



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/24/0162

Witness List:

Witnesses for Appellant:

The appellant

Witnesses for Respondent:

Head Teacher school A (witness A)

Head Teacher school B (witness B)

Reference

1. This is a reference by the appellant following a refusal by the respondent to place the child at school A.

Decision

2. We confirm the decision of the respondent to refuse the placing request, in accordance with section 19 (4A) (a) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). We therefore do not require the respondent to place the child in school A.

Process

3. Following a case management call which took place in September 2024, a two day oral hearing proceeded remotely, by video, in February 2025. Parties lodged written statements from each of their witnesses. Parties also lodged a joint minute of agreed facts. The views of the child were obtained by Agency A, and lodged in the form of an advocacy report. All these materials were included in the 456 page electronic bundle of written evidence numbered T001-054, A001-186 and R001-216:
 - witness A, written statement [R193]
 - witness B, written statement [R175]
 - the appellant, written statement [A176]

- joint minute of agreed facts [T050]
- advocacy report on the views of the child [T030].

4. After the conclusion of the oral hearing, parties exchanged written submissions before lodging. Tribunal deliberations then took place in February 2025. Before reaching our decision, we considered the oral and written evidence and written submissions.

Findings in Fact

5. The appellant is the mother of the child.
6. The child is 9 years old.
7. The respondent is responsible for the child's education.
8. The child has a diagnosis of autism spectrum condition (ASC) with associated social, emotional and behavioural needs. He has been assessed for attention deficit hyperactivity disorder ('ADHD'), but this has not been concluded.
9. The child has difficulty with attention and focus.
10. He is able to communicate his needs and how he feels verbally, but he struggles with reciprocal conversation.
11. A referral was made to child and adolescent mental health services ('CAMHS') in February 2024, in respect of the child, and the outcome was that there was no role for CAMHS (A004).
12. Prior to attending at school B nursery, the child attended private nursery.
13. During the child's primary 4 year, the respondent considered the child's educational needs. His case was referred to the child's planning support forum, ('CPSF'). The CPSF is comprised of senior authority management (a quality improvement manager); head teachers / depute head teachers / principal teachers from the respondent's special schools; an educational psychologist; a speech and language therapist; the head teacher / principal teachers from the respondent's ASN outreach service; and the principal teacher from the autism outreach service. The decision of the CPSF made in December 2024, was that the child is appropriately supported by his current school. He benefits from his current curriculum and peer group and the supports in place are meeting his needs (R134). Witness A was a member of the panel of professionals in the CPSF, who considered the child's case.
14. The annual salary costs of a fulltime PSA employed by the respondent, (including salary, pension and national insurance contributions) is approximately £23,000.
15. The appellant made a formal placing request for school A's additional support needs ('ASN') provision to the respondent, which was refused in April 2024.

Findings on school B and the child

16. The child is currently enrolled at school B, a mainstream school.

17. He is currently in a mainstream primary 4 class, in which there are a total of 27 pupils, including the child.
18. The child has attended school B since primary 1. He also attended nursery there.
19. 434 pupils are enrolled at school B (including the early years provision).
20. 45 staff members are employed at school B. This figure includes teachers, pupil support assistants (PSAs) and support staff.
21. School B has 14 mainstream primary classes.
22. The child's attendance at school in primary 4, for terms 1 and 2 was 100%.
23. The child plays with his peers at school B.
24. The child has an individualised curriculum and timetable. He has an Individualised education plan ('IEP') dated September 2024 (R110).
25. He has a child's plan, dated June 2024 (R061).
26. The respondent's autism outreach service carried out observations of the child in school in: November 2021, January 2023, October 2023, November 2023 and February 2024. The latest report from the respondent's autism outreach service was prepared in February 2024 (R038).
27. The respondent's educational psychology service carried out observations of the child in school in May 2021; September 2021; March 2022; September 2022 and March 2024.
28. An educational psychology consultation meeting took place in March 2024. Attendees included the child's class teacher, the educational psychologist, witness B, the child's PSA, and the appellant. A further consultation between the educational psychologist and the child's class teacher took place in April 2024. An agreed action plan was reached. (A016).
29. A speech and language therapy ('SaLT') assessment, in September 2021, made recommendations for communication, transitions and distressed therapy for the child (A023).
30. SaLT continues to support the child. The service has provided emotion tools to support him to articulate his emotions. SaLT provided updated advice in a report dated September 2024 (R155).
31. Recommendations have been made by the respondent's autism outreach service, speech and language therapy and educational psychology (R187). They are kept under regular review as part of planning to meet the child's additional support needs. The recommendations are shared with those working with the child, including his class teacher, and incorporated into his IEP (R187).

32. The child is working within the early / middle part of first level of curriculum for excellence for all areas: expressive arts; health and wellbeing; literacy ; modern languages; numeracy; religious and moral education; sciences; social studies and technologies.
33. The child is provided with one to one adult support at all times. The child has 1:1 PSA support available for his full school day, 5 days a week, in class and socially.
34. Various health and safety incident and reporting forms concerning injury, or near misses, caused to staff and / or pupils by the child were completed by school B between August 2023 and February 2024.
35. No incident / near miss reports have been submitted by staff at school B relating to incidents involving the child in term 4 of primary 3, or since commencement of primary 4.
36. The child was excluded from school B following the series of incidents that occurred on, and prior to February 2024. The exclusion was initially for a period of 5 days but this was reduced to a period of 3 days. The exclusion was removed from the child's record following an uncontested appeal.
37. The total number of PSA hours at school B is 294.5 hours per week, across the whole school.
38. School B has all the necessary equipment and teaching aids to meet the educational requirements of the child. The child has access to a quiet room at school B. The quiet space is used by the child to support transitions, such as from the class to the playground. School B has access to support and advice from the following services; speech and language therapy, autism outreach, occupational therapy (A026), and educational psychology. Staff from these services are very responsive to the needs of children in the school, and attend when required.
39. School B provides an educationally appropriate and secure environment for the needs of the child.
40. School B continues to be willing to provide a place for the child.

Findings on school A and the child

41. School A has a specialist citywide ASN provision for primary school aged pupils with additional support needs.
42. The ASN provision at school A is situated within the mainstream school.
43. The ASN provision at school A is a special school for children with ASN.
44. Each ASN class within school A has a class teacher supported by a class team of four, usually PSAs or early year practitioners.
45. The ASN provision at school A caters for pupils who have a range of ASNs arising, from moderate to profound learning difficulties.

46. Approximately 90% of the pupils within school A ASN provision have ASC. Approximately 60% of pupils have ADHD. Approximately 50% of pupils have a dual diagnosis of ASC and ADHD.
47. The total number of children within the ASN provision at school A is 78. The total number of children at school A (including nursery, mainstream and the ASN provision) is 637.
48. Within the ASN provision at school A, the classes comprise of children who have similar abilities and so are not strictly year grouped. The children are given opportunities to access mainstream classes where appropriate.
49. There are 8 ASN classes at school A. All but one classroom has 10 children accommodated in it. There is one classroom which can only accommodate 8 children due to physical space within the classroom.
50. The rooms within the ASN provision at school A were purpose built / designed for ASN classes.
51. The classrooms within school A's ASN Wing are all 66m² with the exception of one room which is 40m² (R195). Many classrooms have equipment such as hoists or slings (R207). There will generally be a 1:2 adult to pupil ratio, with 5 adults in a classroom with 10 pupils.
52. The conversion of Room 23 at school A to an ASN classroom, in 2020, cost £24,261.86.
53. ASN teachers have a significant level of expertise. (R198)
54. School A's ASN provision is at full capacity in terms of pupil numbers and physical space.

The child's views (Advocacy Report T030)

55. We instructed that an independent advocacy report be lodged and this was referred on a 'non-instructed' basis because of the child's communication difficulties. The agency was advised to take the opportunity to engage more directly with the child, if possible.
56. A semi-directed report was provided as the advocate was able to engage with the child and gain some information from him directly.
57. The advocate consulted with the appellant and school staff in school B and observed him in three different settings; a classroom setting, a playground setting and at home.
58. The advocate used responses and observations, to build a picture of the child's likes and dislikes, what life is like for the child and what his future wishes might be. As is commonly the case in non-instructed advocacy the report is measured against the wellbeing indicators (commonly abbreviated to SHANARRI).
59. The report is not determinative but it does provide us with an independent perspective on the child. In this regard, we find it informative and helpful.
60. From the report, we are able to identify that when the advocate observed the child in his classroom setting that he was smiling and talking to his PSA. He reached out for her

hand three times. He followed instructions, putting a pen in the wallet when directed to do so. (T033) He made eye contact with his class teacher. We can see that the child likes drawing. He likes dinosaurs and enjoys swimming. During the playground observation the child showed an interest when the PSA was speaking to other children.

61. He needs stability, consistent relationships and a structured environment which is tailored to his needs. His self management skills are progressing.

Reasons for the Decision

62. Parties are agreed that the child has ASN in terms of section 1 of the 2004 Act. Having considered the evidence we are satisfied that this is the case.

63. The onus of proof lies with the respondent.

64. The assessment point is at the time of the hearing.

65. On the evidence a few points are worth noting, witness A's evidence should be given significant weight. He knows the pupils in attendance in the ASN classes at school A. He is in the classrooms on a daily basis (R194). He made reasonable concessions where appropriate whilst maintaining the consistent position that the ASN provision at school A is not suited to the child's ability and aptitude. Witness A has met the child, observed the child in school B, and considered the documentary evidence, lodged with the tribunal, which includes detail of the child's experience in primary 1 to 3. He has also been involved in discussions about the child at the CPSF. His evidence was that to place the child within the ASN provision at school A would be to do him a 'huge injustice'. Witness B was open and transparent about the difficulties the child faced in primary 1 to 3 at school B. However, she did not depart from the evidence in her statement, that the education at school B is suitable for the child and can meet his needs today. She gave us good evidence of the child's integration in his classroom and how it had improved over the years. Whilst we absolutely accept that the appellant wants what is best for the child, her evidence was largely focused on the child's earlier experiences in primary 1 to 3 as opposed to the present. The appellant would also not accept the concerns regarding the lack of an appropriate peer group for the child at school A's ASN provision, nor that he may be isolated. We were concerned that the appellant felt that the child could not learn at all from his peers, and should rely exclusively on adults to develop independence skills. The appellant's knowledge of the provision at school A is also limited compared to witness A. The evidence of witness A regarding the suitability of the provision at school A for the child's ability and aptitude is accordingly preferred to that of the appellant. The appellant herself conceded that the child had made progress in primary 4 in school B. The appellant gave evidence that during visits to school A's ASN provision, the deputy head teacher, confirmed to her that the child's needs could be supported there. However the deputy head teacher did not give evidence to us and there is no indication that she observed or met the child or reviewed any of his education documents and plans. Witness A considered the child in an appropriate way to other pupils using a correct frame of reference in a way that the appellant could not do in a walk around the ASN provision at school A.

The Grounds of Refusal

66. The respondent's refusal of the placing request is based on five separate grounds. The five grounds of refusal under sub-paragraph (1) of paragraph 2 of schedule 2 the 2004 Act which the respondent seeks to rely upon are that placing the child in the ASN provision at school A would:

- i. make it necessary for the respondent to take an additional teacher into employment (paragraph 3(1) (a) (i));
- ii. give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school (paragraph 3(1)(a)(ii));
- iii. be likely to be seriously detrimental to the educational well-being of pupils attending the school (paragraph 3(1) (a) (iv))
- iv. breach the requirement in section 15(1) of the Standards in Scotland's Schools etc. Act 2000 (paragraph 3(1) (g)); and that
- v. the education normally provided at school A, ASN provision is not suited to the ability or aptitude of the child (paragraph 3(1) (b)).

67. Even if the ground of refusal exists then we still have to consider whether in all the circumstances it is appropriate to confirm the decision (section 19 (4A) (a) (ii) of the 2004 Act).

The first ground of refusal; make it necessary for the respondent to take an additional teacher into employment (paragraph 3 (1) (a) (i)

68. Appendix 2.9 of the Scottish negotiating committee for teachers ('SNCT') handbook (R014) sets out different class size maxima for special schools and units, which differ depending on the additional support needs of the pupils within the class.

69. The SNCT is a tripartite body comprising members from teaching organisations, local authorities, and the Scottish Government. The SNCT Handbook sets out conditions of service for teachers employed by Scottish local authorities.

70. For children with moderate learning difficulties, the maximum class size is 10. For profound learning difficulties the number is 10, where teachers are complemented by support staff, and councils are recommended to apply an adult/pupil ratio of 1:2.5.

71. The caps for class sizes are agreed at a national level, and are fixed for special schools in accordance with the requirements of the cohort of pupils in the specified school. Breaching the class size cap at school A's ASN provision would breach the respondent's legal obligations by breaching the terms and conditions of its employee teachers. In real terms, the class size caps in place are effectively mandatory for the respondent.

72. The 10-pupil threshold has never been breached within school A's ASN provision, (R198). We accept legislation does not prescribe class sizes for additional support needs classes. However, there is still a requirement on the part of the respondent, to employ an additional teacher if the class size maxima within the SNCT handbook is exceeded - otherwise the respondent would be in breach of contract. The class size caps are incorporated into teachers' contracts.

73. We also accept that class sizes for pupils with additional support needs are capped for good reason. If the child were to be placed into one of the existing classes of 10, the respondent would be breaching its contractual obligations, unless an additional teacher

is employed. It is not possible to move a teacher employed by the respondent from another school under its management because there are no teachers who are suitably qualified who can be moved. ASN teachers have a significant level of expertise. (R198) An ASN teacher uses the pre-early level curriculum, and developmental milestones. This is not something that mainstream teachers generally have knowledge or experience of. ASN teachers need to have expertise in a large number of areas including visual communication tools. They need a firm understanding of sensory needs and the challenges for learners with sensory difficulties. In his evidence, witness A explained that a mainstream teacher cannot move to an ASN setting without significant support/training/experience. Allocation of teaching staff is determined by senior management. An email from the quality improvement manager for the respondent to witness A, dated December 2024 confirms there are no excess teachers within the respondent's employment who could be relocated to school A.

74. Even if there were a teacher available, there is no physical space where they could teach the child.
75. There are practical difficulties with filling vacant teacher posts (R200). It is not possible to use a supply teacher to educate the child, as their work is temporary in nature and there is no means by which the respondent can compel supply staff to accept teaching contracts for short or long duration.
76. We accept that the use of supply staff is not a sustainable option to educate the child at school A's ASN provision. Nor is it suitable. The child requires trusting relationships with those who teach and support him. This cannot be achieved with the inherent uncertainty with engaging supply teachers.
77. Regulation 8 of the Schools General (Scotland) Regulations 1975 provides that it is for the respondent to determine the maximum number of pupils who may be accommodated in every room or area used for instruction, which includes the ASN classrooms. The ASN provision rooms were purpose built / designed for ASN classes of 10 (R195).
78. Even if there was physical space to teach the child in one of the ASN classrooms, an additional teacher would still need to be employed; otherwise the respondent would be in breach of the class size maxima in the SNCT.
79. In her submissions the appellant refers to the SNCT terms as "an advisory policy document." We accept that the SNCT handbook is a collective agreement, contractually binding on the respondent and incorporated into teachers' contracts.
80. The appellant's in her submissions also refers to the case *J –v- Dumfries and Galloway Council – 2015 WL 6757800*. However, this case does not assist us in the present case. The Sheriff in that case was considering The Education (Lower Primary Class Sizes) (Scotland) Regulations 1999 and their implications on a mainstream placing request. The 1999 regulations apply to lower primary class sizes. Regulation 2 of the 1999 Regulations states "lower primary class" means a class containing pupils in the first, second or third yearly stage of primary education. The child is in primary 4. The 1999 regulations are not relevant.
81. There is a causative link between the placing of the child in school A's ASN provision and the employment of a new teacher - to place the child within School A's ASN provision

would require an additional teacher to be employed. This ground of refusal is established.

The second ground of refusal: give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school (paragraph 3(1)(a)(ii))

82. The respondent's position is that school A's ASN provision is at full capacity in terms of pupil numbers and physical space. Four areas within the school have already been converted to additional classrooms since the building was originally designed and built in 2010.

83. The original school design capacity for the ASN provision at school A was for 70 pupils (R163).

84. There would be a significant cost in converting space into a classroom, were one available, to make it suitable for an ASN class. This would include providing an additional height adjustable interactive whiteboard, provision of plumbing and height adjustable sinks, additional network points for ICT, additional computers, specialist furniture depending on the individual needs of the pupils located there, fridges and microwaves, double safety handles on doors and consideration of adapted toilet facilities being available. It is agreed between parties that the conversion of one room at school A to an ASN classroom in 2020 cost £24,261.86.

85. This figure would need to be uplifted by 19.64% to reflect today's costs due to inflation (R203).

86. In any event, this is hypothetical – as explained in the evidence of witness A, there is no space which could be converted to an ASN classroom at school A (R203). The costs of a modular classroom (portacabin) were explored by the respondent along with the practical difficulties the respondent would need to overcome before installing. A portacabin would cost approximately £1 million over 5 years at school A. This is based on similar costs for a portacabin at a secondary school within the local authority (R147).

87. Internal approval would be needed such as committee approval for the expenditure. There would also be planning consents required, which would add to the cost. Another matter is that the respondent does not own the land upon which school A is built.

88. The appellant submitted that the class room size in school A was more than suitable to accommodate a further pupil, namely the child, and, if necessary, an additional member of staff. Furthermore, she relied on the fact that witness A confirmed in cross examination that the reality of one pupil being added would not impact the wider school in terms of shared facilities such as the canteen, gym hall, and music room. The fact of the matter is however that the individual classes are all at maximum capacity in terms of pupil numbers and physical space.

89. We accept in the circumstances that the ground of refusal in paragraph 3(1) (a) (ii) therefore exists.

The third ground of refusal; be likely to be seriously detrimental to the educational well-being of pupils attending the school (paragraph 3(1) (a) (iv))

90. We accept that increasing a class of 10 pupils to a class of 11 pupils would exceed the teaching ratio agreement and would represent an increase in the workload of the teacher and support staff responsible for that class. Such an increase could be detrimental to the teaching and support provided to all pupils in the class, including the child, particularly given the high level of needs of the pupils.
91. Placing the child into one of the existing classrooms, would result in increased dysregulation from pupils (from overcrowding) and in turn lead to a significant impact on the quality of teaching and learning experiences that can be provided (R205).
92. Such detriment to the educational wellbeing of pupils in attendance is difficult to quantify. There is no reference to a risk assessment being carried out for the child to attend school A's ASN Wing. Furthermore, there is no indication that an assessment has been carried out as to the impact on the wellbeing of the pupils in the class he would attend should he be placed there. We do not accept on the evidence presented to us that there is evidence that serious detriment has been established. The test is whether there would be serious detriment to the educational wellbeing of pupils attending the school – not the staff. We find the argument is overstretched that impact on staff wellbeing (caused by impact on workload should an additional teacher not be employed) may have a consequential impact on the educational wellbeing of pupils.
93. There was evidence about the impact on staff wellbeing and the possible ramifications, such as increased absence rates of staff, stress management issues, and loss of staff from school (R206). Having an additional student would have an effect on the ratio of adult to pupils. However, no persuasive evidence has been led by the respondent that a change in the ratio would lead to detriment, let alone be significant enough to constitute serious detriment to those in the current cohort.
94. We do not find this ground of refusal is established.
- The fourth ground of refusal breach the requirement in section 15(1) of the Standards in Scotland's Schools etc. Act 2000 (paragraph 3(1) (g));*
95. This ground of refusal applies if placing the child in the ASN provision at school A would breach the presumption of mainstream education in section 15(1) of the Standards in Scotland's Schools etc. Act 2000 ("the 2000 Act").
96. It is agreed that school B is a mainstream school. The presumption of mainstream education applies unless one of the exceptions in s15 (3) of the 2000 Act exist; which it is assumed will arise only exceptionally. The effect of section 15 is to create a fairly strong presumption in favour of educating a child in a school other than a special school (*Midlothian Council v PD [2021] UT 17*).
97. The exceptions are: (a) that to provide education for the child in a school other than a special school would not be suited to the child's ability or aptitude; (b) that to provide education for the child in a school other than a special school would be incompatible with the provision of efficient education for the children with whom the child would be educated; and (c) that to provide education for the child in a school other than a special school would result in unreasonable public expenditure being incurred which would not ordinarily be incurred .

98. If any of the three exceptions in section 15(3) of the 2000 Act apply, the presumption of mainstream education does not apply, and the related ground of refusal does not exist. Therefore, we must be satisfied that none of the exceptions apply to conclude that the ground of refusal exists. In other words, the respondent must provide school education to the child in a mainstream school (“a school other than a special school”) unless one of the three circumstances set out in section 15(3) of the 2000 Act arises.
99. In respect of the first exception (a) that to provide education for the child in a school other than a special school would not be suited to the child’s ability or aptitude we are satisfied that: the child has a differentiated curriculum to meet his learning needs. He has a robust IEP (R110) which is regularly reviewed and a child’s plan (R061). He is achieving well within his work. PSAs are providing the necessary support to help him sustain engagement in work (R215). The child’s class teacher and PSAs know him and understand his needs very well. They are attuned to changes in his body language and facial expressions. He knows the school environment very well and is able to express his needs to staff (R189). It is the appellant’s position that the child has lost trust and confidence in the school, teachers and PSAs (A183). In cross examination, the appellant maintained this position based on recent comments made by the child, where he has called staff names. The appellant’s position is contrary to that of witness A, witness B, and the advocacy report (T038). We do not accept that the child has lost confidence in those supporting him.
100. The decision of the CPSF was that the child is appropriately supported by his current school. He benefits from his current curriculum and peer group and the supports in place are meeting his needs (R134). He accesses a broad curriculum within the first stage of the curriculum for excellence with individual support from a PSA, and learning is differentiated and individualised when needed; he is included in class teaching and learning with his peers; he talked about his friends within the class; he benefits from time in his quiet room when needed, but also benefits from the social interactions, positive role models and collaborative learning opportunities that he gains from his age appropriate peer group in the current setting . He benefits from a supportive, flexible and individualised approach to help him progress with his learning; the class teacher and PSA have positive and supportive relationships with him, and have a good understanding of his needs; appropriate planning and delivery of interventions and supports are in place, taking environment, routines, motivation and skills into consideration; advice from the autism outreach service has been sought when needed.
101. There are children working at the same developmental level as the child in school B and within his class (R182). The child has a low / moderate learning difficulty that can be fully supported within a mainstream setting (R210). The child’s timetable is based on his primary 4 class timetable with differences related to transitions where he can access the quiet room. He currently works alongside his class with support. Witness B’s evidence is that it is anticipated the level of PSA support will lessen overtime and that this will be in discussion with the appellant and the child. We find that the education in school B is suitable for the child’s ability and aptitude.
102. In respect of the second exception; (b) that to provide education for the child in a school other than a special school would be incompatible with the provision of efficient education for the children with whom the child would be educated; the child is currently in his mainstream class, working alongside his peers, for the majority of the school day.

He works in small groups alongside his peers (2 to 3 pupils) where appropriate (R183). His attendance at school for terms 1 and 2 of primary 4 was 100% (T051). He takes part in whole class activities such as swimming, assembly, school shows and recently attended a school disco (R184). Swimming and “going on trips” are what he likes about school (T034).

103. The child’s peers at school B understand his needs and are able to include him in learning sessions in class and outdoors (R190). By the appellant’s own admission, since the start of primary 4, the child has been working well in the classroom (A185). There have been some recent incidents in January 2025, whereby the child has been dysregulated in class; however the incidents were not such that any health & safety incident reporting was required. The child is not considered to be a risk to himself, and others, in school. Some stimming has been observed in class, but that is not perceived as distracting to the child’s classmates.

104. We find that educating the child in school B is not incompatible with the provision of efficient education to children the child is educated alongside at school B.

105. In respect of the third exception (c) that to provide education for the child in a school other than a special school would result in unreasonable public expenditure being incurred which would not ordinarily be incurred . The child has 1:1 PSA support available for his full school day, 5 days a week, in class and socially (T052). This level of PSA support is not out of the ordinary. Nor is it exceptional. There are other pupils in the child’s class that require similar levels of support as he does, to access the curriculum, and some require more support. There is one other child in his class who, like him, requires a high level of PSA support to access their learning. The child’s PSA support is funded from the school’s existing budget i.e. from the core allocation of PSA hours allocated to the school (R185). If the child were to leave school B for any reason, the PSAs who currently support him would be redeployed to support other pupils in the school (R186).

106. We are not satisfied that there is any unreasonable public expenditure being incurred which would not ordinarily be incurred by providing education for the child in the current school.

107. We find that the ground of refusal in paragraph 3(1) (g) exists - placing the child in school A’s ASN provision, a special school, would breach the requirement in section 15(1) of the 2000 Act.

The fifth ground of refusal; the education normally provided at school A, ASN provision is not suited to the age, ability or aptitude of the child (paragraph 3(1) (b)).

108. We require to consider the suitability of the education provided at school A’s ASN provision specifically for the child, and whether it is suited to his age, ability or aptitude. Lack of suitability on any one of age, ability or aptitude, or more than one of those, is sufficient to conclude that the ground exists. (paragraph 86 of FTS/HEC/AR/22/0107). It is not disputed by the respondent, that the education at school A’s ASN provision is suitable for the child’s age.

109. Reference is made to the recent Upper Tribunal decision, *JH and Scottish Borders Council 2024 UT 50*. This reference can be distinguished factually. In the JH case the education authority did not lead any direct evidence from teachers at the specified school as to the normal education provided to pupils at that school and the broad span of abilities of pupils within that school. The respondent in the present case has led evidence from witness A, who has an in depth understanding of the normal education provided to pupils within school A's ASN provision, and the broad span of abilities of those pupils. He is in the ASN provision at school A, numerous times a day. He is involved in discussions with the principal teacher and depute headteacher around exploring and considering strategies for pupils in the ASN provision.
110. The JH decision also explains how the test in paragraph 3(1) (b) should be interpreted. We require to consider whether the education normally provided at school A is, or is not, suited to the child's ability or aptitude. An analysis of the pupil profile of existing children within the ASN provision at school A is a helpful guide as to what education is normally provided by the school. We have taken this into account in assessing matters such as whether the child is likely to be able to interact socially with those existing pupils. But, the assessment of a placing request, should not be reduced to a simple comparison of the child's profile, with a profile of existing pupils at the school in question.
111. There is a risk that an individual child whose profile differs to some extent from the current cohort may be excluded even though the school has the expertise to provide suitable education for that child and the child would benefit from being placed at that school. It is important to focus on the statutory test of whether the educational facility is, or is not, suited to the particular child's age, ability or aptitude.
112. Where a comparison of pupil profiles forms part of the assessment undertaken by the respondent, it is crucial to ask the following up question of what, if anything, that comparison tells the respondent about whether the school is suitable for the child in question. If the respondent is refusing the placing request, it should be able to explain in what respects it considers the child would not benefit, or may suffer actual detriment, from being educated in the school under consideration.
113. The respondent in refusing a placing request on the basis that the child's profile differs in material respects from the general profile of pupils attending that school, needs to articulate in what respect it considers those differences would adversely affect the child's education if placed at the school.
114. It is agreed between parties that the child is working within the early / middle part of first level of curriculum for excellence for all areas, (T051). In comparison, the vast majority of pupils within the ASN provision are working within the pre-early and foundation milestones level (R199). Furthermore, the CPSF also acknowledged that the first stage of curriculum for excellence is beyond the curricular stage currently offered to P4 pupils within the respondent's specialist provisions, including at school A (R134). The most appropriate classroom for the child within the ASN provision at school A would be a particular classroom (**the relevant classroom**). In literacy, eight pupils in that room are working at pre-early level curriculum for excellence. Two are working within early level curriculum for excellence. In numeracy, seven pupils are working within pre-early level curriculum for excellence. Three are working within early level curriculum for excellence. The child is working at a notably higher level than age equivalent pupils at

school A's ASN provision (R212). The evidence establishes that the education normally provided at school A's ASN provision is not suited to the child's academic ability.

115. The child is included in class teaching alongside his peers at school B. He is with his whole class for activities such as music, PE, assembly, french. IT, library, swimming, social playtime, eating in the dining room, and playing at lunchtime (R184). This is illustrative of the child's ability to engage in whole class activities. Although pupils at school A's ASN provision are grouped into classes, they are very much individual learners or a group of 10 individual learners sharing a classroom space (R211). The pupils within classes at school A's ASN provision do not have the ability to engage in whole class activities. There is no class that would provide the child with a peer group, and he would be socially isolated. Almost all pupils avoid eye contact. They are unable to play simple interactive games. They are unable to engage in imaginary play. Almost all pupils in the relevant classroom are unaware of others around them (R212). They do not have the ability to have meaningful interactions with peers.
116. The child would not be provided with the same opportunities to allow for development of independence skills in the ASN class at school A, that he currently experiences in school B (R213). The pupils within the ASN provision are limited in terms of their independence (R211). The advocacy report notes that one of the things the child likes about school is having friends (T034). The child has a friendship group within his class who play with him at break and lunch, observed by a PSA who can support him with interactions if needed. He has a group of children who will join him in games who he regards as an important group (R184).
117. The child needs support in terms of play and communication with peers. Support and strategies are in place; the child's IEP has a target to "Build social skills and confidence to engage independently and with support in play and communication with peers in class and in playground" (R110). The child does not always want to interact with others (R183). However, he has the ability to interact with others and the opportunities exist at school B. The same cannot be said about opportunities for social interaction within the ASN classes at school A. The child benefits from significant exposure to peers for repeat modelling / engagement / interaction which he has at school B.
118. With reference to the ASN provision, the pupils there have very limited social interaction and awareness of each other. Almost all children within the ASN provision at school A, present at a stage of solitary play and learning. An ability to understand and gain from anybody else is not there.
119. The child is at the early stages of cooperative play, and is showing the ability to develop those skills (R214). The evidence establishes that the child would not have an appropriate peer group at school A's ASN provision. This may adversely affect his wellbeing. The experience and opportunity in school to make friends is vital to provide the child with the opportunity to be independent in the long term and part of society (R214). Furthermore, the lack of an appropriate peer group would impact the child's development of problem-solving skills and independence from the experience of cooperative play and learning (R215). This would adversely affect his education.
120. The appellant explained in evidence that her wish is for the child to understand the world around him, to have everyday life skills and to be independent in adulthood. The child would lose the daily and ongoing social and emotional coaching and mentoring

from peers in his mainstream setting if placed in a special school. The child has every chance of experiencing independence in adulthood but not if his most valuable learning opportunity of a suitable peer group is removed.

121. The child is showing signs of being able to self regulate in primary 4 (R212). He is being provided with ongoing social and emotional regulation cues from his peers that he is beginning to understand and use himself (R215). On the contrary, almost all pupils within the ASN provision at school A require adult interventions and supports to regulate when they become overwhelmed. Self regulation skills are limited.
122. The child manages transitions between activities well (R173). He struggles in an environment where there are other unsettled children (R191). Almost all of the pupils in the relevant classroom get distressed with minor changes. Transitions to and from class can be very challenging and can take extended periods of time. Pupils frequently flap their hands, rock their bodies and need to spin to self regulate. Unlike the child, the pupils in the relevant classroom are unaware of others around them. They show little or no emotion if someone else is hurt or upset (R212). In contrast, the child will ask why others are upset, and notices when they are (T037).
123. Almost all pupils in the ASN provision in school A have significant sensory difficulties which can result in sudden and intense dysregulation. For most of the pupils this is not distressing, as they are not aware of others around them. The child would find this distressing. He would find the learning environment challenging. The sometimes distressed behaviour of other pupils in the specialist provision may lead to the child feeling insecure (R190). This might adversely affect his wellbeing, which in turn would adversely affect his education.
124. The needs of the pupils in attendance there are more significant / complex in terms of communication and language, developmental delays, and personal care needs. The evidence is that the child's profile differs in material respects from the pupils in attendance at the ASN provision at school A. The child's education would be adversely affected if placed at school A's ASN provision. Therefore the ground of refusal in paragraph 3(1) (b) exists i.e. the education normally provided within the ASN provision at school A is not suited to the child's ability and aptitude.

Appropriateness in all of the circumstances- section 19 (4A) (a) (ii) of the 2004 Act

125. Having considered that a ground of refusal exists, we require to consider whether, nonetheless, it is appropriate in all of the circumstances to confirm the decision to refuse the placing request or whether we should overturn the decision and require the respondent to place the child in school A.
126. We have considered the evidence as a whole, including all the relevant circumstances discussed above. We are satisfied that the refusal of the placing test should be confirmed. The respondent has behaved reasonably in assessing the child's educational needs and determining that those needs could be met at school B. Experienced professionals have been involved in the assessment process. The forum group, CPSF, reviewed the child's placement and came to the same view. It is clear to us that the child does benefit, and would continue to benefit from attending school B. The child's educational needs would be met at school B. The child would be able to utilise social skills to develop appropriate relationships with peers at school B.

127. In contrast school A would not be as appropriate an educational setting for the child. School A would not provide the child with an appropriate peer group within which to utilise social skills to develop appropriate relationships with peers.
128. The respondent has listened to the concerns expressed by the appellant. All reasonable measures have been put in place to alleviate those concerns. In the circumstances, the respondent could not reasonably have done any more.
129. Having considered all of the evidence in the context of the much wider test of appropriateness, we have decided that it would not be appropriate to place the child in a school where the education provision and level of support is not as suited to the child as it would be in school B.

Paragraphs 21, 49, 60, 84,114,115 and 122 in this decision have been edited 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.