



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/22/0172

Witnesses for Appellant:

Witness A- Head Teacher, School A

Witnesses for Respondent:

Witness B – Educational Psychologist

Witness C – Depute Head Teacher, School B

Witness D- Team Manager, Integrated Children’s Service

Reference

1. This is a reference in relation to a placing request lodged with the Tribunal in October 2022. It is made under Section 18(3)(d)(a)(ii) of The Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**).
2. The appellant made a placing request for the child to attend School A, an independent special school. A letter dated August 2022 refusing the placing request was issued by the respondent.
3. The respondent relied upon ground 3(1)(f) of Schedule 2 of the 2004 Act in refusing the placing request.

Decision

4. We are not satisfied that the ground for refusal exists, and we overturn the decision to refuse the placing request. We require the respondent to place the child in school A with immediate effect or by such other date as the parties agree.

Process

5. The hearing took place over two days.

6. The respondent was granted permission to call an additional witness, witness D.
7. A joint minute of agreed facts was lodged (T69-72)
8. The child provided views within an advocacy report contained at T58-68 and also attended the hearing remotely to provide his views directly to the tribunal.
9. The witnesses provided evidence by witness statement, followed by supplementary questions and cross examination.
10. The parties lodged written submissions and authorities. At the conclusion of the evidence, both parties confirmed that they were content with the submissions provided and did not wish to add any additional written or oral submissions.

Findings in Fact

11. The appellant is the mother of the child born in June 2011.
12. The child is in Primary 7 and is currently enrolled at School F and attends School B, a specialist support base of the respondent.
13. The child attends school B each Monday from 9.30am to 4.30pm, Tuesday from 12.30pm to 2.30pm, Wednesday from 12.30pm to 2.30pm, Thursday from 9.30am to 2.30pm and on a Friday from 9.30am to 2.00pm. He attends School B for a total of 20.5 hours per week.
14. In July 2022, the appellant made a placing request for the child to attend school A on a residential placement.
15. The respondent refused the appellants placing request in a letter dated August 2022 in terms of schedule 2 paragraph 3(1)(f) of the 2004 act (T037 to T038).

Provision for the child to date

16. The child is provided with support by the respondent's Inclusion Group. This support was allocated by the Social Work Department following an assessment under Section 23 of the Children (Scotland) Act 1995. The inclusion group supports the child for around 10 hours per week (R152 to R154). The aim of the inclusion group is to facilitate the child's attendance at School B and to engage him in developing soft social skills through community activities.
17. The child has support from children and families social workers. The child is entitled to respite care for 3 weekends a month and 3 sessions of 3 hours each throughout each week.
18. The provision of support from the Inclusion Group has been suspended for periods following issues arising relating to the child or the appellant. At times, the child does not

receive the respite care allocated to him in full due to staff shortages.

19. The child has attended 4 different provisions through his primary education, School D, School E and schools B and F.
20. In 2018, the child attended School B on a split placement for 3 sessions per week and attended School D for the remainder of his time.
21. The child's needs were such that he required to attend a school with enhanced support in his local community and he was therefore moved to School E in August 2019. The relationship between the school and the child broke down. The child moved in November 2020 to school F. The child refused to engage with the curriculum, and he began to refuse school, at times, from December 2020. His attendance reduced over the 2020 to 2021 session.
22. In November 2021, the child commenced a placement at school B. He remained on the school role at school F but solely attended school B due to the challenges experienced by him when he previously attended a split placement.
23. The child is the only child at School B attending full time. All other children have a split placement with a mainstream school.
24. The summer term ends for the child in June 2023 when he completes primary 7.
25. The child is due to start secondary school in August 2023.
26. The respondent has proposed that the child attends School C for provision of his secondary education.
27. The respondent is responsible for the child's education.

The child

28. The child has a dual diagnosis of autism spectrum disorder and attention deficit hyperactivity disorder.
29. The child has ongoing involvement from Child and Adolescent Mental Health Services (**CAMHS**) for the purpose of reviewing medication every 6 months.
30. The child has low muscle tone and hypermobility.
31. The child displays demand avoidant behaviours.
32. At times the child will not follow adult instructions. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy 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)]**

33. The child has social skill difficulties and struggles to understand social cues.
34. The child takes a long time to build trust and relationships with both adults and peers.
35. The child struggles to engage with adults he does not know. He takes a long time to become familiar with adults and feel safe with them (R016).
36. The child finds it more challenging to build relationships with peers than adults. He does not have established friendships either in school or the community. He is socially isolated (R018).
37. Relationships are key to the child's wellbeing and his ability to engage in education (R016).
38. The child finds transitions difficult, and he can become stressed. He has struggled with changes to his routine or timetables and becomes very distressed when he does not feel in control. He can become overwhelmed in situations and needs some time alone in a safe space (R015).
39. The child has a significant degree of inflexibility of thought which impacts on his ability to engage in education. This means that he can become quite fixated and struggles to move on (R015).
40. The child has sensory needs and can experience sensory overload at times but may be unable to recognise and express this (R016).
41. The child requires a high degree of adult support at School B (R030)
42. The child can struggle with emotional regulation (R031).
43. The child has a limited perception of danger and needs supervision and support to stay safe, especially when outdoors.
44. As of June 2022, the child was working at consolidating second level of the Curriculum for Excellence for reading, developing at second level for writing and was developing within second level for mathematics and numeracy.
45. A referral was made to the children's hearing by the local authority. The children's hearing did not proceed as no grounds for referral were established.
46. A summary and analysis of the child's additional support needs and required support was prepared in August 2022 as the child commenced P7 and is contained in R019.

School A

47. School A is an independent school. By letter of June 2022, they confirmed they were willing to admit the child to the school for a residential placement (T023 to T036).

48. School A is a special school.
49. School A has a focus on learning and development beyond school and in the classroom. They have a comprehensive academic programme including an independent development process and comprehensive social communication curriculum.
50. School A has a strong focus on building relationships and enabling a child to feel included. This is reinforced and enhanced through the extended curriculum within the residential aspect of the provision.
51. School A has a high ratio of staff support in each subject class which supports highly individualised learning. Pupils are presented at all levels of SQA qualifications.
52. School A is equipped to support the child to overcome social isolation. Within a safe, supported environment, the child can share in activities which enhance the opportunity for social interaction and allow him to feel included.
53. At School A, emotional wellbeing is supported by the key team ensuring engagement in all school activity. They have access to a clinical team that includes psychologists and therapists. These clinicians can provide advice to the key team around approaches and support but can also do direct work with the child if required.
54. At School A, a sensory assessment will be carried out to ensure the best support is offered to the child at the time of enrollment and then on an ongoing basis. The assessment and subsequent plan are individualised.
55. School A is a quiet and calm environment reflecting what works for young people who have difficulty with sensory regulation and is calm in terms of supporting young people when they are struggling.
56. At School A, individualised approaches with lots of movement breaks, experiential learning, physical exercise and breakup tasks are utilized. Work with occupational therapists, speech and language therapy and psychotherapy to tailor strategies is also embedded in School A's practice. Considerable use is made of IT to facilitate literacy. All young people have a laptop with person specific assistive technology.
57. Upon admission to School A, the child will be assigned a key teacher and keyworker. These relationships are developed through regular contact throughout the school day and through their involvement with devising and implementing the child's individualised plan. The relationships can be reinforced through outreach during school holidays.
58. Every member of staff at School A has training specifically in approaches that support autism and access to the specifically developed OFG (Ask, Accept, Develop) autism strategy. The school has autism accreditation which recognises their skills and experience.
59. The child will be in a class with 4 peers aged 12 and 13. Three of the peers are accessing the curriculum at the appropriate level and one is in the settling in phase at school. The peers have been at the school for between four years and one week. During that time, there has been no notifiable incident or physical intervention involving any of the peers in the class.

60. The peers within the intended class for the child are neurodivergent with diagnosis including autistic spectrum disorder and attention deficit hyperactivity disorder. They are supported by a highly qualified and experienced teaching team.
61. Of the 9 teachers within school A, two hold doctorates, three have over a decade worth of experience within additional support need environments and a further three have over 5 years' experience within additional support need environments.
62. School A recognises that neurodivergent young people require close adult support and adults to facilitate peer interactions to develop socialising and peer interaction skills, and avoid neurodivergent young people, such as the child, masking any anxieties.
63. All staff at school A are trained to support young people through de-escalation. They use various models informed by the clinical team including PACE (connect, coregulate, co-reflect), 54321 grounding technique with each approach being tailored to the young person within their plan.
64. All pupils at school A work under the mainstream curriculum for excellence and 100% of pupils move on to a positive destination, including higher and further education, employment and modern apprenticeships.
65. School A delivers an independence development programme structured across 12 areas required to allow independent living, including hard and soft skills. The programme has been audited independently to ensure its efficacy.
66. The appellant and child have visited school A. Staff from school A visited the child at his outreach facility. The child has been allocated a key teacher, who has over 10 years' experience within specialist education. He will work with the key worker from the care team. This person will be identified following "what helps me" assessments to ensure as positive a match as possible. This key team will be responsible for all assessment, planning and evaluation with the child contributing at each stage. The appellant will be involved by way of weekly contact by phone or email as preferred. In addition to weekly contact, the key teacher will objectively update on education on a 6- weekly basis.
67. The cost for a residential placement at School A is £2,352 per week for 39 weeks making a total cost of £91,728 per school year. Transport is included in that cost if required.
68. The residential aspect of School A is about developing social and emotional health, life skills and building independence and self-esteem, and supporting activities with peers. It will bring benefits in terms of routine and structure to the child.
69. Each residential area is split into 6 bedrooms in each house, 4 bathrooms and a lounge area with cooking facilities. The houses are broadly divided into age. Four of the pupils in the child's class are residential and one has a day placement. The house in which the child would reside is for boys aged 9 to 13.
70. The child would have the opportunity at school A to do all subjects apart from a modern language. Each class has morning and afternoon outdoor learning each week. There is also an elective programme on a Thursday afternoon with an element of choice in what the young person undertakes.

School C

71. The child's additional support needs cannot be met within mainstream schooling and the respondent has offered to place him at School C, a special school within the management of the respondent.
72. The child has been offered a place at School C on a full-time basis and not as a shared placement.
73. The staff at School C include primary trained teachers supported by learning and care assistants.
74. Teaching at School C takes place within small group settings, and the child would work in a designated area of the school rather than moving around the school as is generally the case in secondary education.
75. The child would have one named teacher who would be responsible for planning his individualised curriculum.
76. The child's curriculum at School C would include the setting of individualised learning targets for literacy, numeracy and health and wellbeing.
77. The child would have opportunities to engage in several accredited wider achievement awards such as saltire award for volunteering, junior Duke of Edinburgh and John Muir award at School C.
78. The child would also be supported at school C to engage in ASDAN wider achievement awards in home management, food wise courses, life skills and gardening, depending on his skills and interests.
79. At School C, the child would have the opportunity to attend Ancrum outdoor learning sessions and further develop interests in sports such as swimming and football.
80. Staff at School B share all information in relation to the child with school C as part of transition planning including a transition overview.
81. As part of the familiarisation process during transition staff from school C attend school B for all children who will be transitioning and informally share information about the provision at school C.
82. The child has attended one visit at School C when he toured all areas of the building. He has attended gyms sessions there on a Friday and has recently participated in activities there on two Wednesdays.
83. School B shares practice in terms of staff development with staff at school C.

84. The transition plan for the child to move to school C has not been completed. If the child is placed at school C, a support worker from school B will be available to provide support for the first two weeks of the school term and thereafter school B will provide information and guidance to school C as the need arises.

Views of the child

85. The child had provided views to an independent advocate and also attended the tribunal to provide his up-to-date views in relation to a residential placement at school A.

86. The child wants to attend school C. He understands that a pupil with whom he was previously educated will be attending and he wants to be at school with him. He advised the tribunal that he would not like to stay in a residential placement within school A as he would miss his own bed and his room.

The relevant law

87. The general duties imposed on the education authority in relation to children and young persons with additional support needs are contained in Section 4(1) of the 2004 Act. In particular, the education authority must “in relation to each child and young person having additional support needs for whose education the authority are responsible, make adequate and efficient provision for such additional support as required by the child or young person”.

88. In terms of paragraph 2(1) of schedule 2 of the 2004 Act where the parent of a child having additional support needs makes a request to an education authority to place the child in the school specified in the request, being a school under their management, it is the duty of the authority, subject to paragraph 3, to place the child accordingly.

89. In terms of paragraph 2(2)(a) of schedule 2 of the 2004 Act where the parent of a child having additional support needs makes a request to the education authority for the area to which the child belongs to place the child in the school specified in the request, not being a public school but being a special school the managers of which are willing to admit the child, it is the duty of the authority, subject to paragraph 3, to meet the fees and other necessary costs of the child’s attendance at the specified school.

90. That duty will not, however, apply if any of the conditions set out in paragraph 3 apply, the relevant circumstances in this case being set out in paragraph 3(1)(f) of the 2004 Act.

91. The onus of proof that a ground for refusal of the request exists in terms of paragraph 3 of the 2004 Act lies with the respondent.

92. The assessment point is the date of the hearing.

93. Even if a ground of refusal exists at the time of the hearing, we still have to consider whether it is appropriate in all the circumstances to confirm the decision (Section 19(4A)(a)(ii) of the 2004 Act).

Reasons for the Decision

94. Parties are agreed that the child has additional support needs in terms of Section 1 of the 2004 Act. We are satisfied that this is the case.
95. The respondent's refusal to grant the placing request is based on the ground of refusal in Schedule 2, 3(1)(f). For this ground to be established, the respondent must satisfy us that all 4 of the conditions in 3(1)(f)(i) to (iv) apply to the facts of this case.
96. It was a matter of agreement between the parties, and is established by agreed facts, that the conditions in paragraphs (3)(1)(f)(i) and (iv) apply.

Circumstances in which the duty does not apply

3(1)(f) If all of the following conditions apply namely:

(i) if the specified school is not a public school.

97. It is accepted that this condition applies.

(ii) 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.

98. We were not satisfied on the evidence provided by the respondent that this ground for refusal exists. The respondent relied upon the evidence of witnesses B, C and D.
99. Witness B provided a report (R011-R033) on the relative merits of attending school A and school B, but the report did not refer to School C. The report from witness B was dated August 2022 and related to the child's continuing education at school B. The witness had not observed the child since preparing the report. She provided evidence that she remained involved at the team around the child meetings and reflected that the last meeting she had attended had been around 4 months ago.
100. Witness B referred to a bespoke package for the child, but details of same were not provided in evidence. She provided evidence that transition from school B to school C would take place over a period of time but was unable to provide any transition plan. Witness B was unable to confirm if the child would continue to have access to inclusion group provision, advising that had not yet been negotiated. Provision of support from the inclusion group is essential to supporting the child when at home, during holidays and for periods of respite in order to mitigate the child's social isolation and to provide continuity in his care arrangements, all of which are essential to support his engagement in education.
101. Witness B had not visited school A when preparing her report in August 2022. She had looked on the website and filled in a contact form for a visit but had received no response to that request and the receptionist had not returned her call. She spoke to a colleague who had visited in the past but had not gone to visit in advance of the tribunal.

102. Witness B confirmed that she thought one or two children would go to school C as a full-time placement each year, but the operation model was to try mainstream school first. She did not know about the child's proposed peer group at school C, the number of pupils in his class or the number of hours he would spend in school C each day. She anticipated that the provision would be consistent with the child's current provision and was of the view that he manages that currently.
103. Witness B was unaware of whether the child had a friendship group within school B although she was aware from speaking to the headteacher about the child that he had engaged in one-to-one support and in small groups in the community.
104. Witness B was aware that the general pupil profile at school C included pupils with ASD and ADHD. In relation to academic levels, pupils are presented for SQA examinations and can go onto the city campus for higher and advanced higher depending on their progress.
105. Witness B did not know the numbers of teaching staff at school C or their specialisms or qualifications, beyond the fact that they would be qualified in the subjects they teach.
106. The child had become aware of a pupil that he had spent some time with in a previous primary school who was due to attend school C. The child had difficulties with that pupil in the past. Witness B was unaware of any circumstances surrounding these issues. She was aware that the child had tricky relationships with peers.
107. Witness B confirmed that CAMHS were involved with the child. She confirmed that they do not routinely send reports to educational psychologists and that they had attended one online meeting. She had no access to their notes and did not know that a formal diagnosis of ASD and ADHD had been recorded. She obtained that information from the appellant. It was her view that any challenging behavior related to the child's autism and environment was handled well at school B and he was making progress educationally and socially.
108. Witness B believed that the appellant was no longer seeking a residential placement for the child. That had been discussed approximately 4 months previously at a team around the child meeting. She did not know the current position as at the date of the hearing.
109. We were unable to conclude from the evidence of witness B that she had all of the necessary information available to her about the child's current circumstances, his additional support needs and a plan to address those needs within school C. She based her report on information obtained and available to her by August 2022 which related to schools other than school C. On a number of aspects witness B lacked knowledge about the current circumstances or the plan for the child's transition.
110. Witness C provided evidence as the deputy headteacher of school B. Her understanding was that the provision provided for the child in school C would replicate the support provided in school B and School C have the capacity to respond flexibly to the child's needs. (R145 para 18). School B is a primary school and school C is a secondary education provision. We were not persuaded by her evidence, which we

found lacking in detail in relation to the identification of the child's needs and specific plan to address those needs within school C.

111. No documentation was provided to the tribunal to show that transition meetings had taken place, or that meetings and discussions had included the appellant and the child. No evidence was provided in relation to the individualised education plan for the child, which was repeatedly referred to by witness C. Witness C could not provide details of the plan in place for education of the child at school C other than to say that it would replicate the provision provided at school B and to provide general information.
112. Transition planning will be very important for the child. The evidence of witness C was that she would provide support on a continuing basis for 2 weeks of the transition period which would include providing a member of support staff to support the child at school C for that period. Beyond that, she would be unable to provide staff but the need for her extended support would be subject to review.
113. Witness C confirmed that the school term ends on 30th June 2023. The transition plan is not yet available for the child. He has had transition visits during his time at school B but we were provided with no education plan for his continuing education at school C. The additional learning plan which was within the papers provided to the tribunal included a plan dated September 2022 which has a review date of December 2022. Witness C advised that this plan would be reviewed every 12 weeks and it was last updated in May. We were provided with no further evidence in relation to the updated learning plan. It was not clear to us that the appellant had had the opportunity of providing her views in relation to the plan and she provided evidence that she did not know what the transition plan was for the child to attend school C or how his education would be provided there.
114. We heard from no member of staff at school C regarding their plan for addressing the additional support needs of the child (identified and summarized at R019), the peer group with whom he would be educated, the experience and specialist knowledge of the staff involved in supporting the child to address issues arising from the child's additional support needs, and how they would provide education to him supporting him to develop his health and wellbeing.
115. On the evidence provided, we were unable to establish that the authority are able to make provision for the additional support needs of the child in a school other than the specified school.

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 and in the school referred to in paragraph (ii) to place the child in the specified school.

116. As we had limited evidence about the provision of education at school C, and we were not satisfied we had a full understanding of the provision available to the child to meet his additional support needs at school C, we are unable to establish facts regarding the respective suitability of school C due to insufficient evidence.
117. School C was not considered in the report provided by witness B. That report confirmed that school A could meet the needs of the child (R027) and provided evidence

about the suitability of school B. Other than evidence that school B's support would be replicated in school C (which we could not accept without further evidence in relation to the provision for the child at school C, given that school B is a primary school provision and school C is a secondary school provision) we did not consider we had sufficient evidence about school C relative to the child to enable us to make an assessment of the respective suitability of schools A and C.

118. In relation to the respective costs, including necessary incidental expenses, we had clear evidence in relation to the costs of the child attending school A. The cost of a residential placement is £2,352 per week over 39 weeks and transport is included in that cost. The cost of placing the child at school A is £91,728 per annum. The child may also continue to require respite care at weekends and during holidays. It is not anticipated that respite care will be required during residential periods at school A. The cost of weekend respite care and inclusion group involvement during school holidays will be the same whether the child attends school A or school C.

119. In relation to school C, the respondent's written submissions invite us to conclude that the cost of providing for the child's additional support needs at school C is £18,760. We had no evidence before us to conclude that was the figure concerned. The written submissions for the respondent refer to another child and we assume that figure has been inserted in error, as has the name of another child.

120. We did not accept the evidence of the respondent in relation to costs. The evidence provided was confusing and unclear.

121. Witness D provided the only evidence relating to the costs of a place at school C. His evidence was based on an email exchange lodged at R167 to R172 to which he referred in evidence. That email exchange indicated that the member of staff concerned thought that the last time the cost of a placement at school C was priced (and no evidence was provided as to when that was), it was £37,000 per capita full time. That information was updated in subsequent email at R170 which indicated that the costs for school C were charged at the same cost as another school within the respondent's responsibility. Details were provided in an email dated June 2023 of the costs for the 2023/2024 session at that school (not school C) of £35,750. Witness D was unable to clarify how that figure was calculated and whether it included transport. He confirmed in evidence that this is not a matter within his knowledge, and he was simply reporting the figures which had been provided to him from another department.

122. Witness D also provided information in relation to the cost of the inclusion group support which is likely to continue when the child attends school C. However, he was unable to confirm whether the costs would be increased as he was providing information on the basis of 2022 hourly rates. He was unsure whether inclusion support during the week would continue if the child attended school A and anticipated that support at weekends would continue to be required. He was unsure whether support would continue to be necessary during the school holidays. No plan for provision of this support has been finalised.

123. The evidence provided in relation to the costs of the child attending school C was entirely unsatisfactory and precluded us from establishing the facts in that regard.

124. We have concluded that we have not been provided with evidence which allows us to make an assessment of the respective suitability and respective costs of the provision for the additional support needs of the child in school A and in school C to enable us to establish whether it is or is not reasonable to place the child in school A. The respondent has accordingly failed to establish if this condition applies.

125. We relied on *M v Aberdeenshire Council* SLT (SHCT)126 to which we were referred by the appellant (paragraph 55):

‘The issue of costs can only be determined by evidence and the onus of establishing all of the four conditions lies with the defenders.’

3(1)(f)(iv) The authority have offered to place the child in the school referred to in paragraph two.

126. This condition applies as the authority have offered to place the child in school C.

Conclusion on the ground of refusal 3(1)(f)

127. The respondent has not satisfied us on the evidence provided that all four constituent conditions of the ground of refusal apply in this case. Accordingly, we are not satisfied that the ground for refusal of the placing request exists.

Appropriateness

128. Having concluded that the ground for refusal of the placing request has not been established by the respondent, upon whom the onus of proof falls, we do not need to consider the second stage of appropriateness in all of the circumstances.

129. Accordingly, we overturn the decision of the respondent to refuse the placing request and we require the respondent to place the child at school A with immediate effect or by such other date as the parties agree.