has the facilities, staffing, and a malleable curriculum appropriate to [the child's] additional support needs.' In evidence witness F stated that he agreed with the terms of the report. It is for the respondent to prove the ground of refusal exists. We are not satisfied on the basis of the evidence that they have done so.

The specified school is not a public school: paragraph 3(1)(f)(i)

59. This paragraph requires that the specified school is not a public school. We are satisfied that this is the case, and this was not disputed. This part of the ground of refusal is met

Provision for the child's needs at School B: paragraph 3(1)(f)(ii)

60. The application of this paragraph is disputed. This paragraph requires that the respondent is able to make provision for the child's additional support needs in a school other than school C. In this case the respondent have offered to meet the child's needs at school B. The respondent submitted that school B is able to make provision for the child's support needs while the appellant submitted they were not.

Therapet

61. School B have a therapet dog. This is witness E's dog. The appellant submitted that given the child's fear of dogs the presence of a dog in school B is likely to impact on the child's sense of safety. We accepted that the presence of the dog would impact on the child's sense of safety within school B however we were satisfied on the evidence of witness E that the child's needs would be prioritized in relation to this matter. Witness E gave evidence that they have experience of managing children's fears of dogs. We did not consider this to be a significant barrier.

Use of Star chart

62. School B has a nurture classroom. Within this class there is a star chart. The appellant submitted that the use of a star chart is inappropriate for the child. Witness B gave evidence that the advice is not to use reward charts for this child as they re-enforce a sense of failure. In her opinion the use of a star chart for the child would place additional pressure of the child. Witness E gave evidence that none of the other classrooms had

star charts or reward systems in place. The star chart had been kept in the nurture classroom in response to children's views. The nurture classroom was a space where children could have timetabled time for 1:1 support for learning work. A child would be assessed to consider whether they should have time within this room. We accept the appellant's submission that the use of a star chart is not appropriate for the child in light of the evidence of witness B. However we were satisfied that the child would not require to spend time within the nurture classroom. Therefore we did not consider this to be a significant barrier. **[Part of this paragraph has been edited by the Chamber President for reasons of privacy of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**

Transition Planning

63. The appellant submitted that there had been a lack of planning for transition. Witness B gave evidence that it would be very difficult to move the child from school A. The child would be very vulnerable emotionally with low resilience. Despite this there was no evidence of the respondent taking any steps to plan for this. There had been no risk assessment carried out in respect to school B nor had there been a sensory assessment. Witness E had not observed the child in an educational setting nor had she been involved in child planning meetings. Witness E gave evidence in general about the measures school B were able to put in place to support a child but did not offer any specific measures for how the child's specific needs would be met. This lack of preparation was particularly relevant when we considered the impact of child C.

Child C

64. The appellant submitted that there is a young person at school B whose presence within the school will dysregulate the child. This young person is child C. The respondent submitted that the presence of child C was not a barrier to the child attending school B.

65. We heard evidence from the appellant and witness C as to the nature of the relationship between the child and child C. The appellant described the children as having a 'deep mutual distain..'. She gave evidence that both children had a complex needs profile. They had previously attended alternative schooling together but their relationship had significantly broken down over time. Her evidence was that the child's placement at school D broke down and she was unable to get the child to attend due to child C attending there. Her evidence was that when in the same place the child will become dysregulated and display 'challenging behaviour', that this will impact the child's feelings of safety and trust in school B as a safe environment and will jeopardize the placement. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy of the child under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)].**

66. Witness C gave evidence that the relationship between the child and child C had been a positive relationship for a significant period of time but that it broke down. She gave evidence in her written statement that ‘...if the child was mentioned or a picture of her was shown, this would distress [the child]...’ Witness C spoke about the challenges the child has in maintaining relationships and breakdowns in relationships being common for the child but described the breakdown in the relationship with child C as having a different quality to it.
67. Witness E in her written statement commented that ‘holding such bad feelings towards others is harmful and a waste of good energy.’ Witness E gave oral evidence that she did not see the relationship between child C and the child as being a problem. Witness F was of a similar view. He stated that he believed school staff in school B would be able to manage the relationship. He pointed out that the child could have difficulties with children at any school he attended. He suggested that one of the ways the relationship could be managed would be through staggered start times.
68. Witness B gave evidence about the relationship between the child and child C. Witness B accepted that the child could have difficulties with other children at any school he attended but explained that the nature of this relationship was different due to how emotionally complex and fragile the child and child C are. In her opinion if the child was aware that child C was at school B this would present as a barrier and she was concerned the child would be ‘set up to fail’. This was particularly so given the transition from school A to a new school would have a devastating impact on the child emotionally. She did not seek to claim that the relationship difficulties could never be resolved but was clear that attempting this within a school environment was not the appropriate forum given the impact this would have on the child’s behaviour and capacity to learn. In her opinion placing the child in the same school as child C was likely to be detrimental to them both.
69. It is clear from the evidence of witness E and F that they do not have a full understanding of nature and significance of the relationship difficulties between the child and child C. They presented as dismissive of the concerns and overly confident in their ability to manage the complex relationship despite a lack of planning in relation to this. Their evidence in relation to the relationship did not align with that of witness B. We preferred the evidence of witness B to that of witness D or witness F. Neither witness E nor witness F have met the child. Their evidence was generalized and lacked specificity regarding the specific needs of the child in terms of his relationship with child C. The respondent submitted that we should prefer the evidence of witness E and F to that of witness B because witness E and F have an expert knowledge of school B’s strategies for relationship-building, resolving conflict and trauma management. We were not persuaded by this argument. Witness B is an experienced social worker with 18 years’ experience, 14 of which have involved working in a variety of roles supporting adopted children and families. Witness B had direct experience and knowledge of the child and his family. She impressed us with her level of understanding of the child. Witness B made appropriate concessions to areas she could not speak to whether these be out with her knowledge or expertise. Witness B’s evidence was supported by the evidence of the

appellant and witness C. We found the appellant to be a compelling witness. It was clear that she had a thorough and in-depth understanding of her child's needs. Her oral evidence was consistent with the written evidence. We had no difficulty in accepting her evidence. We also had no difficulty with accepting the evidence of witness C in relation to this issue given she had direct knowledge and experience of the child's relationship with child C.

70. It is clear to us from the evidence that the relationship between the child and child C is one which presents a significant barrier to the child being able to engage in learning in school B. The mere presence of child C is likely to result in the child having a negative view of the school. The presence of child C in school B is likely to impact on the child's feelings of safety which will impact detrimentally on his ability to learn. When feeling unsafe the child becomes dysregulated. This increases the risk of the child displaying distressed behaviour including violence. This in turn is likely to exacerbate the child's negative feelings of self. We accept that the school D environment is different to that of a school nevertheless the breakdown of the placement is evidence of the significant impact that child C has on the child. Further there was no evidence of planning in relation to how to manage the dynamics of the relationship in school B. We are satisfied that the relationship between the child and child C is a significant barrier to the child attending and being able to learn in school B. Further we are not satisfied that school B would be able to manage the relationship based on the evidence we heard.

Transition to secondary school

71. The appellant submitted that as school B only provides education up to primary 7 the child would require to transition to a secondary school provision. The appellant submitted that due to the child's needs profile and difficulties with transitions and change the prospect of a further transition to a secondary school provision was likely to be detrimental to the child.

72. Witness E gave evidence that pupils from school B transition to a number of different high schools. That makes it likely that the child would transition to a secondary school provision without all of his peers. The child has difficulty with social situations and maintaining positive relationships with his peers and requires support in forming positive peer relationships. A further transition is likely to have a negative impact on the child's ability to form peer relationships. The appellant expressed concerns if the child were to be placed at school B that he would require to transition to a secondary provision. She gave evidence that no one who didn't know him would understand how difficult it will be for the child to transition. Witness E was asked to comment on whether there was a risk that by the time the child managed to settle in school B, if he was able to, he would have to start a transition to secondary school. Witness E felt she could not comment. Witness F was asked for comment on whether having to transition to secondary school was a disadvantage in attending school B. Witness F stated that there were 'pros and cons' to attending an all-through school. He stated that this would require fewer transitions but that a downside is that a school can feel too much like a primary school and not a

secondary. Witness F's evidence on this matter was of limited value given how generalized his evidence was. It did not appear to us that in considering this matter witness F had applied his mind to the specific additional support needs of the child.

73. Given the child's additional support needs and in particular the impact of developmental trauma it is reasonable to infer the child will require a significant period of time to settle into any new school environment particularly given his attachment to school A. The child will then only have a relatively short space of time until he requires to transition again to a secondary school. This is likely to have a destabilizing impact on the child. Further destabilization in the child's life is detrimental both to his educational development and wellbeing. It places further pressure on the home environment and jeopardises the placement which would have devastating consequences for the child.
74. The child will not learn in a school which does not meet his needs in terms of sense of safety, security and stability. Taking the lack of transition planning, the relationship with child C, the need for further transition to secondary provision and the impact these have on the child's sense of safety and security together we conclude that school B is not able to make provision for the additional support needs of the child.

Reasonableness of placing the child in the specified school: respective suitability and cost - paragraph 3(1)(f)(iii)

75. The application of this paragraph is disputed. Given that we have decided above that paragraph 3(1)(f)(ii) is not met, we do not need to consider respective suitability and respective cost as the respondent has to satisfy the tribunal in respect to all four parts of the ground of refusal. However in the event that we are wrong about that, and having heard evidence relating to this part of the ground of refusal we went on to consider the respective suitability and the respective cost of school B and school C. This paragraph requires us to have regard to both the suitability and cost of the provision for the child's additional support needs at school B and school C respectively.

Respective Cost

76. The respondent referred us to case law on respective cost. In particular the respondent referred us to *S v Edinburgh City Council* [2006] CSOH 201. On cost, it is clear that we should consider the additional cost in meeting the additional support needs for the child at school B compared with the cost (the fees and, if applicable, transport cost) in relation to the specified school (*S v Edinburgh City Council* [2006] CSOH 201 at paragraphs 23 and 28). The transport costs to both schools is the same. The costs of a place for the child at school C are clear from the evidence contained in the witness statement of witness D at paragraph 20 at A049. This evidence was supplemented by the oral evidence of witness D. However, the authority's position that there is no cost to the proposed provision in school B is not agreed nor was evidence led in relation to this. The appellant submits that there is an evidence gap in relation to this.

77. The burden of proof is on the respondent to satisfy us as to cost and to prove the ground of refusal exists. The appellant asserts in their case statement and in an email at R176 that the cost of meeting the child's additional support needs at school B is nil. This is no more than an assertion and is not evidence as to cost. We do not consider from the evidence heard that it is possible to calculate the cost component. The wording of the provision suggests that such a comparison should be made. Further, the court in the S case suggest that such an approach is necessary.

78. The consequence of the lack of evidence on the cost of the provision for the child at school B means we should assume that on the cost question, the position is neutral. The reason for taking this approach is that it is clear that the respective cost argument is one which can only benefit the respondent. As noted at paragraph 23 of the S case Lord Glennie stated: "The question is: how much more will we [education authority] have to spend to give the child that extra benefit rather than [continue to] place her in our own school?" Only the respondent may benefit from such an argument. In the absence of reliable evidence from which we can make a comparison the appellant must be given the benefit of this absence, which leads to our cost-neutral decision. This means that, practically speaking, the reasonableness question requires to be decided only on respective suitability.

Respective Suitability

79. In considering respective suitability we have made an assessment of and compared the respective qualities of each of the provisions from which the child will benefit in school C and school B. Our conclusions at paragraphs 60 to 74 about the provision of school B are relevant to the suitability question.

Peer group

80. The respondent submitted that school B was more suitable for the child as the children in school B were a 'lower tariff of need' compared to school C and argued that school B was therefore more suitable than school C. The respondent relied on the evidence of witness E and F in relation to this matter.

81. Witness F gave evidence that the children at school C had a 'higher tariff of need' than the child. The appellant submitted that there was no suggestion as to where the child was on this spectrum. Witness F when asked to elaborate on what was meant by a 'higher tariff of need' made reference to pupils who have significant home environment trauma. The appellant submits that the child has significant home environment trauma. We agree with the appellant. The child experiences distressed behaviour at home which has included the child being physically violent and aggressive to his parents. The family are in crisis. There is a risk that the placement will breakdown. In addition the child has experienced trauma in his early years as a care experienced child. Witness F when presented with the description of the child at home accepted that this '...sounds more commensurate with higher tariff pupils...'

82. Witness D did not agree with the assessment of witness F. Witness D's evidence was that in his opinion the children at school C were a suitable peer group for the child. In relation to the children that witness F had referred to in his report at R187 and in oral evidence witness D stated that the particular day pupils witness F was referring to were not typical of the cohort of children and young people at school C.
83. With regards to the level of need of the pupils in school C we preferred the evidence of witness D to that of witness E and F. Witness D presented as knowledgeable about the child and the needs of the other children within school C. Witness D made appropriate concessions throughout his evidence being careful only to speak to matters within his knowledge. He had assessed the child by observing him in a school environment and by speaking to education staff in school A. His oral evidence was consistent with his written evidence. In contrast witness E was inconsistent on her evidence in this matter. In her witness statement she stated that the '...profile of needs of pupils in [school C] and [school B] were very similar...'. Whereas in her oral evidence she referred to a child who had moved from school B to school C because he was 'too high tariff for school B' and agreed with the written statement of witness F at R188 which stated that pupils at school B '...tend not to have as high a tariff of needs as those in the day places at [school C].' Further when asked if there was violence at school B she accepted this and when asked if she accepted there was a risk of violence in school B she said 'yes, exactly like [school C]'.
84. Witness F's evidence was through a lens of his role as the Principal Educational Psychologist for the respondent. His knowledge of children and young people at school C was limited to children and young people who had been placed there by the respondent and was not representative of the cohort of children at school C. This limited the weight we were able to place upon witness F's evidence in comparison to witness D who has direct knowledge of school C and the pupils placed there. Further witness F's evidence indicated a lack of understanding about the home environment of the child and the fragility of the placement.
85. We were not satisfied on the basis of the evidence that school C had 'higher tariff children' than school B. Further we considered on the basis of the evidence we heard that the child's profile of needs was similar to the other children in school C. Therefore we did not consider that school B was more suitable than school C in this regard.

School Environment

86. The appellant submitted that the child would benefit from the therapeutic environment in school C and the sensory architecture of the school. In particular school C is set in large grounds with an abundance of open space and greenery. The appellant submitted that the child enjoys and benefits from outdoor learning and space. The appellant gave evidence that at school C the child would benefit from the outdoors and learning life skills such as gardening. Witness B in her written statement said that the child '...finds capacity

and success in outdoor activities which are important for his emotional and mental health and also resilience.’ It was clear from the evidence that school C is set in more extensive grounds than school B with more readily accessible outdoor space. Within school C each classroom has a private garden, there is a community allotment, an orchard, a pond area, an adventure playground, playpark and woods as well as an abundance of open space. School B is set within a residential area. School B does have access to large outdoor space and takes the children on regular outings however it was clear that the outdoor space at school C is superior to that of school B. Witness F gave evidence about the significance of the difference in his oral evidence. However his evidence in relation to this was generalized and not specific to the child. We accept both schools have access to outdoors and have an outdoor learning programme. However school C is superior to school B in terms of outdoor space is a factor which that makes school C more suitable for the child given the evidence about the benefit the child has from outdoor learning.

Therapeutic approach

87. The appellant submitted that the child would benefit from the therapeutic approach at school C and in particular the school’s vision to provide therapeutic care and education to help children overcome trauma and adversity. Both schools provide a trauma informed environment for learning. We heard evidence of the therapeutic inputs in both schools from witness D and witness E respectively. Witness F was asked to comment on the therapeutic provision of both schools and described them as ‘broadly similar’. That was not born out in the evidence of witness D and E. We preferred the evidence of witness D and E given they had direct knowledge of the therapeutic inputs available in each school. Witness E described having access to a number of agencies who come into the school and the use of student placements for art and music therapy. School B has an allocated educational psychologist, and access to a play therapist one day per week. In contrast witness D described school C as having as part of their staff group a psychotherapist, speech therapist, outdoor learning team, consultant psychologist, play therapist, music therapist, systematic practice consultant as well as Child and Family Workers. Within school C they complete life story work to allow children to explore their history and background. We considered that there was significantly greater access to therapeutic inputs at school C than school B in light of the staff group they have. Given the complex needs of the child and the impact of developmental trauma the child is likely to benefit from this.

Transition to Secondary school

88. The appellant submitted school C is considerably more suitable for the child on the basis of school C being an all-through school and therefore allowing the child the opportunity to develop long lasting and trusting relationships with school staff such that he will develop a sense of safety, security and permanence. The respondent submitted that on the basis of the evidence the tribunal could not make a finding on whether or not school C could provide an all through placement for the child. We reject this submission. The evidence from witness D was clear that the school has existing provision for children up

to 14 and that from July 2022 school C are able to offer continuing care and learning for young people already placed in school C. In respect to the child witness D stated in evidence that children are able to stay until they are 18 years old if appropriate. The school currently has a number of secondary aged children placed within the school. In evidence it became clear that school C will be building a new bespoke high school building which would increase the number of secondary provision places school C could offer. The respondent made much of this in cross examination but witness D's evidence was not that a placement would be dependent on a new high school building, school C have always had provision for children up to the age of 14. The additional provision is for 15 -18 year olds. This provision is not dependent on a new bespoke high school building and is currently already in place with the school having registration for children and young people up to 18 years old.

89. Whether the child if placed at school C would remain there for his full secondary schooling is not a question we have to answer. The benefit the child will receive from school C is that there will be the option for him to remain at school C at the end of his primary school and he will not have to transition as he would in school B providing him with a greater degree of stability. We accepted the respondent's submission and agree the fact that school C is an all-through school meaning that the child would not have to transition to secondary school at the end of primary 7 makes school C more suitable.

90. The respondent submitted that school B was more suitable for the child as the school had better connections with mainstream secondary schools in the education authority area. We reject this argument for the reasons set out above and in paragraphs 71 to 74. The fact that the child will have to transition to a secondary provision if they attend School B is a factor which makes school B less suitable. Further and in any event we were satisfied on the evidence that school C can and do make provision to support pupils to return to mainstream school if appropriate.

Overall assessment

91. Considering respective suitability factors in the round, we take the view that it is reasonable to place the child in school C. The child has complex and multi-factorial support needs which are best met in a school where the child will develop a sense of safety, security and permanence. Those needs in our view are best met in school C which is more suitable than school B. School C has the advantage of being set in extensive grounds, and having significant therapeutic inputs which will benefit the child. These are not available to the same extent in school B. Taken together with the benefit of school C being an all-through school and the absence of child C we consider that school C is significantly more suitable for the child than school B. Even had respective cost been a factor we would come to the same conclusion. The risk to the child's educational and overall wellbeing of a failed or unsuccessful educational placement is so great that the cost of school C is worth the extra benefit for the child.

Respondent has offered to place the child in the school referred to in paragraph (ii) - paragraph 3(1)(f)(iv)

92. This paragraph requires that the respondent has offered to place the child in school B. We are satisfied this is the case, and this was not disputed. This part of the ground of refusal is met.

Appropriateness in all of circumstances (s.19(4A)(a)(ii) of the 2004 Act).

93. Having concluded that a ground of refusal does not exist, we do not require to consider whether it is appropriate in all of the circumstances to confirm the decision to refuse the appellant's placing request.