



Additional Support Needs

**DECISION OF THE TRIBUNAL**

**Reference**

1. This reference relates to the child, aged 11. The child's mother (described as '**the appellant**' in this decision) raised a reference against the education authority (described as 'the respondent' in this decision) on 01/07/2019 as she disagreed with the decision dated 01/07/2019 that the child did not require a coordinated support plan ('**CSP**') and as such the previous CSP would be discontinued.
2. The application is made under section 18(1) and section 18(3)(b)(ii) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**). The appellant asks the tribunal to require the respondent to prepare a CSP in terms of section 19(2)(b) of the 2004 Act.

**Decision**

3. The tribunal allows the appeal and requires the respondent to prepare a CSP for the child within 28 days of the date of this decision.

**Process**

4. The bundle consisted of HEC001-HEC172 including the statements of witnesses detailed above. There was significant unnecessary duplication.
5. Parties were unable to achieve agreement in relation to the reference during various periods of suspension.
6. Several conference calls took place on 10<sup>th</sup> October 2019, 11<sup>th</sup> August 2020, 8<sup>th</sup> October 2020 and 30<sup>th</sup> November 2020.
7. Parties agreed, in writing on 30<sup>th</sup> November 2020, that a decision could be made by the legal member, sitting alone, without the need for an oral hearing.
8. Submissions were lodged on 15<sup>th</sup> December 2020. A minute of agreed facts was lodged on the same date. Given that parties agreed that factual matters in this case were such that the case could progress on the papers only it would have been preferable to see a much more substantial minute of agreed facts.
9. The views of the child were sought. I was satisfied that the child did not have capacity to express a view in relation to this reference. It was agreed that the child would not be in a position to advance a view in respect of the contents of this particular reference; the same essentially being a legal decision only.

## Findings in Fact

10. The appellant is the mother of the child. The child is 11 years old. He lives in his family home with his mum and dog. He attends primary school A. He is in his primary seven year. He has extensive support within this provision, access to additional support teachers, pupil support assistants and educational psychology. The education authority provides significant additional support within education.
11. The child has not yet return to full time education following disruption to his education from March to August 2020, caused by the COVID-19 pandemic.
12. The child has been diagnosed with a number of conditions, namely, autism spectrum disorder (ASD) and associated social, emotional, communication difficulties. These conditions are life long and enduring. He has experienced trauma and bereavement. He communicates with picture exchange communication program (PECs) He has difficulties with social communication and finds unstructured parts of the day difficult. He struggles with concentration and can become frustrated and angry as he struggles to understand change. He has no sense of personal danger and requires close supervision.
13. The child's language and communication is progressing. Boardmaker assists with structuring the child's day and with transitions. He requires to be prompted in areas of personal care when going to the toilet and changing.
14. Educational psychology services are involved in an advisory capacity in their role as part of the local authority education provision. This particularly supports the work of pupil support assistants working with the child.
15. Speech and Language Therapy (NHS) provide an advisory service to those working with the child.
16. Child and Adolescent Mental Health Services (CAMHS) (NHS provision) are assessing the child's needs at present.
17. The local NHS child development clinic oversee and review the child every eight months and will see the child at the parent's request.
18. The child is supported by his GP as and when necessary.
19. An orthotic referral is outstanding.
20. The child's social worker has contact with the family once each month he spends approximately one hour speaking with the family on each occasion.
21. Self-directed support payments are made to fund a personal assistant for six hours per week during term time and twelve hours during school holidays. In addition, there

is provision for respite of one night per month. Self-directed support funding and personal assistant time was increased to 23 hours per week during lockdown.

22. The child has three personal assistants work with him on a rotational basis each week. The cost of the care workers is met by self-directed support which is funding provided by social work services following an assessment of the child's needs.
23. Personal assistants are asked to provide additional support to allow the child to feel confident and continue to be able to participate in physical activities; to feel fit, challenged and healthy. They are to provide additional support to build his confidence in social settings in an environment that stimulates an interest him. To provide additional support to learn how to socialise with peers and to develop friendships, essential socialising life skills and to live in an environment that promotes his cognitive and emotional development.
24. The child is working on communicating his thoughts and feelings enabling him to participate in group activities and is learning to ask for help. The work undertaken by personal assistants support the child's education through improving his memory, motor skills and monitoring development in line with the GIRFEC model and SHANARRI wellbeing indicators. Work is also undertaken in relation to social communication in line with his learning objectives. Literacy and numeracy is also undertaken by personal assistants.
25. Social work services, through personal assistants, support the child to make choices, participate in activities, promote his health and development, grow confidence and self-esteem and build relationships with others.
26. Personal assistants are kept up to date with the child's educational objectives to ensure continuity. Self-directed support increased payment to allow for 23 hours per week personal assistant support which assisted with education during the COVID-19 pandemic, high level lockdown. The child's maths and reading progressed during the lockdown periods due to input of personal assistants.
27. The child is unable to engage in school tasks with mum as he sees home and school as very different forums with different purposes. It is difficult for the appellant to support the child to complete schoolwork this was particularly prevalent during lockdown. The child is able to associate personal assistants with education and learning.
28. Personal assistants are required to provide additional support in respect of the child's educational objectives. There is a direct link between the work undertaken by personal assistants and the child's educational outcomes. There is a requirement for consistency of approach with the child in order that he may learn. Social work services require to provide a wide range of experiences in the community.
29. The child has a multi-agency plan, an individual education plan child action plan, personal emergency evacuation plan and a behavioural risk assessment.
30. The following people are invited to the multi-agency meeting and action plan as interested parties in the child's education: the appellant as parent of the child; the deputy head teacher and chair of the meeting; the additional support for learning

teacher; class teacher; social work services; educational psychologists; speech and language therapist, clinical nurse specialist; CAMHS; occupational therapist CAMHS; GP; consultant paediatrician community health and medical paediatrics and admin support assistant.

31. The support required to achieve the child's learning objectives need to be coordinated between all those involved in supporting the child's learning objectives. Services require to be co-ordinated to meet the child's educational objectives.

### **Evidence – General Remarks**

32. I accepted the written evidence of all of the witnesses as being credible and reliable save for one conflict of evidence referred to. The facts and circumstances of the case are not in dispute and the content of the respective witness statements were not challenged.
33. The question to be considered here is whether or not the child meets the statutory test for a CSP. This is a four part test. There is agreement that first three parts of the test are met and therefore are covered only briefly. Although there is specific reference to areas of evidence the decision is not intended to review all areas of evidence.

### **Legal provision and reasons for the decision**

34. It is a matter of agreement that the child has additional support needs (detailed at finding in fact 11) as defined within section 1 of the 2004 Act.

**In terms of Section 2 of the 2004 Act, a child or young person requires a “co-ordinated support plan” for the provision of additional support if—**

**(a) an education authority are responsible for the school education of the child or young person**

35. The child attends a primary school under the management of the education authority, the respondent is therefore responsible for the education of this child (see finding in fact 10). This test is therefore satisfied. This matter is not disputed.

**(b) the child or young person has additional support needs arising from (i) one or more complex factors, or (ii) multiple factors**

36. The child has both complex and multiple additional support needs as detailed at findings in fact 12. This test is therefore satisfied. There was some confusion in this area as to whether the child's needs are complex, multiple or a proportion of both. It is addressed directly in the submissions of both parties, but not in evidence directly. Witness A, together with extensive documentary evidence throughout the bundle, led me to conclude that the child had both complex and multiple additional support needs. The respondent submits the additional support needs are multiple but not complex. There is agreement however that this part of the test is satisfied.

**(c) those needs are likely to continue for more than a year**

37. The factors giving rise to additional support requirements are lifelong and enduring as detailed at finding in fact 12. This test is therefore satisfied. This matter is not disputed.

**(d) those needs require significant additional support to be provided—**

38. The significance of this support is the central issue of dispute between the parties. *JT v Stirlingshire Council* 2007 CSIH 52 concluded that the word significant should be given its ordinary meaning and importing more than “not insignificant”. Significant is to be considered in relation to the additional support and requirement to co-ordinate support.

**(i) by the education authority in the exercise of any of their other functions as well as in the exercise of their functions relating to education,**

39. The child attends a special school as defined by section 29(1) of the 2004 Act, he has extensive support within this provision, access to additional support teachers, pupil support assistants and educational psychology. The education authority provides significant additional support within education.

40. The child receives support detailed at findings in fact 19-26, 28-31 and 33-34 from social work services which is a local authority provision exercising their functions out with education and therefore an appropriate agency. The education authority in the exercise of their other functions as social work services is significant.

41. Discussion has been undertaken in relation to bringing one of the child’s personal assistants into school to bridge transition from primary to secondary school. This is an illustration of collaborative working and the need for co-ordination.

**Or (ii) by one or more appropriate agencies**

42. There are many other medical professionals involved as specified at findings in fact 14-17. The NHS is the appropriate agency in this case and not the individual providers (in this case CAMHS, Community Child Health, Occupational Therapy, Speech and Language Therapy, Physiotherapy and Orthotics).

43. Of importance in this case is the statutory guidance, *Supporting Children’s Learning: Statutory Guidance on the Education (Additional Support for Learning) (Scotland) Act 2004 (as amended), Code of Practice (Third Edition) 2017 (‘Code of Practice’)*, issued by the Scottish Government. The code of practice provides that where a child has several professionals involved from one appropriate agency, such as from an NHS Board, then the cumulative effect of these professionals’ involvement may amount to significant additional support from that agency, even although the input from each professional individually is not significant. This is clearly the case for this child.

44. Significant additional support may be provided to a child on an individual basis, in a group setting with others or through personnel working under the direction and guidance of those from the appropriate agency. The issue of significance thus refers to the extent of the provision. Judgments about significance have to be made taking account of the frequency, nature, intensity and duration of the support and the extent

to which that support needs to be co-ordinated and is necessary for the achievement of the educational objectives. (Pg72 *Code of Practice*).

45. The Code of Practice requires the Tribunal to take into account the frequency, nature, intensity and duration of the support, and the extent to which that support was necessary for the achievement of the educational objectives which would be included in a CSP (page 72 *Code of Practice*).
46. Frequency: - the specific frequency of input in relation to services is detailed from finding in fact 14-22. Additional support is both frequent and significant. It is clear from the written evidence of the appellant and personal assistant's statements that the regularity of input is important in progressing educational objectives.
47. Nature: - the specific nature of input is detailed at finding in fact 22-25. This is further supported by the contents of meeting minutes and planning documents. This is significant as it works to develop skills detailed within the child's educational objectives. The necessity for consistency of approach is clear given the child's additional support needs.
48. Intensity: - the additional support provided has a strong influence on the child and has allowed the child to progress towards his educational objectives. The intensity of the additional support can be inferred from the frequency and nature of the additional support provided.
49. Duration of the support: - there appears to be no dispute that a high or significant level of support is required on an ongoing basis. This is reviewed six monthly to ensure that the provision made is meeting the child's needs, there is no indication in evidence that there will be a dramatic decrease in the provision of additional support. The child's condition is life long and enduring and the need for additional support is ongoing. The duration of the support can be said to be significant.
50. Each party involved with the child was provided with a proforma questionnaire the contents of which ask each party to consider whether or not the criteria for a CSP is met. It is of note that this is a legal question to be determined by the respondent in the first instance and now falling to me to determine, it is not appropriate to look to stakeholders to answer this legal question.
51. Social work services confirm that, in their view, the child has one or more complex factors, principally autism, there are multiple factors, learning disabilities; that these needs are likely to continue for a period of a year and he requires significant additional support to benefit from education. I concur with social work assessment of the facts that they as an appropriate agency provide significant additional support in respect of the child's educational objectives.
52. Witness E states that social work services do not consider their support significant at the primary evidence direct from social work services is preferred and it is assumed that there has been an error in interpreting this evidence by witness E. In any event as previously stated this is a legal question and not one for providers. From the facts I have drawn the conclusion that part four of the test is met and have not been influenced by my view by the evidence at HEC152, however, would hope that the

respondent may revisit the comments made by social work services in delivering education to this child.

53. The additional support provided to the child by education, social work and NHS services is significant and requires to be coordinated in the form of a CSP.

54. The criteria for a CSP are met.

55. Section 9 of the 2004 Act provides: "(1) Where an education authority establish in pursuance of any provision of this Act that a child ... for whose school education they are responsible requires a coordinated support plan, they must prepare such a plan for the child." This is not a discretionary power but a requirement.

56. As such the respondent is directed to provide a coordinated support plan within 28 days.