



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/25/0057

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 challenging the respondent's decision to refuse the appellant's request to place the child in school B.

Decision

2. We overturn the decision of the respondent to refuse the appellant's placing request under s.19(4A)(b) of the Education (Additional Support for Learning)(Scotland) Act 2004 (**2004 Act**). We require the respondent to place the child in school B within 14 days of the issue of this decision, or on such other date as the parties agree.

Process

3. This reference was case managed to an evidential hearing, which took place over two days, remotely on the Tribunal's Cisco WebEx platform.
4. We considered all available oral and written material. The written material in the bundle (including final submissions and the respondent's list of authorities) consists of the following page numbering: T001-096; A001-054; and R001-037.
5. With its submissions, the respondent lodged a two-page document called 'SNCT 1449' which we believe is an excerpt from the SNCT Handbook referred to by the respondent in its final written submissions at paragraphs 22 and 52. This document was not in the bundle at the time of the hearing and so was not referred to by any witness. It is not appropriate for a party to introduce fresh evidence at the submissions stage without a request to add it to the bundle (a request likely to be refused, in the absence of compelling reasons). We

decline to add that document to the bundle, and we have left it out of account in reaching our decision. Apart from anything else, its omission from the bundle at the hearing prevented the appellant putting it to witnesses. There was some oral evidence in which the SNCT guidelines were referred to, and we have taken that into account, but not the document produced with written submissions.

6. In a direction of 2 December 2025, the legal member provisionally allowed the respondent's opposed request to add an additional ground of refusal, but on the basis that a final decision would be taken on whether or not the respondent would be able to rely on that ground only after the evidence was heard. This meant that evidence in support of that ground was led, but on the basis that its addition would be addressed in final submissions. The proposed additional ground is the one in paragraph 3(1)(a)(iii) of Schedule 2 of the 2004 Act, namely that placing the child in the specified school would be 'seriously detrimental to the continuity of the child's education'.
7. The relevant test is that 'exceptional circumstances' exist justifying amendment of a case statement (rule 19(5) of the Tribunal rules). We are satisfied that such circumstances do exist. The respondent's argument is that this additional ground only became stateable once witness statements were taken, in November 2025. The original case statement was lodged in August 2025. The child started attending school A on 14 August 2025. The respondent argues that on taking the statement of witness A in November 2025, evidence of the child's progress at school A became available, prompting the application to add the additional ground.
8. We are satisfied that evidence to support this ground of refusal only became available to the respondent in November 2025. We agree that the progress of a child's education changes over time, especially where, as here, he is attending a new educational provision. Although the child attended the nursery provision of school A since (at the latest) October 2023 (A011), we accept that the primary school provision there is distinct. Exceptional circumstances exist when new evidence which was not reasonably available earlier becomes available such that it justifies an additional ground of refusal being argued. We draw a distinction here between a ground of refusal being arguable and being successfully argued. We therefore allow the respondent to argue the additional ground, meaning that three grounds of refusal are relied upon.
9. We fully considered the terms of the non-directed advocacy report for the child, at T036-053, and refer to its terms where relevant in our reasons below.

Findings in Fact

General findings in fact

10. The child lives with his parents and his older brother.
11. The child started attending school A in its enhanced provision, on 14 August 2025.
12. The appellant made a placing request to the respondent seeking the placement of the child in school B. The respondent refused that request on 15 April 2025 (T021).
13. The child has a diagnosis of autism spectrum disorder (**ASD**). This diagnosis was made on 10 January 2024. An assessment for possible Pathological Demand Avoidance is due to take place.

14. The child has significantly limited verbal ability and uses very few words such that he is sometimes referred to as 'non-verbal' or 'pre-verbal'. He sometimes takes people by the hand to communicate what he wants. He stares at objects and relies on adults to know what he wishes to communicate.
15. The child requires an adult to manage his personal care.
16. The child becomes distressed when routines are not followed or when his expectations are not met.
17. The child enjoys playing outside. He sometimes runs with his head turned so that he is not looking in the direction of travel. He has no understanding of danger or taking safety measures, he regularly runs away from his parents and has run out in front of cars. He sometimes pushes food into his mouth when it is full, causing a risk of choking.

The child and school A

18. School A is managed by the respondent.
19. Prior to attending the primary school provision at school A, the child attended the nursery provision there during academic sessions 2023-24 and 2024-25. The nursery provision is in the same building as the primary enhanced provision. They share the same entrance door, but they are in separate parts of the building.
20. Due to the timing of the offer made by the respondent for the child to attend school A, the child did not benefit from the usual enhanced transition process from nursery.
21. The enhanced provision at school A consists of two classes, one on the lower floor and one on the upper floor. Both classes are similar in structure to a mainstream primary classroom, except with a higher adult to child ratio. There are 9 children in one of the classes (consisting of those in primaries 1-3, including the child) and 8 children in the other class (for those in primaries 4-7). The adult to child ratio in the child's class is 1 to 2.5, comprising one teacher in that class and four support workers across the two classes, used dependent on need.
22. All of the children in the child's class at school A are autistic, require personal care assistance and are pre-verbal.
23. In the child's class, learning is mainly play-based, with a flexible layout, minimal furniture and with some sensory activities.
24. The child has settled well into his class in school A. He most enjoys outdoor play, water play, musical instruments, puzzles and lining up alphabet letters. He can use pens, pencils, crayons and other marking objects independently. He can follow instructions.
25. At school A, the child communicates using hand-leading, eye gazes or by making high pitched noises when upset.
26. The child does not engage with other children at school A, and prefers to engage with adults, but only when he wishes something from them. When in school A, he carries out activities alongside peers, not with them. The other children in the child's class at school A also prefer solitary play.
27. The child is working at the pre-early stage of the Curriculum for Excellence (CfE).

School B

28. School B is managed by the respondent.
29. It forms part of a wider campus that includes a nursery, a mainstream school and a language and communication provision.
30. School B comprises 10 classrooms, two soft play areas, a sensory room, a targeted intervention room, toilets, a hygiene room, a learning café, a room used for lunch and physical education activity, and an open area. In addition, there is a sensory swing and an open area (the latter used for fine motor development and small world play).
31. The school roll is currently 72 pupils, an increase from 66 in academic year 2023-24.
32. There are four classes in the infant part of school B. Each of the four classes is staffed by a teacher and two pupil support assistants (**PSAs**) If the child were attending school B, he would join one of those classes. The current pupil numbers in these classes are as follows:
- class A: four pupils
 - class B: six pupils
 - class C: seven pupils
 - class D: seven pupils.
33. Under the ratio guidelines applicable for school B, the maximum teacher: pupil ratio is 1:10, since the school is registered as one providing education to pupils with a moderate learning difficulty. A review of this registration is underway. In practice, the maximum teacher: pupil ratio for these four classes is 1:8.
34. Class A has a smaller number of pupils due to the needs of one of those pupils who regularly presents with very dysregulated behaviour. This usually happens a number of times every school day. When it occurs, the other three pupils in the class require to be removed from the classroom until the dysregulated spell comes to an end. On these occasions, the three other pupils are accommodated temporarily in the other three classes, usually one in each such class.
35. The pupils in the four infant classes at school B are working at the pre-early level of the CfE, most are pre-verbal and most require assistance with their personal care. Some have ASD and some become dysregulated while in class.

Reasons for the Decision

36. The parties agree that the child has additional support needs, as defined in section 1 of the 2004 Act. We agree, as supported by our findings in fact at paragraphs 13-17 above.
37. The appropriate point in time for consideration of the evidence is at the date of the hearing: the law is clear on this. The burden of establishing that the respondent's decision should be confirmed falls on the respondent.
38. A few points are worth noting about the evidence.
39. All of the witnesses who gave oral evidence did so in a credible and reliable fashion. Our decision turns on interpretation of the evidence and its application to the relevant statutory tests.

40. In final written submissions, the respondent sought to cast doubt on the credibility and reliability of the appellant's evidence (paragraphs 38-46). We disagree. The appellant's evidence was given in an entirely credible and reliable way. We accept that the appellant does not have educational expertise: indeed, he expressed this himself more than once in his oral evidence by saying that he is not an expert in education but is an expert on his son. This means that we accept the evidence of witness A on how the child presents at school A, and his general progress there. There was some disagreement between the appellant and witness A on the question of whether the child's communication ability has regressed in his time in school A. Given the grounds of refusal relied upon and our decision that they do not exist, we need not conclude on this point, so we decline to do so. For the same reason, evidence of the child's progress at school A is of limited relevance (only in relation to the continuity of education ground of refusal, even then in a limited sense, as discussed below).
41. We accept the respondent's position on the change in the school roll number for school B from 74 in witness B's written statement (R029, paragraph 12) to 72 in her oral evidence: the latter figure is the correct one and the change was due to a simple error in the witness statement. This correction was explained by the respondent on day 1 of the hearing before the oral evidence began.

The first ground of refusal: employment of an additional teacher, 2004 Act, Schedule 2, paragraph 3(1)(a)(i)

42. This ground of refusal only exists where it is necessary for the respondent to employ an additional teacher as a result of the child being placed in the specified school.
43. The respondent argues that this ground exists, the appellant that it does not. We prefer the appellant's position for two reasons.
44. Firstly, there is no evidence to support the need for the respondent to take a teacher into employment if the child is placed in school B. There is no evidence available to us about the teaching complement within the respondent's area. There is no evidence to indicate that, for example, a teacher could not be moved from another school and relocated to school B. Witness B was asked whether it might be possible to move another teacher from elsewhere in the education authority to school B: she responded that she did not know and that this was 'above my pay grade'. She explained that supply teachers are sometimes hired during staff shortages, but she did not know what the position was on additional staff beyond that.
45. Secondly, it was clear from witness B's oral evidence that the reason for the stated need for an additional teacher was the need to create a new class on the child's arrival (each class having one teacher). We are not persuaded that if the child was placed in school B, an additional class would require to be created. He could be placed into one of the current four classes. This is for reasons outlined below at paragraphs 48-54 below in relation to another ground of refusal, and we adopt those reasons here.
46. For these two reasons, even taken individually, the respondent would not require to take an additional teacher into employment should the child be placed in school B. This ground of refusal does not, therefore, exist.

The second ground of refusal: significant expenditure on extending/altering school accommodation/facilities, 2004 Act, Schedule 2, paragraph 3(1)(a)(ii)

47. This ground of refusal only exists where the significant expenditure would be caused by

the child being placed in school B.

48. The respondent argues that this ground exists, since if the child were to attend school B, an additional class would require to be created and therefore built. We do not accept this since the evidence does not support the need for an additional class if the child attends school B.
49. We refer here to the findings in fact at paragraphs 30-34 above. When witness B was asked why the child could not simply be placed into one of classes B, C or D in the infant part of school B, she simply stated that an additional class would be needed. This is not supported by her evidence around class numbers. A maximum teacher: pupil ratio of 1:8 is in place. Even during times when three of the four pupils in class A require to be temporarily moved into the other classes, the addition of the child into class B would keep the numbers within the maximum teacher: pupil ratio. We note also that the 1:8 ratio is the one adopted in practice; the ratio under the applicable guidelines is 1:10. While witness B indicated that this ratio is under review as it is inadequate, that does not mean that it will be altered; until it is, it remains in place.
50. There was some oral evidence in relation to teacher: pupil ratios in what the respondent in its final submissions refers to as the 'SNCT Handbook', a document produced by the Scottish Negotiating Committee for Teachers. It is within our knowledge as a specialist Tribunal that such a document exists. However, its precise terms and how they ought to be interpreted in the context of a particular case may only be considered where the document is in the bundle and referred to by a witness(es). To the extent (if any) that this analysis departs from that employed by the Tribunal in an earlier case relied upon by the respondent in its written submissions at paragraph 52 (ASN_D_11_05_2021), we disagree with the approach taken in that earlier case, in which it appears that the content of the Handbook was stated to be within the Tribunal's specialist knowledge (paragraph 15 of the decision). As noted above, since an excerpt of that document was not produced until the final submissions stage, we have not considered its terms. In any event, witness B stated in her oral evidence that the class capacity limits at school B are based on the SNCT ratios plus an additionality from a staffing exercise. This means that school B does not fix its ratios purely in line with those in the SNCT guidance, which in turn means that this guidance would be of little or no assistance in this case.
51. We accept that the maximum (practical) ratio of 1:8 applies only to teachers and not more generally, for example for PSAs. We also accept that witness B was clear in her evidence that the addition of a new pupil in a class can change the classroom dynamic, which could have negative consequences. However, this evidence is of limited value here, since witness B was clear that she does not know what the child's needs are for the purposes of deciding which class he would join (witness statement, R030, paragraph 22).
52. In the same paragraph in her witness statement, witness B refers to an increase in class sizes and to 'reshuffling pupils'. She goes on in that paragraph to refer to an additional teacher and support staff 'to increase any of the classes'. There is no mention there of a need for an additional classroom; instead, she is referring to increasing the staff complement within the current classrooms. This discrepancy between witness B's written and oral evidence caused us to doubt witness B's oral evidence that the only way to accommodate the child in school B was to create (build) an additional class.
53. Further, the arrangements for the temporary (but regular) displacement of three pupils from class A into the three other classes supports an impression of some flexibility in the staffing arrangements within these four classes in school B. This kind of flexible approach could lead to the child being accommodated within an existing class.

54. Taking all of this together, the respondent has not persuaded us that if the child attended school B, an additional classroom would need to be created and therefore built. The strong likelihood is that the child would be accommodated in one of the existing classrooms. While this might involve a reshuffle of pupils (and possibly staff), and this could be detrimental to pupils, we cannot speculate about that, and in any event, this ground of refusal is purely about significant expenditure, nothing else is relevant.

55. This means that we do not need to decide whether or not the respondent has established that building an additional class would give rise to significant expenditure on extending or altering accommodation at school B: we are not persuaded that such an additional class would be built if the child were to attend there. Had we required to decide the significant expenditure point, we would have followed the approach taken by the tribunal in the earlier decision FTS/HEC/AR/23/0139, where a global figure of £150,000 arising from a general conversation was insufficient. In the current case, no evidence of global cost was provided. This means that we would not have been satisfied, on the available evidence, that the building of an additional classroom would give rise to significant expenditure.

56. We conclude that this ground of refusal does not exist.

The third ground of refusal: serious continuity detriment (2004 Act, Schedule 2, paragraph 3(1)(a)(iii))

57. This ground of refusal exists where placing the child in school B would be seriously detrimental to the continuity of the child's education.

58. It is important to note that the impact of placing the child in school B must be measured only against the continuity of the child's education, not the child's education generally. While we accept (as the respondent argues in its final submissions, paragraphs 65-72) that the child is settled at school A, and is part of the community there, we need to concentrate on continuity of education. In order to be detrimental to continuity of education, a move of school would have to be likely to involve a disruption, break or negative impact on the flow of education of a child. Given the provision in schools A and B, it is clear to us that the provision in school B would mean that the child's education would simply continue, albeit in a different environment. From our findings in fact at paragraphs 13-17 and 35, we conclude that the child's peers at school B have similar needs to the child and are working at a similar curricular level. The respondent does not argue otherwise and instead focusses on the movement away from the child's current educational setting.

59. A number of specific factors persuade us that this ground of refusal does not exist:

- a. By the hearing, the child had only been in primary 1 for four months, meaning that little time has passed in order to build continuity.
- b. The child managed to transition smoothly from nursery classes to primary school classes at school A, even without the usual enhanced transition process, suggesting an ability on his part to smoothly move between educational settings.
- c. This ability is likely to be contributed to by the child's lack of interest in class peers (see the findings in fact at paragraph 26 above) and the lack of evidence of a particular attachment to an adult at school A. This is supported by the class observation of the advocate who refers to the child as not engaging with other pupils, even when his name was called, running around the classroom and not responding to attempted interactions with teachers. That report also records a lack

of engagement by the child with teacher led group activities (see T038-039 for these observations).

- d. The child's curriculum in place at school A is principally play-based, and so there is no prospect of disruption to academic achievements that might take place were the child working at a level beyond the pre-early stage of the CfE.

60. On the previous Tribunal decision ASN_D_06_03_2020, relied upon by the respondent (paragraph 67 of its final submission) we agree with the appellant's arguments (at paragraph 45 of his final submission) that this case is readily distinguishable on its facts. The child in that case was 12 years old and had 'benefitted enormously' from his mainstream primary education (paragraph 70 of the decision). Further, the specified school was held to be 'less suited to his abilities and aptitudes' than the school suggested by the respondent in that case (paragraph 71). This affected the tribunal's conclusion on the continuity question. As noted above, that does not apply here. There is very little of similarity between the child in that case and the child here. Given that the cases in this Tribunal are based on the particular facts and circumstances faced by the child or young person at their core, it is rarely helpful to compare cases on their facts.

61. To conclude on this ground of refusal, any continuity built up in the child's education at school A can readily be absorbed by school B were the child to attend there. There is no evidence from which we can infer a likely detriment in this area, far less a serious one.

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

62. Since we conclude that none of the three grounds of refusal relied upon exist, we need not consider whether in all the circumstances it is appropriate to confirm the decision to refuse the placing request. We therefore decline to apply this test.

Paragraphs 15 and 30 in this decision have been edited by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.