



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/24/0196

List of witnesses

For the appellant:

Head of Service school A (witness A)

Child's sister (witness B)

For the respondent

Head Teacher School B (witness C)

Educational Psychologist employed by respondent (witness D)

Reference

1. This is a reference in relation to a placing request made in April 2024 under Section 18(3)(d)(a)(ii) of The Education (Additional Support for Learning) (Scotland) Act 2004 (The 2004 Act).
2. The appellant made the placing request for the child to attend school A, an independent school. The respondent relied upon the ground in Section 3(1)(f) of Schedule 2 of the 2004 Act in refusing the placing request.
3. The appellant was advised by letter of June 2024 that the placing request had been refused.

Decision

4. We overturn the decision and require the respondent to place the child at school A forthwith.

Process

5. This reference was made in July 2024. A case management call (CMC) took place in October 2024 when an in person hearing was fixed for January 2025. On the second day, a further day and a half were fixed for February.
6. We considered the written evidence numbered T001-075, A001:0175 and R001:0113 in the case file. Written statements of the appellant and witnesses as well a joint minute of agreed facts (JM) were lodged. The witnesses and appellant gave oral evidence (witness A remotely, the others in person) to supplement their written statements. Submissions were lodged before the hearing started. These were updated before the hearing reconvened in February. At the conclusion of the evidence in February final submissions were made. We then adjourned to consider the matter.
7. Two objections arose during the evidence. The appellant objected to the respondent leading evidence to the effect that child is not socially isolated. This was an agreed fact in terms para. 12 of the JM. The respondent noted that the reference in the JM for that fact was to T029-T030 which is a letter from school A. What was admitted was that school A were of the view that the child was socially isolated. We upheld the objection. The reference to the 'T' page numbers was to no more than assist in understanding on what basis that fact had been admitted. It did not qualify the admitted fact. As the respondent had agreed that one of the child difficulties was social isolation, it was unfair to seek to introduce evidence to suggest that he was not socially isolated. What was important, and what we heard evidence on was the degree to which the child was socially isolated.
8. During the evidence of witness A the respondent objected to evidence as to the provisions that would be made at school A for the child moving on from secondary school. This was on the basis that during the CMC it was noted witnesses speaking to matters of the child's transition into secondary school, would not assist the tribunal in determining this reference. We heard the evidence under reservation. We repel

the objection. The evidence was not about a transition from primary to secondary school but related to the steps that would be taken towards transition out of school, a process, planning for which would, in essence, begin as soon as the child started at school A. This was evidence relating to suitability. The provisions that would be in place for the child on entrance to school A are important considerations in assessing the reasonableness of the placement having regard to respective suitability and respective cost.

Findings in Fact

Child's personal circumstances

9. The child is 12 years of age. He is a P7 pupil at school B a mainstream primary school managed by the respondent.

10. The child has Autism Spectrum Disorder (ASD), dyslexia and associated learning difficulties. He has been referred to child and adolescent mental health services CAMHS. In November 2024 he was diagnosed as having attention deficit hyperactivity disorder (ADHD) and is on the waiting list for a review by psychiatry and for functional assessment to be undertaken. He was referred to speech and language therapy (SALT).

11. The child has an assigned Social Worker, Educational Psychologist and has accessed SALT via CAMHS as part of the assessment for ADHD.

12. The child is very sensitive to noise, light, and movement and he struggles to cope in busy environments. He moves between having no awareness of danger and being overly aware of risk and perceived threats.

13. The child exhibits significant levels of anxiety around every aspect of daily life and in particular in relation to his schooling. Much of this arises from the stress he is encountering in school. At school, the child is exhibiting these reactions less frequently than he does at home. The child is acutely aware of his behavior at school and masks same. He wishes to blend in.

14. Away from school the child is very demanding of adult attention, talks constantly, tangential in conversation, has a low boredom threshold, speaks over people, is inattentive to others, often distracted and raises topics of his own interest. The child does not display these behaviour to the same extent when at school.

15. The child attends clubs out with school that are all for children with additional support needs (ASN)

Primary Education

16. The child's entrance to P1 was deferred for a year. He then attended school C a special school managed by the respondent, on a full-time basis in P1. A split placement was agreed from the end of P2, when the child attended school B (a mainstream school managed by the respondent) alongside school C.

17. During the child's P5 and P6, school C admitted an increasing number of pupils with diverse support needs and behavioural challenges. From P5 and with increasing frequency, the child witnessed incidences of pupils exhibiting distressed and dysregulated behaviour. The child found this upsetting, disruptive and frightening.

18. Due to witnessing these incidences the child began to fear for his safety and developed anxiety and hyper-vigilance which has impacted on his education, daily activities and adversely affected his mental health. He began removing himself from class as a consequence.

19. As a consequence, in March 2024, the Appellant removed the child from school C, where he had been attending two days a week. At her expense she employed a private tutor for those two mornings and the child attended school B from 11am on those days.

20. The child's main difficulties centre on mental health and emotional wellbeing, academic learning environment and progress, social isolation and peer relationships.

21. The child continues to be affected by his experiences at school C. When stressed or anxious the child's thoughts turn to themes of violence which he openly discusses.

22. The child requires one-to-one support and has received this throughout most of his primary education. He continues to require a highly differentiated curriculum with ASD specific strategies and a quiet environment in which to learn.

23. To support his learning he needs a small class and access to a quiet space with minimal auditory or visual stimulation.

Placing Request and Refusal

24. School A is an independent special school. By letter dated April 2024 the child was offered a place to attend there from August 2024. The offer of a place remains open.

25. In April 2024, the appellant wrote to the respondent requesting that the child be placed at school A.

26. In June 2024, the respondent wrote to the appellant refusing the placing request, citing paragraph 3(1)(f) of Schedule 2 of the 2004 Act and stating that as all the conditions were met the duty to grant the placing request does not apply.

Ability to meet ASN at each school

School A

27. School A provides primary and secondary education to boys with autism spectrum condition, social emotional and mental health diagnoses, ADHD and other conditions which make it difficult for them to cope in a mainstream educational environment.

28. School A offered a residential place to the child, having determined his needs can be appropriately met there following visits, discussions and consideration of reports, noting his particular needs with social interaction and peer relationships, the academic learning environment, his academic progress, and his mental health and emotional wellbeing.

29. School A offers small class sizes and a quiet, tailored sensory environment, calm social environment, extended curriculum and specialised support to develop social connections out with school.

30. The most recent Education Scotland report (dated December 2019) for school A rated learning, teaching and assessment as 'good', and raising attainment and achievement as 'very good'. School A holds a current Autism Accreditation by the National Autistic Society(NAS)
31. The child would be placed in a class with 5 other boys.
32. School A has a clear focus on learning and development beyond as well as in the classroom. An occupational therapist, educational psychologist, speech and language therapist, and psychotherapist are all on site to provide advice to children's key teams on approaches and supports and to undertake direct work if required.
33. School A provides a quiet and calm environment. Sensory assessment is undertaken by school A's occupational therapist and a child's key team to ensure support from admission onwards.
34. School A provides a range of clubs and activities at break, lunch and after school that would be of interest to the child. These will provide the child opportunity to socialise and develop relationships with peers.
35. The small class size offered at school A and quiet spaces together with the teaching delivered by highly qualified and experienced staff with knowledge of autism will be of considerable benefit to the child in meeting his ASN.

School B

36. The child is enrolled at P7 at school B. He is in a class of 33. His classroom has large windows to the outside and to the atrium on the inside. He is overstimulated in the busy environment of his classroom and struggles to concentrate. The child has an individualised timetable with 1:1 support. He spends significant parts of his school day out with the P7 classroom as a result of his difficulties. The child has regular time out of the classroom scheduled in timetable. He is able to and does access a breakout space, an the area out of the classroom as necessary. The breakout space is an open space and is used by others.

37. Staff at school B are committed to the child's wellbeing and progress. They employ strategies such as chunking of instructions, 1:1 adult support to stay on task, individualised teaching of literacy and numeracy. He has a structured routine with a visual timetable, including planned time out of the classroom to work on specific tasks. He has made limited curricular and social progress. In class he has been observed to be repeatedly inattentive to the initiations of others, to have a low tolerance for frustration and to be overactive and impulsive. His emotions can change suddenly in school. Interactions with other children can cause stress, dysregulation and at times self-injurious behaviour. He dislikes other children looking at him. The child's attendance is currently 95%. He is late arriving at school each day due to the challenges he faces leaving the house.
38. A Wellbeing Plan is in place for the child. A detailed assessment by CALL Scotland, recommending the use of assistive technology and enhanced ICT provision to increase digital learning opportunities, is integral to the child's Wellbeing Plan.
39. In line with his Wellbeing Plan the child receives 1:1 support from a pupil support assistant (PSA) support every morning and a one-hour block of teaching from a Principal Teacher (PT) four afternoons a week, specifically targeted at literacy and numeracy skills. The child is currently working at first level for literacy and numeracy and requires support from a PSA to complete individual work tasks. By the afternoon the child is tired.
40. The consequence of the PT sessions is to withdraw the child from mainstream activities and classes resulting in a narrower curricular experience than his P7 peers. The child feels differentiated as a consequence. The curricular targets in his wellbeing plan are not all specific enough for there to be clear understanding of his targeted learning, achievement nor planning of the next steps in his learning. The progress noted by school B as far as it relates to academic achievement is unknown.
41. The child has been assessed as having dyslexia but there has been no detailed assessment of his curricular strengths and development needs. His sensory needs have not yet been assessed.

42. The staff at school B have experience with pupils who have ASN. All have undertaken Child Inclusion Research into Curriculum Learning Education (CIRCLE) training. Some staff have accessed professional learning in relation to autism and understand the importance of creating an inclusive learning environment for all children. School B is not accredited by the NAS.
43. Staff at school B are also able to consult with and access advice from a specialist outreach teacher from school C to ensure appropriate strategies and supports are in place to address the child's ASN. The outreach teacher suggests strategies to support his learning. There was a difference in understanding between witness C and witness D about the purpose of some strategies and activities.
44. The child has one good friend in school B with whom he spends a lot of time out with class. School B's attempts to support the child's social interactions with peers are ineffective. His social interactions are mainly with one other child and sitting with others while eating lunch. School B offers the child further support through a daily lunchtime club and weekly Digital Club.
45. Prior to giving evidence witness C was unaware of his feelings about and experiences of school B.

Child's views

46. The child has visited school A and expresses a strong preference for attending there. He has indicated that he feels accepted there and doesn't stand out as different.
47. In relation to school B the child stated he is left out of activities. He is not coping there. He was asked to read a book that was beyond his ability. He was given homework that was too difficult for him. The teachers think he is coping fine but he is not. His classroom is too busy and loud. He cannot hear himself think. He gets distracted.

Ability to make provision for child's ASN

48. The child is not benefiting from being included in mainstream education, even with the additional supports in place.

49. The respondent is not able to make provision for the child's ASN in a school (whether or not a school under their management) other than the specified school.

50. School A will be able to make provision for the child's ASN.

Respective costs of placement at the specified school and the offered school

51. Based on a 39 week residential placement, the fee charged by school A for the academic year 2024/25 is £93,311.40 per annum, VAT thereon of £18,622.28. Separately, school A would charge a total of £2,316.60 per annum for weekly transport to and from school. No VAT is payable on this.

Reasonableness, of the provision for the ASN in school A

52. Having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the ASN of the child in school A and in school B it is reasonable to place the child in school A.

Reasons for the Decision

53. Parties 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.

54. The respondent's refusal of the placing request is based on schedule 2 paragraph 3(1)(f) (ii) the ability to make provision for ASN in a school other than the specified school and (iii) the respective cost and suitability test. The onus of proof lies with the respondent. The assessment point is at the time of the hearing.

55. The substantial question in issue is whether the ground for refusal of the placing request is made out. If it is, we would need to go on to consider if it was appropriate, in all of the circumstances, to confirm the decision. As the ground is para 3(f) each of 4 conditions must apply. If they all apply the duty to place the child in school A does not apply. It was agreed that two of the 4 conditions exist (the specified school A is not a public school and the respondent has offered to place the child in school

B). The dispute is therefore focused in the provisions of Schedule 2 para 3 (ii) and (iii). In order to confirm the decision we are required to be satisfied that the authority are able to make provision for the ASN of the child (in school B); and that 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 ASN of the child in school A and in the school B, to place the child in school A.

56. In considering this we are mindful of the para [17] in *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court) referred to by the appellant:

‘Given that all of the four conditions must apply that third condition, namely the balancing of respective suitability and respective cost for the purposes of determining whether it is reasonable to place the child at the specified school only comes into play if the second condition is met, namely that the authority are able to make provision for R's additional support needs at [S school]. If they are not able to do that then the issue of the reasonableness of the placement having regard to respective suitability and respective cost simply does not arise. Looked at another way, the ability of the specified school to meet the child's needs only requires to be looked at if the other school, in this case [S school], meets R's additional support needs’.

57. We are not satisfied that the respondent is able to make provision for the ASN of the child. Whilst it was clear that the staff at school B were doing all that they could and that they thought they were meeting the child's ASN the evidence taken as a whole did not support this. Whilst witness C and D did say the child was ‘making progress’ we were left wondering what actual progress was being made and how that was being measured. There were no measurable targets in the child's plan. There was confusion between witnesses C & D as to exactly what was the purpose of the Traffic Light System (one of the strategies implemented) and how it operated. In her oral evidence the appellant said she only became aware of this when it was mentioned by witness C in her witness statement. The child's only knowledge of it was in relation to its use to mark poor behaviour which would be an inappropriate method of shaping his behaviour. Another example of his year on year progress, was said to be the ability sit at school assemblies with his PSA on the periphery. There was insufficient

evidence before us to allow us to find in fact anything more than the child has made some progress.

58. Witness C seemed to be reassured that progress was being made largely on the basis that the child appeared more settled and was not having to remove himself from the class as often as he did previously. Latterly the child's time at school C and the journey between there and school B were fraught. There is no doubt that the move out of school C whilst unplanned was necessary in the child's interests. Witness C's evidence was that moving the child to a full time placement at school B had much improved his wellbeing and emotional state, but our view is that the improvement is as a result of the child's removal from school C rather than as a consequence of the provision made at school B. But for the change in the cohort at school C, the child would have continued to benefit from the small group intense support provided to him. This is a significant omission from the provision for his ASN at school B. We note all of the strategies put in place for the child but these are not achieving the desired result. For example the digital club was meant to be a small group of children, (selected by the child) to provide an opportunity for the child to use his communication skills to build new friendships with peers. The evidence about the digital club was contradictory. In reality it was, on the whole, no more than the child and a teacher. We heard evidence that on one occasion another child had attended and on another occasion (after evidence from the appellant about the digital club had been heard) the appellant explained that she was aware that another child attended. The daily lunchtime club was actually an activity (Lego) with his one friend.

59. This paragraph has been removed by the Chamber President, it being in the interests of any other person under rule 55(3)(a) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.

60. Having regard to the evidence of the child's mother and sister, as well as what he is recorded as saying in the Advocacy Report we are satisfied that the school B's strategies have not worked to develop and nurture the child's confidence, independence and contribution to the school. The evidence from the child's mother and sister was of a child who returns home from school exhausted. He is demanding

of attention and talks constantly. He tries to occupy his mind with Lego and gaming. The picture painted is different from that the school recount.

61. The appellant has significant concerns about the child continuing in mainstream schooling, even with additional supports as outlined by the respondent. She anticipates ongoing social isolation, lack of learning progress and further deterioration in the child's mental health on transition to secondary school.
62. The appellant and the child's sister gave clear and compelling evidence as to how the child presents and behaves when not in school. This was confirmed by the matters of fact, beyond the child's views on his reasons for preferring school A over B set out in the advocacy report. The specialist speech and language therapist carried out assessment and the report is dated December 2024. We note the observations of the child in that report, such as he is demanding of adult attention, tangential in conversation, low boredom threshold, speaking over the appellant, inattentive to others, often distracted and raising topics of his own interest. These mirror the evidence of the child's mother and sister. All of this leads us to conclude that the child is masking his behaviour when at school B which is why it appears to the staff the child is more settled. Witnesses C and D accepted in their evidence that these types of behaviour do occur but said it was less often than previously.
63. There was speculation and some evidence about whether the child may have a learning disability. On the basis this is not diagnosed we are not able to attach any weight to this but have instead considered all of the evidence as to how the child presents. Similarly the appellant discussed that she hoped that when the child is prescribed medication following on from his recent diagnosis of ADHD that this may help 'clear the fog' in his mind and improve his learning. Witness D made the same point. Again this is speculative. We cannot make our decision based on the possible effect of medication the prescription of which is not a forgone conclusion.
64. The appellant was concerned that the staff at school B were over egging the pudding as far as the child's progress was concerned. We certainly formed the view that the staff were overly reliant on the child appearing to be calmer and took that as an indication of progress without a full understanding of the child and why he might

appear calmer. The suggestion was that his ability to go to clubs was evidence of not being socially isolated but it transpired these were all specifically for ASN children. Witness C spoke positively about the child's 'friendship group' in school, and this gave one impression. When this was explored in evidence, the reality was the 'friendship group' consisted of the child and his only friend in school, a boy with similar needs, and this painted a different picture.

65. The respondent maintains that the child benefits from being included in mainstream education; that his needs can be met in a mainstream school with additional supports, including outreach support from school C, and that a full-time placement at a special school is not necessary. The evidence does not support this.

66. We were referred to the latest inspectorate report for school A. Between that and the evidence of witness B we are satisfied that the children placed there have long standing anxiety and mental health (rather than attendance issues) issues. The child will be supported very well to eradicate his anxieties. School B thought that the child was engaging well but we do not accept that evidence. We are persuaded that the work that will be done at school A will allow him to re-engage successfully with his education so that he no longer thinks 'why am I even here'. If his ASN are met we have no reason not to accept that this will lead to him making very good progress and achieving his potential. Overall, children and young people at school A attain well, significantly improving their wellbeing and build skills for learning, life and work. The child is entitled to this opportunity.

67. As far as the child's views (on the reasons for the preference to school A over school B) are concerned as we are required to do we have taken these into account. They have not been determinative in our decision. We note that he seemed concerned about the effect of one of his answers (about the lunch hall) but overall there is no reason to suspect that he has not answered truthfully, and his comments accord with the evidence of his mother and sister. What we have attached weight to are the matters beyond his views where he comments on his experiences at school B. For example his comments about the book he could not read and homework he could not do. Other comments noted by the advocacy worker were '*They (school B) think they know autism, but they don't really. They told my mum I was coping fine, but they had*

a cheek to say that. They said I was fine, but I wasn't in real life'. In relation to his classroom at school B he described it as 'busy' and 'loud'. He also said, 'I can't hear myself think' and 'I get distracted' 'I don't think it's the right place for me because it's really busy. Busy busy'. 'Sometimes I feel like what am I even doing here, because I can't concentrate'. These and the other matters he said are all evidence, that we accept, that his ASN are not being met at school B.

68. School A's NAS accreditation is indicative the specialist knowledge and understanding of autism, which consistently inform assessment and support plans for pupils. Our view was this is the type of provision that is needed to meet the child's ASN.

RESPECTIVE COST AND SUITABILITY

69. If the respondent was able to meet the child's ASN, we would not have been satisfied that the third condition of the para 3(1)(f) test (the balancing of respective suitability and respective cost) was met.

70. Having regard to the respective suitability school A is by far more suitable to meet the child's ASN. Their sensory assessment will identify challenges and plan to reduce sensory input. This will, lead to a better learning environment. There is access to Occupational Therapist, an Educational Psychologist, a Speech and Language Therapist, a Psychotherapist all on-site as well as a clinical psychotherapist. Whilst school B has access to some of these resources the inevitable delay to access these would be detrimental to the child's progress. We note for example that despite attending full time at school B since April 2024 his sensory needs have not yet been assessed. The environment at school A is quiet and calm. Class sizes are small, the child will be in a class with 5 others. If he needs 1:1 support that would be available, but given the smaller class size this support may be necessary. Personal, space is always available, whereas in school B if the child is overwhelmed he moves from the classroom to a space used by others outside the classroom. Whilst school B say they are not witnessing anxiety displaying behaviors such as skin picking, we accept the evidence of the appellant and witness B that this is still occurring and that the effects must be noticeable to the school staff, yet there is no strategy to deal with this. School B sees the supports put in place (such spending time outside the classroom or having

1:1 support) as the solutions, but does not seem to recognise that these can have negative consequences such as the child being made to feel different. School A does recognise this and has strategies in place to deal with the challenges that spending time outside the classroom or having 1:1 support can have. The child has said that he feels different and there is evidence that he is masking his anxiety at school. This is an important factor in not only our conclusion that the respondent is not able to meet the child's ASN but is also a factor evaluating the respective suitability of schools A and B.

71. We accept witness D's evidence that many the approaches, strategies, personnel and technological resources are available and in use for the child at school B as they would be at school A. However this is not simply a matter of us comparing a tick list. Looking at the child's ANS the question when assessing comparable suitability is the how quickly and effectively the resources can be made available and implemented. From witness A's evidence it is clear that the school A will provide a range of resources and strategies to meet the child's ANS that school, B cannot effectively provide. For example school A provide uncluttered classrooms and personal space. School B's classrooms have windows to the outside and into the atrium so even when he moves out of the class (to an area that may be being used by others) he is still faced with the prospect of sensory over stimulation. The more extensive and specialised resources and ability to implement these more quickly and in a targeted fashion mean school A is far more suitable to provide the child's ASN than school B. The child is assessed as a good fit. The small class size and schools knowledge of autism will be of considerable benefit for the child.

72. As far as cost is concerned we accept the respondent submission and proceed on the basis that cost difference between the provision at school B and school A is £77,836 per year at current rates. We determine that the extensive benefits to the child of attending school A means that it is reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the ASN of the child in the school A and in school B to place the child in school A.

73. In conclusion we make it clear that we have not decided this case on the basis that we preferred and accepted the appellant's evidence over that of the respondent. As one example we did not agree with the appellant's view that in refusing the placing request the respondent's priorities were purely financial. No doubt that was a factor but the staff at school B had a genuinely held belief that they were able to meet the child's ASN. Our decision is based on our assessment of all of the evidence as a whole and where that has led us in assessing what the child's ANS are and how these can be met.

74. Finally, although we allowed the evidence of the work that school would undertake in preparing the child for life after secondary school that evidence has not been a factor in our decision.

Appropriateness

75. Having concluded that the grounds for refusal of the placing request have not been established by the respondent we do not need to consider the second stage of appropriateness in all the circumstances.

Paragraphs 13, 17, 21 and 37 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.