



Additional Support Needs

**DECISION OF THE TRIBUNAL**

FTS/HEC/AR/22/0192

List of witnesses

**For the appellant:**

Head of Service, school C (witness A)

The appellant

**For the respondent**

Principal Educational Psychologist (witness B)

Guidance Tutor and Teacher, school B (witness C)

**Reference**

1. This is a reference by the appellant following a refusal by the respondent to place the child in the school specified in the placing request.

**Decision**

2. We overturn the decision of the respondent and require the respondent to place the child in the school specified in the placing request within two weeks of the date of this decision; in terms of section 19(4A)(b)(i) of the Education (Additional Support for Learning) Scotland) Act 2004 (**the 2004 Act**).

**Process**

3. A hearing took place remotely over two days. Prior to the hearing directions were issued to regulate the hearing and pre-hearing processes. Witness statements, a joint minute of agreed facts [T063-065] and outline written submissions [A043-050 and R041-046] were prepared following these. An independent advocacy report was also lodged [T057-060].

4. Before reaching our decision we considered the oral and written evidence and written submissions, found in the bundle numbered T001-T065, A043-A050 and R001-R046.

### **Findings in Fact**

5. The appellant is the mother of the child. The child lives at home with the appellant and two siblings.
6. The child is a thirteen year old boy with a diagnosis of Attention Deficit Hyperactivity Disorder (**ADHD**) with prominent traits of Pathological Demand Avoidance (**PDA**).
7. PDA can be a symptom of or present alongside autism spectrum disorder (**ASD**), although the child in this case does not have a diagnosis of ASD.
8. The child is a competent, capable and responsible pupil who has strengths in many aspects of his learning. The child follows a demand avoidant profile, which means that he follows his own agenda and it can be very difficult to engage him in activities that do not interest him. He does not easily follow adult instruction. The child is academically able, but struggles to access the mainstream school curriculum through traditional means due to his demand avoidant profile. He will not engage in school unless he is engaged in the learning and wants to do it, he needs to feel safe and motivated to engage in his educational environment. [Appellant, A004 and case statements A001 and 025, Child and Young Person Planning Document (**CYPP**), R014].
9. The child benefits from close adult support at all times to keep him focused on his work. The child struggles to review his work for mistakes and close adult support can help identify issues that require correction. Without this support the child will experience low self-esteem as he feels the mistakes are reflective of his overall ability. The child needs staff and supporting adults to have a knowledge and understanding of supports for ADHD and PDA [CYPP, R015].
10. The child tries to suppress his ADHD tendencies, like fidgeting, when at school but this requires a lot of energy, which means that he has less energy and concentration to give to his academic work.
11. The child needs a curriculum to match his strengths and learning ability [CYPP, R014]. The child enjoys outdoor education. This is essential to engage him in learning and allow him to focus on his education. His most prolonged period of attendance in school was when he attended school D where he spent at least 3 to 4 hours outside during the school day [Appellant, A102-013].
12. The child has had significant time out of education and is behind his peers academically with gaps in his learning [Joint Minute, T065]. The child need access to supportive peer group experiences [CYPP R014].
13. The respondent has been responsible for the child's education since 2021.

### *School History*

14. The child has been a school refuser since primary 1. This has led to low attendance throughout his time in education. The child attended school E for primaries 1 to 4. The

child then attended school D for primary 5 and half of primary 6. The child left school D in February 2021 during the second period of Covid-19 lockdown, after periods of online learning and episodes of bullying [Appellant, A007-008], which made it difficult for him to remain.

15. The child was then enrolled in school F, a state school, where he had two months of online learning before attending in person after the Easter holidays in 2021. The child's attendance dropped significantly by mid-December 2021 and in the new school year (2022), he stopped attending.

*The enrolled school: (school A)*

16. The child is presently enrolled in a mainstream secondary school. He is in S1. The child attended the three day transition to school A in June 2022. In August 2022, he attended for one day. He has attended school A for four days in total.

*The current school: (school B)*

17. School B is an independent secondary school, with a school roll of 21 pupils. It is a co-educational school. It caters for pupils who have not thrived in a mainstream school setting. It is located in a stone cottage with the aim of creating an informal and homely environment. The outdoor area is made up of a small landscaped garden with a shelter [Witness C, R024].
18. The school year comprises 35 weeks, with lessons Monday to Friday, 9.00 am to 3.00 pm. There are early closures for Christmas, Easter and summer holidays.
19. School B provides small classes (4 or 5 pupils) in a calm and quiet environment. They employ 10 part time subject specialist teachers, supported by two part-time learning assistants. Pupils have access to a part time Support for Learning Teacher. Every pupil is allocated to a member of staff (a tutor) who oversees their pastoral care and maintains family links. The school has two male members of staff out of 13. Teachers work flexibly and cooperatively responding as far as possible to individual pupil needs [Witness C, R025].
20. Almost all pupils at school B have previously spent a considerable amount of time out of school, are often socially isolated and many experience significant anxiety. In recent years, the majority of pupils are neurodivergent, who have been assessed for ASD.
21. School B offers a full curriculum to pupils from secondary years 1 to 6. The school does not have its own sports facilities but makes use of local amenities. The school offers a range of extra-curricular activities. Outdoor activities are not timetabled every day or every week [Witness C, R033]. When outdoor activities take place, these usually begin in June.
22. The child has been attending school B since week beginning 30 January 2023 on a trial basis, which is not a guarantee of placement. The trial timetable is part time. The child does not attend for the whole of the agreed timetable and does not attend all subjects. His average attendance sits between 6 and 7 hours a week [Case statement A026]. He is absent from school at least one day a week and he arrives late to school most mornings [Witness C, R032].

23. The child has difficulties with the commute to school B. He and the appellant find travelling through city traffic stressful. The commute can take between 35 and 45 minutes [Appellant, A12].
24. There are no other pupils in the child's year group (S1) or the year above (S2). The child is the only boy in his class.
25. The number of pupils entered for National Qualifications differ from year to year depending on the pupil cohort and range from National 3 to Higher qualification level. Many pupils in S5 and 6 attend School College Partnership courses. Previous leavers have moved on from school to supported training, employment, apprenticeships, college and university [Witness C, R027-028].
26. The annual cost of fees for school B is £21,788 yearly. The cost for transport is £24,681 yearly. The total cost of the fees and transport are £46,469 [Case statement, R003].

*The specified school: (school C)*

27. School C is a single sex independent school, with a school roll of 27, providing day and residential places to boys who typically will have had adverse experiences of school and education.
28. The school term comprises 39 weeks of teaching and 13 weeks of holidays, with lessons Monday, 1.30 pm to 4.30 pm, Tuesday –Thursday, 9.00 am to 4.15 pm and Friday, 9.00 to 12.40 pm. Terms last no longer than 6 weeks, with a holiday at the end of each term. This means that the summer holiday lasts 4 weeks instead of 7 weeks.
29. The appellant made a placing request for the child to attend school C on a residential basis, in September 2022. This was later amended to a day place. School C are willing to admit the child for a day place. The child has attended a 'taster day'.
30. Every member of staff at the school has training in ASD and they are ASD accredited. The school provides teaching and has clinical staff on site. All teaching staff have experience of teaching in additional support needs environments. All staff are trauma-informed and trained in de-escalation techniques. There are 10 teaching staff who are supported by support staff. On a given school day, there are 10 to 12 support staff. There is a full time designated member of staff for outdoor learning [Offer letter, A029-042].
31. The school provides teaching under the Curriculum for Excellence and presents pupils for subjects from National 3 level to Higher qualifications. They also offer an elective element to their weekly timetable that provides access to subjects that complement or go beyond the core curriculum.
32. The child would be placed in a class with four peers aged 13 and 14 years who are each neurodivergent, with diagnoses or traits including ASD, ADHD and PDA.
33. Many of the pupils who attend the school face sensory difficulties and have certain sensory preferences. The school provides a quiet and calm sensory environment. They provide sensory assessments and individualised plans to ensure that they can offer the

best support at enrolment and on an ongoing basis. Classrooms are large enough to make sure that personal space is always available.

34. Emotional wellbeing is supported by a Key Team ensuring engagement in all school activity. Pupils have access to a clinical team, which includes psychologists, psychotherapists and therapists, who provide advice to the Key Team and directly work with a pupil, if required. [Witness A, A017-024]. These supports are accessed routinely by all pupils.
35. Day pupils are included in activity beyond the classroom. Attendance by day pupils is close to 100%. Once a pupil is admitted to the school they are given a key teacher and a key worker and an individualised plan. An individualised approach is taken with lots of movement breaks, experiential learning, physical exercise and other supports (Witness A, A020).
36. Most pupils at school C achieve National 5 or Higher qualifications in their senior phase. The majority go to college or university. Destinations (work experiences, college or university) for pupils from the respondent area are built in to their locality area. All school leavers in 2021 remain in their choice destination.
37. Peer support is a strong feature of the school culture, which provides social engagement, a sense of identity and good self-esteem.
38. The cost of the specified school is £1,198 a week. The school year is 39 weeks. The total cost of fees is £46,722 yearly.

### **The child's views**

39. The child spoke to the independent advocate before the hearing and attended briefly at the hearing towards the end of day 2. We were happy to see him. He spoke to us briefly.
40. The child enjoys motorcross activities and gaming. The child thinks that school A is very big and school B is tiny. The child finds Computing boring at the moment because he already knows what the class is doing. Maths is ok but he does not like English. The child thinks that school B is good, there are no mean people and the teachers are alright. He feels safe there but the doors are open and the gates are not locked.
41. The child visited school C. He likes the space outside and the mountain bike trails. He visited some of the classrooms, assembly hall, common rooms and an unused dorm. He likes the option to do biking and kayaking offsite, woodwork and using power tools for maintenance.
42. The child would like to be in school for a full day. He would like interesting and hands-on lessons, to be with nice boys that he has things in common with. He would like teachers who "get him" and not too many people in a class.

### **Reasons for the Decision**

*General remarks on the oral evidence*

43. We benefitted from the provision of detailed witness statements for all of the witnesses. None of the witnesses deviated in any significant way from their statements or reports.
44. Witness A gave his evidence in an informative, well-rounded and objective manner. He has met with child. He has had discussions with the appellant on a number of occasions. Where concessions were appropriate (such as the potential challenges of integrating the child into a new school) the witness was prepared to make these. He demonstrated good knowledge of the child (for example, his appetite for outdoor learning and his need for movement breaks). He emphasised the need for a tailored, rather than wholly diagnostic approach (tailoring to the child's strengths and finding a way into education). He stressed the value of building relationships with the child (with his staff and peers). He had a very good knowledge of PDA and its effects. He explained this clearly and succinctly.
45. The appellant was compelling and balanced. She acknowledged that there is no perfect solution to the child's school education. She left us with the strongest impression of the barriers the child faces to learning. She was able to describe the characteristics and impact of PDA in real life terms. She was insightful, thoughtful and measured.
46. Witness C was informative, open and objective. She has met the child and has been involved in teaching the child. Her evidence was very helpful in clarifying areas of uncertainty (for example, on positive destinations achieved by school leavers and the child's attendance levels). Where concessions were appropriate (such as the difficulties the child has experienced in computing classes) the witness was prepared to make these.
47. Witness B has not met the child. He is the single decision maker for the respondent on placing requests. He made the decision to refuse the placing request. He stated that he never grants placing requests for school C (although he later conceded that one was granted in the past). We found him less objective for this reason. His evidence was inconsistent at times, and there was a lack of evidence to support some of his statements, particularly where a comparison was being made between schools B and C. He conceded that he knew less about school C and although he consistently stated that he made no criticism of school C we detected an undertone of criticism to his remarks about school C.
48. All of the witnesses had an understanding of PDA, although we found witness A to have the broadest knowledge. PDA is within the specialist knowledge of this tribunal. Although this condition is commonly identified in England and elsewhere, it is not adopted as a diagnosis in Scotland. Instead, it is considered to be a profile or a set of symptoms with an underlying cause. The terms 'traits of PDA' or 'demand avoidance behaviour' appears across the documents in the bundle. We were content with either terminology as neither appeared out of step with the other. We did not recognise the term 'extreme teenage behaviour', which witness B stated was the language (or similar) that the National Autistic Society uses to describe PDA. He stated that the concept is seen a lot in teenage boys and described it as a "teenage presentation, although [the child's] is more extreme". This terminology is very different and clearly describes a teenage phenomenon. We placed no weight on this for two reasons, first, no authority was lodged to support this; and second, the child has been a school refuser since primary 1 and has only recently become a teenager. Traits of PDA have been present throughout his primary school history.

## *Legal tests*

64. Both parties referred us to the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court), which reminds us that the proper time for assessing whether the conditions contained in the grounds of refusal are met or not is at the time of the hearing. We also accept that (again arising from the *M* case), consideration should be given to the assessment of the child's needs which happened closest to the hearing. We have evidence of such assessments in the oral and written evidence.
65. We accept the submission of the appellant that it is appropriate for us to consider the child's additional support needs in their entirety, following the Inner House case of *City of Edinburgh v MDN* [2011] CSIH 13. In refusing this appeal the court found no error in law of the tribunal's approach to determining that 'these needs required to be stated in a more general, all-encompassing and indeed "holistic" way' [para 32].
66. We accept the submission of the respondent that when calculating respective costs we must view that according to what is reasonable from the perspective of the education authority and that the costs to be compared are the costs (in each of the two schools) of providing the additional support necessary for the child; not the overall costs (*S v Edinburgh City Council (SM, Appellant)* 2007 Fam LR 2.).
67. The onus of establishing the ground of refusal lies with the respondent.
68. The parties are agreed that the child has additional support needs in terms of section 1 of the 2004 Act. Having considered the evidence we are satisfied that this is the case.
69. The respondent's refusal of the placing request is based solely on schedule 2, paragraph 31(f) of the 2004 Act – the 'respective suitability and cost' test. Even if the ground of refusal exists we must then consider whether in all the circumstances it is appropriate to confirm the decision (section 19(4)(a)(ii) of the 2004 Act).

## *The ground of refusal*

70. There are four constituent parts to schedule 2, paragraph 31(f), numbered in paragraphs (i) to (iv). The respondent must satisfy us that each of the parts is applicable to the facts of this case at the date of the hearing.

### *Paragraph 3(1)(f)(i) The specified school is not a public school (school C)*

71. It is accepted that school C is not a public school. This part of the ground of refusal is met.

### *Paragraph 3(1)(f)(ii) The authority are able to make provision for the additional support needs of the child in a school other than the specified school (school B)*

72. We are not satisfied that this ground is met. It is a matter of agreement that school A cannot meet the needs of the child. After considering the evidence, we agree, which leaves us to consider whether school B can meet the additional support needs of the child. We are not satisfied that school B can.

73. The case of *M* reminds us that although a local authority will not be able to determine whether they can or cannot meet a child's needs until they have determined what those needs are; it is expected that these will be known by the time the decision was taken on the placing request. The very latest time at which the child's needs should have been known was before the commencement of this hearing. We are not convinced that the respondent has the fullest understanding of the child's additional support needs, either at the time of the decision on the placing request or by the time of the hearing.

#### *Flexibility and PDA*

74. The Educational Psychologist acknowledges that the child needs support to access and be motivated in an education environment and to help manage any arising avoidant feelings [R014-015]. It is clear that the child needs a flexible approach to be taken to the daily timetable and to the subjects that he can access, in order to avoid the sense of demands and authority being placed on him. School B cannot accommodate this. While they tailor the timetable around the child, this process takes place at the stage of admission. Witness C admitted that they do not have the resources to tailor this day to day as teaching staff are part time and there are limits to the subjects offered in a day. We concluded that this lack of flexibility could be more confrontational for the child and consequently would act as an absolute barrier for his learning within the context of his prominent PDA profile.

#### *Outdoor education*

75. The child has thrived in the past in an outdoor education setting. The extent of this cannot be replicated at school B. The majority of the school day is conducted indoors. There is no fixed time for outdoor learning. It depends on each subject approach. It is not provided or timetabled on a daily or weekly basis, although some ad hoc activities might arise, leading to outside learning in the small garden. Should the child need a break from classroom learning then the school would have to ask a learning assistant to take the child outside. There are no regular movement breaks for the child as he is not yet attending school B on a full time basis.

#### *Pupil cohort and PDA*

76. School B currently provides school education to pupils who have ASD or anxiety. Witness C conceded that the child does not present with the same features of anxiety or ASD that some of their other pupils do. The child is more sociable and able to engage with other pupils, although he can become very fixed on what he wants or does not want to do. He does not need the same structure as other pupils at the school. It is the child's traits of PDA that result in school refusal. The school does not currently have other pupils with PDA.

#### *The trial placement at school B*

77. There are three parts to the trial assessment (1) staff review the trial placement; (2) staff take into account whether the child (and their family) want to be at the school; and (3) whether the child will fit into the current cohort. Witness C advised that the school was in a unique situation that they had never been in before. She stressed how fundamental part 2 is. The appellant does not want the child to attend school B and witness C admitted that she was not sure the child wanted to attend school B. Witness B stated that an offer



to attend school B would imminently be made but we did not gain any sense of that from witness C. If anything, there was a reluctance to make an offer in these circumstances.

78. While the child's enthusiasm for any school is tempered by PDA, he does not appear to be settling into school B. He regularly asks for the appellant to be contacted to return him home. The trial placement has been running for over 4 months. While witnesses B and C explained that some trial placements have lasted for longer, we would have expected the school to have a sense of whether progress is likely, leading to a conclusion of whether a place will (or is likely to) be offered, at least by the time of this hearing. Witness C confirmed that there is no offer of a place for the child at this time.

#### *Timetable at school B*

79. The child's timetable had not progressed from 24 April 2023 to the positive extent that witness B suggested. Witness C confirmed that the child continues to attend for parts of a morning (usually two periods) each day apart from a Wednesday (when he refuses to attend). Although the intention is to increase this to include Friday afternoons from 12 May there is no evidence to suggest the child will attend and it is concerning that the appellant heard this first at the hearing. Witness C conceded in her oral evidence that the child's attendance is "not really improving unfortunately". We agree with the appellant's perception that the timetable has "stagnated".

80. We could place no reliance on witness B's written and oral evidence which suggested the child's attendance amounted to 67% [R035], which appears higher than the attendance timetable suggests [R030]. When pressed on this, witness B stated that the school had provided this figure to him. Witness C did not recall this. She advised that she has not put attendance into percentage terms.

*Paragraph 3(1)(f)(iii) It is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school (school C) and in the school referred to in paragraph (ii) (school B), to place the child in the specified school*

#### *Suitability*

81. Our findings at paragraphs 72 to 80 (that the authority are not able to make provision for the additional support needs of the child in school B) are relevant to our considerations here.

#### *Flexibility and PDA*

82. Witness A emphasised the importance of relationship building between the child, his peers and staff, which he described as central to their provision. He explained the importance of always being able to be flexible on a day to day basis, to be indirect with demands and offer choice, doing things "with" and not "to" the child. This approach would be used to help the child become engaged. It is a strategy that has worked with other pupils who have PDA. We agree that this level of flexibility will avoid the sense of demands and authority being placed on the child.

83. Witness A explained that school C's teachers are well versed in encouraging pupils to enjoy where they are, to develop relationships and to benefit from outdoor education.

He advised that they have an independence development programme that all pupils follow, using creative and flexible approaches, which also promote self-care.

### *Outdoor education*

84. The two schools are set in very different grounds. School C is rural and set in woodland on National Trust grounds. The school building is large and spacious. School B has a small garden. The school building is a former cottage with some historical significance. The child describes it as “tiny”.
85. Their approaches to outdoor learning are very different. School C has an outdoor learning programme, which is carefully planned and structured around the interests of pupils, their development and progress. Outdoor learning is linked with the teaching team to make sure that opportunities for learning are achieved. It is a core part of their curriculum and forms part of their experiential learning. The child would have outdoor learning timetabled every week over different days and more if needed.
86. Witness A described the benefits of their outdoor learning as “huge”. He said it is very popular with the pupils. Something they look forward to. He advised that it is good for mental health and wellbeing and engagement with learning as pupils become more focused in the class environment.
87. The Educational Psychologist states the importance of the child feeling able to engage in his educational environment [R014]. School C’s focus on outdoor learning replicates more closely the kind of learning environment at school D, where the child managed the most sustained period of school attendance. We recognise its value and the positive part it has played in the child’s school attendance history. For that reason, we place some weight on this provision.

### *Pupil cohort and PDA*

88. School C presently has pupils with PDA. Witness A advised that the school always has pupils with PDA. They are experienced in dealing with it day to day. He described their experience as “extensive”, in contrast with school B whose experience is more limited.
89. Witness B suggested that school C would not be suitable for the child for reasons which include a potential risk from male students who have profiles of emotional trauma and who are prone to impulsive, dysregulated, or aggressive behaviour [R017, para 23]. Witness A disputes this. He described trauma as a broad term. It can manifest in different ways. He spoke of “big T” or “little t” traumas and he explained that a lot of their pupils have experienced trauma, which includes marginalisation and isolation. Some have been disengaged from school for reasons of anxiety, being in the wrong environment, being detached from peer group, being absent from school and family break up. We found this distinction helpful and we noted that some of these elements are present for the child.
90. One other area that was examined was the use of physical intervention and restraint. Neither is practiced in school B. Both may be used in school C and all staff are trained in these. Four pupil’s experienced physical intervention in the past year and school C has used restraint three or four times a month in relation to this same pupil cohort of four. Witness A described these figures as very low. We understood the respondent’s position

to be that this suggests a kind of 'high tariff' environment and we should therefore be cautious about placing a child here without expert social work involvement [Witness B, R017, para 23]. We do not consider this to be a fair assessment of school C. Any use of physical intervention or restraint with a child must not be entered into lightly and we did not detect that this was the case or that it was overused in school C. There is no history of the child requiring either.

91. Finally, the child would have access to peers with similar additional support needs. His class would include children closer to his age. At the moment, he is the only boy in his class and the only one of his age. We agree with the evidence that peer support and learning is important to improve the child's self-esteem and to reduce feelings of isolation. We agree with witness A that a single sex school is unlikely to create difficulties for the child. The child will have access to mixed gender staff. He will be given social and emotional education to help him to understand relationships. If he enters into college partnerships, he will experience a co-educational environment.

### *Positive post school destinations*

92. Witness B stated that school C has slightly lower academic success than school B [R035, para 3], although he conceded in his oral evidence that his knowledge is limited to 5 respondent pupils. Witness C disputes this. He described high levels of academic success. He explained that all pupils who join the school reach the appropriate level of academic achievement.

93. The suggestion by witness B that school C are not best placed to link with positive destinations in the respondent area was disputed by witness A, who explained that destinations and pathways are built into pupil localities and he described work placements, which include the Scottish Parliament.

94. Witness B's statement that most pupils at school B achieve National 5 or Higher and almost all go on to college or university [R035, para 2] was disputed by witness C, who explained that a reasonable proportion of pupils sat Highers last year (4 out of 21) and two of those were on the path to university. Of the remaining two, one is at college (HNC level) and the other remains in 6<sup>th</sup> year. Witness C summarised that several pupils attend college, sometimes in S5 but more often in S6. This year there are leavers going to college and not applying to university. She stressed that in any one year it depends on individual ambition and skills.

95. The measured approach of witness C assisted us when making a comparison of suitability on the grounds of positive destinations and we are able to conclude that both schools offer the same academic opportunities and post school destinations, which may differ from year to year. There is one important difference and that is in relation to S6. At school B a place in S6 is not guaranteed and an application must be made for this. This means that the child would be able to attend school C through to S6 without an application process at the end of S5.

### *Timetable*

96. The attendance of day pupils at school C is close to 100% [Witness A, A019, para 11]. We accept the evidence of witness A that this demonstrates that school C do not have difficulties with school attendance. Central to this is the relationship between staff, pupils

and their families. Witness A advised that support can be given to pupils in the mornings, and phone calls can be made in the evenings. The timetable is flexible and there are individualised transitions, which consider the needs of the pupil (for example, do they like active or low arousal quiet time).

97. School terms at school C are never longer than 6 weeks and there is a holiday at the end of each, which means that a summer holiday is 4 weeks as opposed to 7 weeks. The appellant considers this to be more of a match for the child and we agree that this is more likely to avoid demand and authority stresses.

### *Travel*

98. There is a clear difference in the location of and travel to both schools. School B is around 7 miles from the family home and involves a car journey through city traffic. This can take anywhere between 35 – 45 minutes. The appellant describes this a very stressful journey. While the appellant and the child's father share this at the moment, they will not continue to do so, which means that the appellant will seek taxi transport from the respondent.

99. School C is set in a rural location around 35 miles from the family home, taking around 45 – 65 minutes. Witness A suggested there is a difference between driving away from the city and driving through it. He conceded that a lengthy journey can in some ways make transitions trickier, however, it can also be a time for the child to decompress and prepare. The appellant advises that car journeys are when she and the child talk to one another. She finds the journey to school C a more relaxed journey which supports their communication. In addition, she and the child's father are content to share this transport, which means that there will be no request for transport from the respondent.

100. We took the view that we could not measure the impact of this in miles but rather we had to measure it in time and type. We saw little difference in the time to each school, on some days this might be like for like, but a considerable difference in the quality of the journey. We agree with the appellant that there is a difference between travelling away from the flow of traffic into the city to a rural location. For these reasons, we do not see the additional distance to school C to be a negative factor.

### *Cost*

101. The parties agree the following costs:

The weekly cost of fees at school C are £1,198 per week. The school year is 39 weeks. The yearly cost of fees is £46,722.

The yearly cost of fees at school B is £21,788.

102. The parties do not agree on the cost of travel. After considering the evidence of the appellant, we consider that there would be a cost to the respondent for travel if the child was to continue to attend school B, which the respondent accepts is a necessary incidental cost. This cost is £24,681 [R003]. Taking this with the cost of fees, the total for school B amounts to £46,469. When we compare this cost with the total cost for school C the difference is minimal (£253 per year). The respondent's suggestion that the appellant might change her mind about transport in the future has no bearing at the

present hearing. We are obliged to consider the circumstances as they present at the hearing (see the case of *M* above).

103. We were not persuaded by the respondent's submission that having regard to the transport arrangements for school B amounts to "speculation". The appellant stated clearly that if the child is to remain at school B the family would have to rely on the respondent to provide a taxi for him and the appellant explains the reasons for this. This appears to be a well thought out conclusion, rather than a matter of speculation [A015, para 19].

104. Even if we did not require to take the travel cost into account we would have still concluded that the suitability factors far outweigh the greater difference in cost.

*Paragraph 3(1)(f)(iv) The authority have offered to place the child in the school referred to in paragraph (ii) (school B)*

105. An offer of a place has not been made for school B, neither is there a guarantee of a place, which is a matter of agreement [Joint Minute, T065, para 23]. However, even if this was a clear offer, we are not satisfied that school B can meet the additional support needs of the child. It undoubtedly offers a safe and gentle school environment that is a good match for its cohort of pupils. The fact that it is not a good match for this child is no criticism of school B.

106. Having decided that the ground of refusal does not exist we are not required to consider whether in all the circumstances it is appropriate to confirm the decision. Had it been necessary for us to do so we would have not considered it appropriate to confirm the decision (for the reasons specified above) and we would have placed the child in school C.