

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/24/0005

Witnesses for Appellant:

Witness A – Head of learning

Witnesses for Respondent:

Witness B – Educational psychologist

Witness C – Class teacher

Witness D – Head teacher

Witness E – Principal educational psychologist

Reference

1. This is a reference made under section 18(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) in respect of a decision by the respondent under section 18(3)(da) refusing a placing request made in respect of the child under paragraph 2(2) of schedule 2 to the 2004 Act to place the child in the (**the specified school**). The respondent has offered to place the child in (**the offered school**).

2. The two grounds of refusal relied upon by the respondent are:

(A) paragraph 3(1)(f) of schedule 2 to the 2004 Act, which provides that the duty to comply with placing requests does not apply if all of the following conditions apply, namely:

- (i) *the specified school is not a public school,*
- (ii) *the authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school,*
- (iii) *it is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school, and*

- (iv) *the authority have offered to place the child in the school referred to in paragraph (ii).*

Conditions (i) and (iv) were not in dispute. Only conditions (ii) and (iii) were in dispute.

(B) Paragraph 3(1)(g) of schedule 2 to the 2004 Act, which provides that the duty to comply with placing requests does not apply:

Where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the Standards in Scotland's Schools etc. Act 2000 (the 2000 Act).

Decision

3. In terms of section 19(4A)(b) of the 2004 Act, the tribunal overturns the decision and requires the education authority to place the child in the school specified in the placing request to which the decision related no later than 16 September 2024.

Process

4. Case management calls took place in April and May 2024.
5. The reference proceeded to a hearing in June and July 2024. The hearing took place via video conference. A number of documents were lodged by both parties in the course of the hearing. All were lodged without objection by the other party and were accepted and received by the tribunal.
6. Parties lodged written submissions shortly prior to July 2024 and additional submissions shortly after that date, all as agreed.

Findings in Fact

7. The child was born in December 2013 and was adopted by the Appellant and her partner in 2016.
8. The child was care-experienced prior to adoption. The child had adverse childhood experiences.
9. The child has diagnoses of Attention Deficit Hyperactivity Disorder (**ADHD**) with a predominant inattentive presentation and Autism Spectrum Disorder (**ASD**) with associated social, emotional and behavioural needs. The child has presumed Foetal Alcohol Syndrome. The child had early traumatic experiences.
10. The child is prescribed medication and lotion..
11. The child has difficulty sleeping.

12. The child has been on the waiting list of Child and Adolescent Health Services (**CAMHS**) for approximately 10 months for treatment for ADHD. The child has also been added to the waiting list for anxiety and obsessive compulsive symptoms. CAHMS have recommended that attempts be made to divert the child from excessive handwashing. The child has fears of unspecified contamination.
13. The child has high levels of anxiety in the mornings and takes a long time to dress.
14. In October 2023 the child presented at her general practitioner with extreme fatigue.
15. The child often becomes distressed and dysregulated before and after attending school
16. The child has sensory differences including to light and smell, signs of tactile defensiveness and sensitivity to certain tastes and textures.
17. The child had severe anxiety about attending the offered school as a consequence of which she was frequently late for school. It would often take a number of hours for the child to regulate before attempting to attend the offered school. At the offered school the child presented to staff as compliant. The child had no difficulty transferring from the offered school to home. At home the child regularly presented as severely distressed.
18. The child struggles establishing and maintaining friendships. The child found the learning environment at the offered school confusing.
19. The child requires support to achieve set goals; benefits from clear and repeated instructions; requires to concentrate on achieving one goal at a time; benefits from working in small groups; and benefits from an environment that is not overly-stimulating.
20. The child attended nursery, Primaries 1 through 5 and, for a period, Primary 6 at the offered school.
21. The offered school has over the years put in place a number of measures to support the child including the opportunity for movement breaks, sensory circuits, a visual timetable, zones of regulation, access to a nurture room, access to a safe space in the classroom, use in school of a transitional object; check ins by teacher and pupil support assistant; arrangements so that the child does not require to eat in front of others; and a home / school diary.
22. The child has been on a reduced timetable for most of the child's primary school education. The child did not attend the offered school for several months during lockdown. In July 2020 the Appellant applied for permission for flexi-schooling (two half-days per

week out with school) as a measure to build the child's confidence for returning to school.

In August 2020 the Appellant sought to reduce the flexi-schooling arrangement to one half-day per week out with school. From January 2022 the flexi-schooling arrangement ceased. The child has regularly failed to attend the offered school as required.

23. The child was working within the second level of the Curriculum for Excellence in all curricular areas at the end of Primary 5. The child is artistically able.

24. In Primary 6 the child's level of attendance from July 2023 until November 2023 was recorded as 48.62%. The offered school is a mainstream school.

25. The child has been on a reduced timetable at the offered school for much of her primary school education. On entering Primary 6 at the offered school the child had numerous class teachers over a short period of time. This circumstance increased the child's anxiety about attending the offered school. The child ceased attending the offered school, has not attended the offered school since October 2023 and is unwilling and unable to return.

26. The respondent has no plan in place to return the child to education at the offered school.

27. The respondent has had limited contact with the child since October 2023. That contact ceased after a TEAMS call in the early part of 2024.

28. The specified school is a special school. The child has attended the specified school for one half-day per week since November 2023, self-funded by the Appellant. The specified school has offered a full-time place to the child. The child receives Maths tuition once per week, self-funded by the Appellant.

29. The fees for the child to attend the specified school are £40,952 per academic year. If the child was to attend the specified school on a full-time basis the appellant will transport the child to and from the specified school.

30. The specified school has two Primary 5 and three Primary 7 pupils working at the first and second levels of Curriculum for Excellence. These pupils present with ASD, early traumatic experiences, genetic conditions and anxiety.

31. The specified school offers a spacious, low stimulus environment with an extensive campus; has a small cohort of fifteen pupils (from eight to eighteen years of age: two in Primary 5, one in Primary 6, three in Primary 7, one in First Year, one in Second Year, two

in Fourth Year, three in Fifth Year and two in Sixth Year) with a high ratio of teaching and learning & well-being practitioners to pupils; has staff trained in understanding stress and anxiety; has a speech and language therapist; has small classes; specializes in providing individualized, person-centred, skills-based learning to its pupils up to the age of eighteen years with a focus on the health and well-being of its pupils; has long experience of providing education and support to pupils with complex and additional support needs, including children with autism, sensory impairment and difficulties with communication; and has experience of teaching children who mask their difficulties in an educational environment.

32. The specified school currently delivers teaching up to National 3. The specified school does not currently offer Highers or Advanced Highers. With current staff the specified school can deliver teaching for Higher English. Pupils can sit Highers and National Highers remotely. Access to such courses would be discussed with families as appropriate. The specified school can access appropriately qualified professionals as required to fulfil the educational needs of its pupils.

Reasons for the Decision

33. The respondent relied upon the two grounds of refusal set out at paragraph 2 above. With regard to the first of those grounds (A), the appellant disputed only that statutory conditions (ii) and (iii) of that ground of refusal existed.

34. The tribunal had in the bundle of papers before it written statements from, and heard oral evidence from, **Witness A, Witness B, Witness C, Witness D and Witness E** and the **Appellant**.

35. Witness A, Witness B, Witness C, Witness D and Witness E each had only limited personal contact with the child. Each gave their evidence in a straightforward manner, engaging with questions put to them and seeking to answer those questions to the best of their ability.

36. The Appellant gave her oral evidence clearly and in a straightforward manner. On one point, the number of friends the child had at the offered school, the appellant insisted that the child had only one friend in the face of other evidence that the child had two or three. The appellant set out her view as to what constitutes a friend (a person a child sees only at school or that a child sees at other times as well). Despite this small wrinkle in the Appellant's evidence the tribunal was satisfied that the appellant engaged thoughtfully with

questions put to her and sought to answer those questions honestly and to the best of her ability.

37. In reaching its decision, the tribunal had regard to the views of the child as set out in the document at pages T078 to T085 of the bundle of papers before it; all of the papers before the tribunal; the oral evidence given to it; and to the written submissions.

38. The tribunal was satisfied and accepted that statutory conditions (i) and (iv) of paragraph 3(1)(f) of schedule 2 to the 2004 Act apply. The tribunal reached its decisions on each of the statutory conditions (ii) and (iii) of paragraph 3(1)(f) of schedule 2 to the 2004 Act and on paragraph 3(1)(g) of schedule 2 to the 2004 Act for the reasons given below. The burden was on the respondent to satisfy the tribunal that the two grounds of refusal were made out.

The authority are able to make provision for the additional support needs of the child in a school (whether or not a school under their management) other than the specified school: paragraph 3(1)(f)(ii) of schedule 2 to the 2004 Act

39. The tribunal was not satisfied that the respondent is able to make provision for the additional support needs of the child in the offered school (it being a school other than the specified school) for the reasons given below.

40. Despite the child's attendance at nursery, Primaries 1 through 5 and (briefly) Primary 6 at the offered school the respondent did not satisfy the tribunal, through the evidence of its witnesses or by reference to documentary evidence lodged with the tribunal, that it has a detailed understanding of the barriers currently experienced by the child that prevent the child attending the offered school.

41. The respondent did not satisfy the tribunal that it has identified sufficient specific and appropriate measures that will, can or may be usefully put in place to reduce or eliminate those barriers.

42. The respondent did not satisfy the tribunal that it has a plan to engage with the child and manage, on a step-by-step basis, the child's gradual re-introduction to formal education and return to attending the offered school.

43. Despite taking account of the very limited contact that each of the respondent's witnesses had with the child the tribunal was surprised by the limited nature of the respondent's consideration of the circumstances and needs of the child.

44. The respondent pointed to the child's level of academic achievement in the course of the child's attendance at the offered school, in particular in Primary 5, as an indicator that the child was achieving a level of success. However, the respondent failed to acknowledge, or apparently even to understand, that the long history of limited attendance (in the course of a week or even a day) by the child at the offered school was an indicator of the respondent's failure in its engagement with the child.

45. From the case presented by the respondent the tribunal formed the clear impression that the respondent's position was that if only the child's family could get the child into school it had measures available to support the child's education. First, this position appeared to the tribunal to be an example of the respondent's failure properly to assess, analyze, understand and respond appropriately and effectively to the barriers the child experiences to attending the offered school. The child's challenges in attending the offered school are not a burden to be shouldered by the child's parents alone.

46. Second, given the child's historic and longstanding resistance to attending the offered school, the tribunal was not satisfied that the measures available – being those that have previously been deployed – would be sufficient, appropriate or effective in maintaining, even in the short term, engagement with the child (even if the child was able to attend the offered school in the first place).

47. The measures previously in place proved insufficient to meet the challenges experienced by the child. They resulted in attendance only for parts of weeks and parts of days. They achieved only this limited level of success even during a period when other positive factors were in alignment, such as the lengthy period of stability from Primaries 3 through 5 when the child had the same class teacher and the same pupil support assistant.

48. The respondent's position appeared to the tribunal to be that if the outcome of the tribunal was that the child was to return to the offered school then it would offer the supports it previously offered and it hoped for the cooperation of the appellant. It appeared to the tribunal that the appellant has a long history of engaging and cooperating with the respondent. It appeared to the tribunal that the supports previously provided are inadequate – as referred to above – to address the challenges experienced by the child. It appeared to the tribunal that the respondent has failed to grasp that offering again what was provided before is not sufficient. It was insufficient before. The position in which the child and the respondent now find themselves has moved far, far beyond that which pertained at the end of Primary 5 and the beginning of Primary 6. That the respondent appears not have

understood that is a cause of concern to the tribunal. Now is not the time for a return to how things were previously.

49. The respondent's aim, as explained by Witness E, is for the child to return to the offered school, undertake Primary 7 and then transition to mainstream secondary school. However, the respondent offered no cogent explanation to the tribunal as to how this aim might be achieved.

50. On the issue of understanding the barriers the child experiences to attending school Witness E explained that the child struggles with the transition from home to school (which ever school the child is attending). Witness E's view was that the reasons for this struggle are not, and cannot be, known; that there may be a connection between home and school but Witness E did not know what this is; that the child has "meltdowns" at home at the point of transition, but that the child presents well at school.

51. On the issue of whether the child is masking her difficulties at school Witness E did not accept that was the case, though accepted that it was at least a possibility. Other colleagues may have different views. Witness E's preferred view was that the child behaves differently in the school and home environments, behaves differently in these environments to seek to exert control and that it is easier for the child to do this in the home environment. While the child appears to be positive about the specified school and negative about the offered school and appeared relaxed and happy during Witness E's short observation of the child at the specified school (which the child attends only for a short period each week), Witness E was concerned that the challenges the child experiences in attending school would not disappear simply by virtue of attending the specified school rather than the offered school; that the same problems may well reappear if the child's attendance at the specified school was increased; and that the specified school does not offer the range of academic opportunity that mainstream school offers.

52. Witness D had only a limited understanding of the concept of masking and was of the view that this issue was for other colleagues, such as those in Additional Support for Learning.

53. Given the Appellant's view that the child is masking her difficulties at school and that this takes up her energy, increases her level of anxiety and is a contributing factor to "meltdowns" at home and her unwillingness and inability to attend the offered school the tribunal was surprised that the respondent offered no greater insight on the issue. Is the

child masking or not? Does it matter? If the child is masking at school would that have an impact on the approaches that might be taken by the respondent in addressing the barriers the child experiences to attending the offered school? On the evidence presented by the respondent the tribunal was left unclear.

54. The respondent's thinking about the circumstances of the child (who has not attended the offered school since very early in Primary 6 at the beginning of the academic year in 2023) up to the tribunal hearing in July 2024 has led to it identifying that the transition from home to school is a barrier experienced by the child to attending the offered school. There the respondent's thinking appears to have halted. What is it about that transition that might prevent the child from attending? What steps might the respondent take to reduce or eliminate the barriers the child experiences to attending at the offered school? The respondent has nothing cogent to say.

55. The child is attending the specified school, albeit for a short time each week. On that point the respondent says that the specified school is academically unchallenging and that it is undemanding as to time commitment. Might those circumstances offer points for thought about how the respondent could – initially, at least – seek to engage with the child and to facilitate the child's re-engagement with the offered school, with formal education and a gradual return to attendance at the offered school? The respondent does not say.

56. On the issue of provision for the additional support needs of the child the respondent does not acknowledge that the measures previously in place resulted in only limited success in achieving the child's attendance at the offered school. There appears to be no understanding of what worked, what didn't work, what could be improved or what further provision could be made. Accordingly, the respondent offers no detailed specification – beyond what was previously provided and so may be provided again – as to which measures might be usefully and appropriately provided.

57. On the issue of a plan for the respondent to re-engage with the child, Witness D referred to the entries for "Agreed Actions" in the Child & Young Person Planning Document dated November 2023 at page T112 and the Child & Young Person Planning Document dated March 2024 at page A021 and in. Those entries read:

"Denise to do home visits to build relationship and work on the longer term goal (if appropriate) of returning to [the offered school]. Work will be on emotional regulation

and body sensations when triggered. This is part of the twin tracking support for [the offered school] and [the specified school]”.

“ J to visit home to find out more about [the child] and her stress triggers about [the offered school]”

“ J provided feedback from her Teams call (minuted above). J explains they are not at the point to schedule another meeting. Review in 6 weeks”.

58. Those entries do not amount to a plan. They do not amount to the outline of a plan.

59. Witness E in his oral evidence noted that in his observation of the child at the specified school the child appeared relaxed and happy; that it offered a roomy environment with few pupils; and that the specified school may be of benefit to the child, particularly due to the lack of pressure children experience there. However, Witness E was concerned that this lack of pressure might mean that the child was not intellectually challenged. Witness E noted that the child’s past history at the offered school would make it harder to return the child there. Witness E accepted that engaging with the child, placing a team of professionals around the child and re-building relationships to return the child to the offered school was an aspiration. While people stood ready to do so his evidence was that currently there is no plan in place to return the child to the offered school. The recent input of Educational Psychology has been limited to a small number of TEAMS calls. Additional Support for Learning has disengaged. While Witness E stated earlier in his evidence that he wanted to focus on a plan to allow the child willingly to transition from home to school he later explained that planning and engagement had paused as a result of the proceedings before the tribunal. There was no evidence before the tribunal as to how the respondent might engage with the child in a way that might result in the child willingly transitioning from home to school.

60. The tribunal was not satisfied that the respondent has a plan to engage with the child and manage, on a step-by-step basis, the child’s gradual re-introduction to formal education and return to attending and learning at the offered school.

61. The tribunal understands that when proceedings are raised before the Tribunal it is almost inevitable that the positions of the parties will, at least to some extent, become polarized and that relations between parties will come under increased pressure. Nevertheless, the respondent has not set out before the tribunal – either in the oral evidence of its witnesses or in the documents lodged with the tribunal – a plan, a provisional plan or even a draft provisional plan (caveated, if such caveats were needed, with explanations that

in the course of recent months it has been unable, due to the strains on relationships resulting from the proceedings before the tribunal itself, to draft a plan as complete and detailed as it would otherwise have wished; it was not clear to the tribunal that such caveats would be necessary) setting out how it proposes to re-engage with the child or the steps it might take to manage the child's return to formal education or the specific measures it proposes to put in place to make provision for the child's additional support needs, engage the child in formal education and return the child to attending the offered school (which plan the tribunal would likely have been able to accept would be subject to revisal and adjustment as necessary according to circumstances as they developed). The raising of proceedings before the Tribunal does not end or suspend the respondent's duties in respect of the child.

62. The child's circumstances have changed dramatically, and for the worse, since the child briefly attended Primary 6 at the beginning of the academic year in 2023. The child has not attended the offered school since then and previously had limited attendance at the offered school. Witness E observed the child for a short time at the specified school. Most of the respondent's evidence – oral and documentary – is historic, looking back before the disastrous circumstances of the child's entry into Primary 6 (when the respondent acknowledges that the needs of the child were not met) during the years up to and including Primary 5. What the tribunal lacks is a clear statement – oral or documentary – of the respondent's assessment of the child's current circumstances and current needs and of the additional support that the respondent determines is currently required to meet those needs. The circumstances in this case are not the same as those in *M v Aberdeenshire* 2008 SLT (Sh Ct) 126. Nevertheless, the tribunal is not satisfied that the respondent has carried out an up to date assessment of the child and the child's circumstances and needs (which could have been carried out by professionals even without the cooperation of the child or the child's family, had such cooperation been refused which the tribunal is by no means certain would have been the case). For the forgoing reasons, not being satisfied that the respondent has a detailed understanding of the barriers currently experienced by the child; of the child's current needs; of the sufficient specific and appropriate measures currently required; or that the respondent has a working plan to engage the child and return the child to education, the tribunal concluded that the respondent has not discharged the burden on it and the tribunal is not satisfied that the condition at paragraph 3(1)(f)(ii) of schedule 2 to the 2004 Act applies (see paragraph 3(1)(f) of schedule 2 to the 2004 Act for the use of the word "apply"). That being the case the ground of refusal at paragraph 3(1)(f) does not exist (see section 19(4A) of the 2004 Act for the use of the word "exist").

It is not reasonable, having regard both to the respective suitability and to the respective cost (including necessary incidental expenses) of the provision for the additional support needs of the child in the specified school and in the school referred to in paragraph (ii), to place the child in the specified school: paragraph 3(1)(f)(iii) of schedule 2 to the 2004 Act

63. The tribunal having decided that condition (ii) of paragraph 3(1)(f) of schedule 2 to the 2004 Act does not apply, for the reasons given above, the tribunal cannot be satisfied of the suitability of the provision for the additional support needs of the child (in the words of paragraph 3(1)(f)(iii) of schedule 2 to the 2004 Act) “in the school referred to in paragraph (ii)” (the offered school). As condition (ii) of paragraph 3(1)(f) of schedule 2 to the 2004 Act does not apply the ground of refusal at paragraph 3(1)(f) of schedule 2 does not exist.

64. However, for the sake of completeness the tribunal briefly considers here condition (iii) of paragraph 3(1)(f) of schedule 2 to the 2004 Act. The tribunal is not satisfied as to the suitability of the provision for the additional support needs of the child in the offered school (“the school referred to in paragraph (ii)”) for the reasons given above.

65. With regard to the specified school the tribunal is satisfied that the specified school’s individualized, person-centred, skills-based learning approach to young people up to the age of eighteen with complex and additional support needs, including autism, sensory impairment and communication difficulties; small classes; low arousal physical environment; large campus with large quiet classrooms, breakout spaces and playgrounds with spinning and other equipment; level of staff support and training; peer group with similar life and educational experiences; total communication approach; availability of a speech and language therapist; preparation of pupils for changes in routine and visitors; highly differentiated curriculum; experience of children who mask their difficulties in an educational environment; and focus on health and wellbeing, meet the current needs of the child. The tribunal is satisfied as to the suitability of the provision for the child’s additional support needs in the specified school.

66. There is no additional cost to the respondent of placing the child in the offered school. The cost to the respondent to place the child in the specified school is £40,952 for the academic year. The Appellant intends to transport the child to and from the specified school if the child is placed there. The cost of placing the child in the specified school is significant. Having considered the historic difficulties the child has faced attending the offered school; previously limited attendance at it; length of absence from full-time formal education and

from the offered school; current (though limited) engagement with the specified school; the importance of re-introducing the child to formal, full-time education; and the impact on the child's education, development, socialization, preparation for adult life and future ability to participate in and contribute to society, the tribunal is satisfied that it is reasonable to place the child in the specified school.

67. Taking all of the above together, the tribunal is satisfied 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 additional support needs of the child in the specified school and in the school referred to in paragraph 3(1)(f)(ii) of schedule 2 to the 2004 Act (the offered school), to place the child in the specified school.

68. For the reasons given above the tribunal is satisfied that the ground of refusal at paragraph 3(1)(f) of schedule 2 to the 2004 Act does not exist.

Where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the Standards in Scotland's Schools etc. Act 2000: paragraph 3(1)(g) of schedule 2 to the 2004 Act

69. Section 15(1) and (3) of the 2000 Act provides:

“(1) Where an education authority, in carrying out their duty to provide school education to a child of school age, provide that education in a school, they shall unless one of the circumstances mentioned in subsection (3) below arises in relation to the child provide it in a school other than a special school.

...

(3) The circumstances are, that to provide education for the child in a school other than a special school—

(a) would not be suited to the ability or aptitude of the child;

(b) would be incompatible with the provision of efficient education for the children with whom the child would be educated; or

(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred,

and it shall be presumed that those circumstances arise only exceptionally.”

70. In short, the education authority 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. To satisfy the tribunal that this ground of refusal exists the respondent must satisfy the tribunal that none of the three circumstances set out at section 15(3)(a), (b) and (c) of the 2000 Act “arises in relation to the child”.

(a) would not be suited to the ability or aptitude of the child

71. Having failed to satisfy the tribunal that the respondent is able to make provision for the additional support needs of the child in the offered school, the respondent failed to satisfy the tribunal that the circumstance (which arises only exceptionally) set out at section 15(3)(a) of the 2000 Act does not arise in relation to the child.

72. The respondent failed to satisfy the tribunal, for the reasons given above, that the respondent is able to make provision for the additional support needs of the child in the offered school. The tribunal considered above the suitability of the respondent’s provision and found it wanting. The child has significant anxiety around attending the offered school which has resulted – despite measures previously put in place by the respondent – in a history of only limited and poor attendance (in weeks and days) at the offered school. The child has not attended the offered school since the beginning of Primary 6. The child is unable to return to the offered school. The respondent is unable to make provision for the additional support needs of the child in the offered school.

73. The provision of education at the offered school is fundamentally incompatible with the child’s ability, as evidenced by her limited and poor attendance over years and, ultimately, her inability to attend the school due to her anxiety and distress about attending the offered school, notwithstanding the measures previously put in place by the respondent. The tribunal was satisfied that such a combination of circumstances is exceptional.

74. For the forgoing reasons the tribunal was satisfied that this circumstance, which arises only exceptionally, does arise in relation to the child.

(b) would be incompatible with the provision of efficient education for the children with whom the child would be educated

75. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise in relation to the child. There was no evidence accepted by the tribunal that

providing education for the child in the offered school would be incompatible with the provision of efficient education for the children with whom the child would be educated.

(c) would result in unreasonable public expenditure being incurred which would not ordinarily be incurred

76. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise in relation to the child. There was no evidence accepted by the tribunal that providing education for the child in the offered school would result in unreasonable public expenditure being incurred which would not ordinarily be incurred.

77. Accordingly, the Tribunal was satisfied that placing the child in the specified school (a special school) would not breach the requirement in section 15(1) of the 2000 Act and was satisfied that the ground of refusal at paragraph 3(1)(g) of schedule 2 to the 2004 Act does not exist.

78. The tribunal having found that neither ground of refusal exists, the tribunal overturned the decision of the education authority and required the education authority to place the child in the specified school no later than September 2024.

Paragraphs 9, 10, 21 and 57 in this decision have been edited by the Chamber President for reasons of anonymity and privacy under rule 55(3)(b) and (4) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.