



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. The appellant made an application to the respondent in August 2019 to have the child placed at the specified school.
2. The respondent refused this request on 26 September 2019, relying on three grounds of refusal specified in schedule 1 of the Education (Additional Support for Learning) (Scotland) Act 2004 (**the 2004 Act**) at paragraphs 3(1)(a)(iii), 3(1)(d) and 3(1)(f) of Schedule 2 of the 2004 Act.

Decision

3. The tribunal overturns the decision of the respondent to refuse the placing request and requires the education authority to place the child in the school specified in the placing request as soon as possible and no later than October 2020.

Process

4. A hearing took place over two days by video conference, in accordance with President's Guidance Note 02/2020 Remote Hearings and the Covid 19 Outbreak. Prior to the hearing a number of case conference calls took place. Directions were issued to regulate the hearing and pre-hearing process. Written submissions were directed and exchanged before the hearing and final oral submissions were made at the hearing. Written witness statements were prepared by both parties for each of their witnesses. The skilled witnesses lodged written reports. Two advocacy reports were prepared in connection with the views of the child (T49-55 and T65-68). A joint minute of agreed facts was lodged (T69-72).
5. Before we reached our decision we considered the oral and written evidence and the written and oral submissions. The written evidence (the bundle) consists of T1-72, A1-A409 and R1-142.

The child's views

6. The child asked to present his own views at the hearing. He did this without support and expressed himself clearly and eloquently. These did not deviate from his advocacy reports. His views are referred to later in our decision.

Findings in fact

General findings

7. At the time of the hearing the child was 10 years old. He lives at home with his mother (the appellant), his father and his sister.
8. The child has a primary diagnosis of fetal alcohol spectrum disorder (**FASD**), with co-occurring, attention deficit hyperactivity disorder (**ADHD**), autism spectrum disorder (**ASD**) and conduct disorder (report of witness B at A093-A106).
9. The child has a lengthy history of involvement with CAMHS, occupational therapy, speech and language therapy, the autism and assessment team and social work services.
10. The child is a very anxious vulnerable boy who has significant issues making sense of the world. He presents with increased levels of arousal, accompanied by poor physical and emotional self-regulation and control. He is restless, distractible and hyperactive, with impulsive responding. He has poor attentional skills and ability to persist with tasks. Social skills and communication awareness are markedly impaired, accompanied by egocentricity and lack of social and emotional reciprocity and empathy. His lack of social awareness and imagination contribute to poor appreciation of how the world works, resulting in misunderstandings and anxiety with limitation in positive social/peer interaction.

Peers

11. The child struggles to understand the general norms for social interactions, play and games. This leads to isolation from his peers when he disrupts their games or lashes out at them. He struggles to understand the emotions of others or their emotional needs.
12. The child can appear to understand conversations or requests but this can mask an underlying difficulty with cognitive processing or understanding (Wellbeing Plan A379).
13. The child requires constant adult supervision in order to progress both at home and at school and in order to keep himself and others safe. Such intervention and lack of peer friendships contributes to his anxiety, low self-esteem, and increasing introversion and mood disturbance. Reactive, angry, physical and verbal outbursts occur frequently, e.g. during over-vigorous play (report of witness B at A096).
14. Although the child seeks social interaction and contact with his peers, this is seldom achievable as he finds noisy and crowded environments such as the whole class, school corridors, playground or lunch hall to be uncomfortable, stressful and distracting to the point that he is overwhelmed.
15. The child is friendly, helpful, and polite. He is hardworking and determined. He has a strong desire to make and have friends.

Pressure valve effects

16. The child likes to please and tries hard to comply and make progress at school, which means that he needs to expend considerable willpower and resilience. This can lead to increasing fatigue over the school day, particularly if there have been any incidents or social misunderstandings and peer rebuffs. This leads to decompensated 'pressure valve' effects which often occur and present as maladaptive physical and verbal outbursts when returning to the familiar and safe comfortable surroundings of home and

family. He frequently returns from school and will descend into very challenging physical and verbal abusive behaviour placing his sister and parents at risk requiring them a times to seek safety in separate rooms (report of witness B at A096). This has placed the family in crisis (T072).

The current school

17. The child attends the current school, which is a mainstream school provided by the respondent.
18. The child has attended the current school since primary 1 through to primary 5 until 'lockdown' commenced on 23 March 2020. The child has not returned to school.
19. The child has a co-ordinated support plan (**CSP**), the most recent dated February 2019 (A370-74).
20. The child has a Wellbeing Plan, the most recent dated March 2019 (A377-85).
21. The current school has a pupil roll of 630 pupils. The child is placed in a class of 30 pupils.
22. The school has a number of pupils with ASD.
23. The school has an Additional Support Needs Coordinator who oversees all children in the school and nursery class who have additional support needs. The school has an Additional Support Needs teacher, who is also the ASD Advisor. Along with other members of staff, both have attended the annual ASD Conference. The Additional Support Needs Coordinator attended a conference on FASD, along with the child's parents.
24. The school has strong links with their local authority Psychological Services Team, which assists in building on the support strategies used in school.

The child and the current school

25. The child had good attendance at school before lockdown.
26. The child has not been formally excluded from school.
27. The child has good relationships with the adults in his school. He is a well-liked child amongst school staff.
28. The child is provided with a range of school supports, which include a pupil support assistant (**PSA**) (who is available to the child and other children), brain breaks, movement breaks, chunked timetable, daily visual timetable, playtime and lunchtime timetable, laying out and labelling of resources, advance notification to the child of any upcoming changes and small group activities to support the development of social skills (statement of witness D at R106-107).

29. The child requires constant adult supervision to access some areas of the curriculum and to socialise with others. At times he can be physically aggressive towards his peers (CSP at A370). The child can sometimes be picked on by his peers. He has been involved in a number of physical altercations with other pupils and sometimes his peers' tolerance levels towards him can be low. This leads to isolation from his peers (Wellbeing Plan A379).
30. The child has frequent breaks during class and one to one supervision between classes and in the playground. He is isolated and shielded from his peers, which is necessary to avoid incidences of conflict with other pupils. As a result of this the child is segregated and less able to develop social skills.
31. The child is seated separately from other pupils in the classroom. He sits at a desk at the front of the class while the remaining pupils sit in a horseshoe shaped group. The child has a table outside the class where he sits during times of unstructured (higher) activity e.g. the start of the class day. He has access to a 'busy box' during this time. The child takes his lunch in the lunch hall along with the other pupils, although he accesses this first when it is quieter.
32. The amount of unstructured time the child spends in the playground is limited. There are three breaks in every school day. The child accesses the playground during morning break, with the supervision of the PSA or another teacher. The child has limited access to the playground at lunch time. After the child has his lunch he helps the school janitor to tidy the hall and then accompanies him around the school helping him empty bins. The child can go out to the playground for the remaining 5 or 10 minutes of lunch break. He has an allocated adult for this time. For afternoon breaks, the child stays in school and does not go into the playground, except for the last 5 minutes of break on a Tuesday and Thursday afternoon (statement of witness D at R108).
33. During periods of wet play the child does not remain with the pupils in his class. He either sits with an activity outside the class or accompanies the PSA to the primary 1 class where he usually sits and eats his snack.
34. The social demands of a busy classroom are overwhelming for the child. This demanding, busy social and sensory environment requires an enormous effort by the child to manage his emotions and leads to suppression of emotion and distress, which frequently results in highly aggressive, uncontrolled and violent behaviour on leaving school. During school summer holidays between 2016 and 2019, there was a marked decrease in these behaviours. This has been replicated during the period of lockdown from 23 March 2020 to present.
35. On the standardised objective test measure used by the respondent, the child has regressed from a standard score of 86 for maths and 83 for reading (in P3) to 80 and 80 in P5, with a minimum possible score of 75.

The specified school

36. The specified school is an independent special school providing education and care to boys in a residential environment. Their staff are trained and experienced in supporting children with ASD, ADHD and FASD. The school has gained autism accreditation by the National Autistic Society. Autism accreditation provides an autism specific quality assurance programme which is audited three times a year (letter of offer at T24). The

school has audited its practice and approach to FASD in all areas of the school and has hosted training sessions by FASD Hub Scotland for their staff (statement of witness A at A254).

37. The school provides primary and secondary school education. All pupils can access a standard National Curriculum.
38. Class sizes consist of a maximum of six students with a minimum ratio of one adult to three students. All pupils have a key teacher, key worker and co-worker who work closely with pupils, parents and associated professionals. The school also employs two Independence Development workers.
39. Levels of attainment for pupils in the school is higher than those achieved by pupils with additional support needs in a mainstream setting e.g. at SCQF level, 36.5% of pupils in mainstream achieve one pass or more at level 6 or better, compared with 85.2% in the specified school (statement of witness A at A251).

The child and the specified school

40. A sensory assessment is carried out with all pupils, which is regularly reviewed (letter of offer at T34). The child would, if attending the specified school, be placed in a class with two other pupils.
41. The programme of education and care is personalised to the child. The school works with self-regulation scripts to help promote positive behaviour in all classrooms along with a calm organised learning environment. The school has a positive behaviour policy. The school promotes and teaches self-care and independence skills. The school provides a programme of transition and support in preparation for the transition to life beyond the school. Tailored coaching, peer mediation and support provides pupils with the opportunity to develop skills in mediation, conflict resolution and restorative practices. Peer support offers pupils the opportunity of finding new ways to communicate and empathise (letter of offer at T32).
42. The school offers a wide range of extra-curricular activities as part of their 24 hour curriculum, which include karate, sailing and cooking (letter of offer at T35).

Findings on cost

43. The cost of a placement at the specified school is £79,131 per annum for a term-time (39 weeks) residential placement.

Reasons for the Decision

Oral evidence

General remarks on the oral evidence

44. We accepted the evidence of all of the witnesses as being credible and reliable. The appellant's witnesses were clear, reflective and consistent. Where concessions were appropriate (such as the potential challenges of integrating the child into a new school) we found that the appellant's witnesses were prepared to make these. The respondent's witnesses were clear and consistent but they were less willing to make concessions and remained firm in their views.
45. We benefitted from the provision of detailed witness statements and skilled witness reports for all of the witnesses. None of the witnesses deviated in any significant way from their statements/reports.
46. The respondent's witnesses knew the school routine very well. They appeared to know the child reasonably well although their knowledge and understanding of the impact of the child's diagnoses on his life at school were less well understood. Witness D holds the dual position of Depute Head Teacher and Additional Support Needs Coordinator and is employed by the education authority.
47. Witness E is an Educational Psychologist with 22 years of experience who is employed by the education authority. He is the link Educational Psychologist for the current school. He has been involved in the child's care for two years but has known the child for longer. He consults with the school and parents on the child's needs, has input into his Wellbeing Plan and attends reviews and CSP meetings.
62. Witnesses D and E had no specialist training in FASD. Witness D had attended a conference on FASD. When asked about the 6 Guiding Principles in the Ayrshire and Arran Health Board Guidance, *Understanding FASD, What educators need to know (AAHB guidance)* (A234) for pupils who have FASD, she was not familiar with these.

Skilled evidence

63. The appellant led evidence from two independent skilled witnesses in the fields of occupational therapy and paediatrics/FASD. No contrary independent skilled evidence was led for the respondent. We found the appellant's skilled witnesses to have considerable expertise and knowledge in their specified fields. Where their evidence conflicted with the respondent's witnesses, we preferred the evidence of the skilled witnesses. Their expertise in the complexities of the child's diagnoses was clear and compelling. We were impressed with their level of understanding and knowledge of the child. Although they had not known the child for the length of time the respondent's witnesses had, they had undertaken a comprehensive review of all appropriate records and had conducted interviews and observations suitable to the assessments being undertaken (reports of witness B at A93-106 and witness C at A107-174).
64. It was suggested to us that it would be hard to find anyone more expert in FASD than witness B. We agree. He is a retired paediatrician with experience in acute paediatric neonatology and the diagnosis and management of neurological and

neurodevelopmental conditions. His caseload included children and young people with learning difficulties, ASD, and FASD. Alongside his clinical work he was involved in research, consultative work, and professional advisory work with the Scottish Government from 2010 to 2020. This included contributing to a national surveillance study of FASD in Scotland, awareness raising and training initiatives, clinical guidelines, and setting up e-learning and guidance resources. His evidence was not based solely on his clinical experience but reflected several hundred school hosted meetings. He explained the difference between observational assessment undertaken by a school team trying to interpret what they observe and diagnostic assessments. He said that if a school are going to observe and reach conclusions based on observations, these need to be detailed and long observations. This point is important. We are not satisfied that the current school has taken adequate account of the need for both observational *and* diagnostic assessments.

65. Witness C is an Advanced Occupational Therapist and an advanced sensory integration practitioner with specialism in paediatrics. She has worked with children with neurological conditions, including ASD, ADHD, FASD, developmental delay, sensory processing and integration difficulties; school related and functional difficulties; and attachment difficulties/disorders. She has over 12 years' experience in mainstream school settings. Her recommendations reflected the child's needs, whichever school he would attend. On the point in her report related to home-schooling (at A111) she clarified that this had not been assessed and was only offered as a consideration. We did not explore this as it was clearly not an option for either party.
66. The witnesses for the respondent had the benefit of reading the reports of the independent skilled witnesses. They did not agree with their conclusions and recommendations. Witness E was critical of the assessment of Witness C and disputed her credentials to undertake an education assessment. Witness D felt witness C's assessment of the current school was "not fair". We found both criticisms to be unjustified. It is clear from her credentials and experience that witness C is qualified to have undertaken the assessment. Furthermore, she is trained in sensory integration, whereas witnesses D and E are not.

Legal tests

67. As pointed out by the appellant (and as set out in the case of *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126 (Sheriff Court)), the appropriate assessment point is at the time of the hearing. We accept that the onus of establishing the ground of refusal lies with the respondent. We also accept that (again arising from the *M* case), consideration should be given to the assessment of the child's needs which happened closest to the hearing. We have evidence of such assessments in the appellant's witnesses' oral and written evidence.
68. There was no dispute between the parties on the question of whether the child has additional support needs, as defined in section 1 of the 2004 Act. Given our findings at paragraphs 7 to 16, it is clear to us that this is the case.
69. The respondent relies upon three grounds of refusal from the 2004 Act. We consider each in turn.

Grounds of refusal

First ground of refusal: schedule 2, paragraph 3(1)(a)(iii)

Placing the child in the specified school would be seriously detrimental to the continuity of the child's education.

70. We were not persuaded that this ground was met. Given our findings at paragraphs 36 to 42 above, it is clear that placing the child in the specified school would introduce him to a sensory sensitive environment tailored to his particular needs. This would be a positive educational experience for the child as opposed to one which would be seriously detrimental. We say more about this at paragraphs 73 to 77.
71. Witness B expressed surprise at the wide discrepancy in accounts from the current school compared with his findings. He suggested that the school accounts were surprisingly low key compared to other sources and what he would anticipate based on the child's FASD. He said there is a danger that the child will be overestimated as he presents on the surface as a polite, gentle well-spoken boy, which does not align with the internal challenges which will be ongoing.
72. If the status quo was to be maintained with respect to the current school the risks are very high (report of witness B at A099). Witness B emphasised the importance of a system of support – educationally and emotionally - to try to head off some of the risks that will inevitably attend once the child reaches puberty. This will require a nurturing school environment where the child can be constantly reminded and guided. Witness B said that his nightmare is [the child] being in a busy high school setting where the risks are very high. He said small is beautiful. He concluded, "Were that my child I would be quite properly distressed."

Second ground of refusal: schedule 2, paragraph 3(1)(d)

The child does not have additional support needs requiring the education or special facilities normally provided at [the specified school]

73. We were not persuaded that this ground was met. Witness A was clear in his assessment that the specified school would be a good fit for the child. He was satisfied that the child's additional support needs could be met in the school and he was satisfied that the child needed the range of facilities provided by the school. He advised that the school refuses more placing requests than are granted. We were able to attach some weight to his evidence, given his role as Principal and the knowledge and experience he has of a special school environment; and his qualifications and expertise in the diagnoses of the child.
74. We were not persuaded by the evidence of witness E that the child does not require what he called this "most high tariff" placement (R098). His views of residential education seemed to us rather one dimensional. He suggested that a placement of this nature ordinarily only occurs through the joint engagement of social work and education, with social work taking the lead. This may well be his experience in this education authority; however, we heard from witness A that children at the specified school arrive in different

ways, including private funding by parents. Witness E had not visited the specified school, which meant we could place little weight to his evidence.

75. Witnesses B and C made recommendations in their reports with regard to the most suitable educational environment for the child. Witness C visited both schools before compiling her report, which meant we could attach more weight to her evidence. It is clear from their evidence that the child has the type of additional support needs requiring the special facilities normally provided at the specified school.
76. Witness A advised that the child would have a peer group with similar characteristics in a small classroom, which would be sensory sensitive. The specified school offers a range of ways to support making friends and dealing with social situations including peer support, coaching, rehearsal, and '7 kinds of Smart'.
77. The specified school staff have had training on FASD. They use the 6 Guiding Principles from the AAHB guidance to audit practice. Witness A was very encouraged by the outcome of the last audit in 2019.

Third ground of refusal: schedule 2, paragraph 3(1)(f)

78. This ground is made up of a number of constituent parts, numbered in paragraphs 3(1)(f)(i)-(iv). The respondent must satisfy us that each of the paragraphs apply for the ground of refusal to exist. Given our findings at paragraphs 7 to 42, we are not satisfied that this is the case.

(a) The specified school is not a public school: paragraph 3(1)(f)(i)

79. This paragraph requires that the specified school is not a public school. We are satisfied that this is the case, and this was not disputed. This part of the ground of refusal is met.

(b) Provision for the child's needs at the current school: paragraph 3(1)(f)(ii)

80. The application of this paragraph is disputed. This paragraph requires that the respondent is able to make provision for the child's additional support needs in a school other than the specified school. In this case, that other school is the current school. We are not satisfied that the current school can make such provision and that this part of the ground of refusal is met. Our reasons for this can be found in paragraphs 82 to 125.

(c) Reasonableness of placing the child in the specified school: respective suitability and cost - paragraph 3(1)(f)(iii)

81. The application of this paragraph is disputed. This paragraph requires us to have regard to both the suitability and cost of the provision for the child's additional support needs at the current school and the specified school respectively. Having considered both, we conclude that it is reasonable for the respondent to place the child in the specified school.

82. The question of reasonableness must be viewed from the respondent's standpoint, which was confirmed by Sheriff Tierney in the case *M v Aberdeenshire Council* 2008 SLT (Sh Ct) 126, where he says at paragraph 54:

“The matter in respect of which a decision on reasonableness is required is the placement of the child in the specified school. That placement would be made by the defenders’ education authority and accordingly it seems to me that the question is whether it would not be reasonable for the education authority to place the child in that school, not whether it would be reasonable for the parent to seek to have him so placed.”

Respective cost

83. On cost, it is clear that we should consider the additional cost in meeting the additional support needs for the child at the current school compared with the cost (the fees and, if applicable, transport cost) in relation to the specified school (*S v Edinburgh City Council (SM, Appellant)* 2007 Fam LR 2 at paras 23 and 28, as approved by the Inner House in *B v Glasgow City Council* 2014 SC 209; 2013 SLT 1050 at para 19).
84. The costs of a placement at the specified school are agreed (T71). The appellant’s representative submitted that while the appellant has expressed an interest in a 46 week placement, this is not something which we have the power to grant. We agree. Our powers are restricted to requiring the respondent to place the child at the specified school. It is accepted that this necessarily involves a term-time (39 week) residential placement. It is that fee (£79,131 per annum) which we must include when considering this part of the test. If the child was to continue at the current school no additional costs would be incurred by the respondent; therefore, the cost of providing for the child’s additional support needs at the current school is nil.

Conclusion on respective cost

85. The parties agree that it is appropriate for the respondents to take a child-centred rather than a cost-centred approach to the decision (Joint Minute at T70) and witness E stated that the cost, while relevant, “is very much a secondary issue, secondary to the consideration of the child’s needs” (R96), which he repeated in his oral evidence. Sheriff Kierney reminds us in the case of *M* that cost is an issue which can only be determined by evidence and the onus of establishing all four conditions lies with the respondent (para 55). We accept that the approach taken in *M* is appropriate. The evidence in this case is that cost is a secondary issue and we must accord that evidence respect. We therefore treat cost as a secondary issue.

Respective suitability

86. When considering respective suitability, Sheriff Tierney explains that:

“The two factors which have to be taken into account are suitability and cost. It seems to me that suitability involves an assessment of the respective qualities of the provisions from which [the child] will benefit in each of the two schools.” (para 54)

87. This involves a direct comparison of the respective qualities of each school from which the child will benefit. In this case the evidence is clear. The specified school is more suitable. It is not the case that both schools are suitable and one is more attuned to meeting the child’s additional support needs.
88. Of most value to us in the task we have to perform is credible and reliable evidence of the provision available at the two schools from a professional who has direct experience

of both. That is what we have in the evidence of witness C. Her conclusions and recommendations (at A143-145) are consistent with those of witness B, whose recommendations are set out in A098. Although witnesses D and E were able to provide us with information on what is provided in the current school, they had not visited the specified school. Witness A was able to provide us with evidence on the provision at the specified school.

Teaching staff (paragraphs 23, 24, 28, 36 and 38)

89. Teaching staff at the current school have limited training and experience in the education of children with ASD, although there are a number of pupils with ASD who attend the school. They have limited knowledge and experience of FASD. Although witness D attended the FASD conference, she could not remember who the speakers were, even when advised that witness B was one. Although she had knowledge of the AAHB Guidance, she could not recall their Six Guiding Principles; whereas this was well known to witnesses A and B.

90. Teaching staff at the specified school are trained and experienced in the education of primary and secondary school children with the same types of diagnoses as the child. They are an autism accredited school and they audit their FASD practice.

Classroom size (paragraphs 21, 38 and 40)

91. Witnesses B and C emphasised the importance of a small, sensory sensitive classroom environment. The class size in the current school is 30, which is far greater than witnesses A, B and C perceived to be suitable. The class size at the specified school would be 3 (including the child), which is consistent with his additional support needs.

Sensory needs, sensory environment (paragraphs 10-16, 26 and 28)

92. It appeared to us that there was a lack of understanding within the current school about how his diagnoses, in particular FASD (according to witness B the child is at the top end of FASD) manifest in the child and a lack of knowledge of how to support the child in school to prevent sensory overload.

93. Witness D was only aware of 'masking' in general terms. She was not aware that the child could be masking in school although this is a common behaviour in children with ASD. Witness C found the child to be very good at masking his difficulties and his demeanour to adults is of a happy, smiley, compliant pupil. The terms 'coke bottle effect' including 'fizzy' and 'the pressure cooker effect' are all used to describe masking and its impacts. The person works so hard all day to suppress and 'mask' their struggles in order to not draw attention to themselves and once in their safe place, they have a meltdown. While both witnesses for the respondent said that they knew of this, and tried to take account of it, they did not demonstrate to us an understanding of the cost to the child of having to suppress his needs and challenges while in school and that this comes at a significant cost at home. We heard from the appellant that the 'coke bottle effect' diminishes during school holidays and has diminished significantly during lock down.

94. The child requires an individualised, visually supported, sensory and emotional regulation programme in school and at home (report of witness C at A147). He requires an educational setting where he is part of a small group with 1-1 adult support. The

environment needs to be devoid as much as possible from visual and auditory clutter. Witness C explained that by reducing sensory input the child will feel more regulated and able to focus on learning activities and interacting with others.

95. There needs to be scope for accommodating the child's other sensory needs, e.g. regular regulating movement with proprioceptive (heavy work) input, support with emotional regulation, flexible seating options, and having access to fidget toys while focusing on work. This is necessary to allow him to access the curriculum, learn life skills, and foster social interaction including forming and maintaining friendships with his peers, which is critical for the child's overall health and wellbeing (report of witness C at A143-144).
96. The classroom in the current school is a noisy, busy environment, uncomfortable, stressful and distracting. What struck witness C during her visit was the enormous effort employed by the child to "compulsively comply" to the direct and perceived expectations of the adults in the school (A139). She explained that there is a difference between being surrounded by other children and being part of the group. It is clear that this is the case for the child, who has to mask his difficulties at school. The child has learned to relate to people using a self-protective, compulsive strategy that he has adopted. This provides him with a positive response from adults in school but does not work with children, who are less predictable.
97. The child is over eager to please and very good at masking his difficulties using his strengths in expressive language and demeanour and compulsive compliance behaviour. An example of this occurred when witness C conducted a home assessment with the child using a pen to touch parts of his arm – although his central nervous system was showing considerable distress, he said he was OK to keep going and he kept smiling. Witness C believes the child perceives that he cannot show that he is dysregulated.
98. Until the child's needs in regards to his multiple diagnoses are met in an education setting, the child will not be able to safely socialise with his peers nor will the violent and aggressive behaviours at home improve. When asked about the child's current school, witness B said that he felt very sad on behalf of the child, that his internal stress must be quite high. He warned that in a busy mainstream setting the child cannot not continue to have problems. The child presented a picture of a child who feels a stress to conform to school's regulations. He advised that children with FASD are notoriously difficult to assess and need to be constantly reminded and guided within a nurturing environment.
99. It was clear to us that because the child has not shown reactive change in the current school it did not mean he did not struggle. This was summed up in the evidence of witness B who said that the child has difficulty communicating his struggle without wanting to make a fuss and draw attention to himself.

Diagnostic needs – child's behaviours (paragraphs 10-16, 29-34)

100. We were faced with a clear dichotomy of views between the appellant's and the respondent's witnesses on the child's behaviours at school. The evidence in both the written evidence and the oral evidence for the respondent made claims about how the child presented at school that were, at times, at odds with each other; whereas the claims made by the witnesses for the appellant, the appellant and the child himself were consistent.

101. Witness E said in his statement (R091) that neither school staff nor he had noticed any concerns over sensory overload occurring in the classroom. Neither did the child appear to be severely dysregulated in school. Witness D stated that the child does not present with any sensory issues or high levels of anxiety in school (R102, paras 7-8) and he is absolutely not prone to outbursts (R108). In the respondent's case statement (R2) they state that the child has never been a risk to himself or others at school and that he is not considered by staff at the school to be either unruly or problematic. This is confirmed by witness E in his statement (R083) that the child is not a challenge in terms of safety, either to himself, teachers or others at the school. We read in the annual school reports (R9 – R22) that the child is a lovely boy who enjoys school and likes to interact with his schoolmates and has made good progress both academically and socially; that he is a cheerful boy with a fun loving attitude which is appreciated by many.
102. These statements contradict statements in the Wellbeing Reports that suggest all staff are well aware of the child's anxiety (R37); that when over or under stimulated or at times of emotional distress the child appears to experience difficulties accepting the support of others resulting in him becoming distressed and placing himself and others at risk on occasions (R24 and 31). The most recent CSP (A370) records the factors giving rise to additional support needs, which includes the fact that the child struggles to understand the general norms for social interaction, play and games, which leads to isolation from his peers and that the child can display a high degree of emotional dysregulation, anxiety and poorly developed abilities. The pastoral notes (A279 – 286) give examples of incidents where the child hurts others both in and out of the classroom and where he is being hurt by his peers.
103. In the report of the speech and language therapist (A320) she notes the child's teacher reports that he will regularly hit peers when he moves around the classroom and this results in him being told off and can escalate his behaviour. Witness D acknowledged that (R103) the child can sometimes be physical with other children in school and can hurt them but equally he has been hurt by other children too.
104. The child's altercations with his peers when he is on the receiving end is not seen as bullying by the school, but as an expression of frustration by the pupils on the child's behaviour towards them over time. Witness D, when questioned, said that peers can be mean to him even when not provoked. The child describes himself as being bullied, which surprised witness D.
105. We are satisfied that in the school records and the joint minute of admissions we see a picture of a school who has endeavoured to provide as much support as they can with limited understanding of the impact of the child's diagnoses. This, however, is insufficient in meeting the child's additional support needs.

Peer socialisation and isolation (paragraphs 11-15, 29-34, 40-41)

106. The evidence of the respondent's witnesses is that the child is involved with his peers and is not generally on his own or isolated (witness E R093). This is in stark contrast to the evidence for the appellant, which is that the child is effectively isolated and shielded from his peers. While the appellant has nothing but praise for the current school's efforts, she is concerned that they take the child at face value and have not been able to assess, identify and provide further supports. The school's response to incidents has been to

keep the child and others safe by removing him, which has moved him further from his peers.

107. The child told us that he “really, really, really doesn’t like” the current school. He said he has no friends and “just gets bullied there”. He said he gets bullied all the time. He said he gets to play with other pupils just a couple of times – “just maybe once a year”. Although he enjoys the time he spends with the school janitor, he would prefer to be out playing during breaks, if he had any friends. Forming a friendship is clearly very important to the child. This is an area where the specified school is more likely to succeed given the smaller class sizes, the opportunities for peer group work and activities and the peer programmes available.

108. There was one anomaly. The child is reported as saying “school is brilliant” in the most recent CSP (A373), which is at odds with how he had been reporting to his parents and how he reports his experience now. It is not entirely clear where this statement emerged from but the appellant believes it misreports the child’s views.

109. It is clear from school reports that the current school have been reactive as incidents occur; rather than being proactive and considering the child’s needs first and putting in place evidence based interventions to aid learning, reduce behavioural challenges and increase self-esteem, as opposed to the opposite effect if not part of day to day support (report of witness B at A098 bullet points). This has led to increasing isolation of the child from his peers.

110. The evidence suggests that the child is isolated within the current school. It is clear that the child feels this. His views gave us no sense of him feeling safe, healthy, respected or included in school. Not having any friends and feeling alone came through very strongly.

111. We see this from the school routine. When he arrives he goes to the table outside the classroom and waits for the teacher or PSA to arrive. His break times are closely regulated and supervised as is his time during ‘wet days’. He sits on his own at the front of the classroom. He leaves school by a different door to avoid conflict with other pupils at the end of the school day. He does not take part in any after school activities with his peers.

112. The specified school uses a Having Your Say form to support pupils and to report on their experience of the school. In the final year all pupils reported that they liked the school, they felt supported and the school was good or better (100%). In the narratives which are encouraged in the form, some pupils said that they “loved school”, felt that “school was great” and that they were “happy” (statement of witness A at A252).

113. We concluded that the child is unlikely to experience isolation in the specified school and that he will have a number of choices and opportunities to engage with and develop relationships with his peers.

Attainment (paragraphs 35 and 39)

114. There is ample evidence to indicate that the child is surviving but not thriving in the current school. It was asserted that the child is learning and progressing at school but the evidence does not support that. Witness D conceded on the sole objective test

measure used, that the child had regressed from a standard score of 86 and 83 (in P3) to 80 and 80 in P5.

115. Levels of attainment for pupils in the specified school is higher than those achieved by pupils with additional support needs in a mainstream setting (statement of witness A at A251).

Suitability – the current school (paragraphs 17 to 35)

116. Witness C formed the view that trying to keep adults always happy at school, is to the detriment of the child's wellbeing. She said that we should expect a significant negative impact on his mental health in the future should this situation continue (A139). The child is overwhelmed with all the sensory and social demands that he is unable to successfully process and meet, whilst having to interact with adults in a compulsively compliant manner (which is a feature of FASD). The child is not gaining any sense of mastery or accomplishment, both in his academic work (as reported in the advocacy statements at T51-54 and T 65-72) and in establishing and maintaining friendships, with no perceived meaningful interactions with his peers, which is very important to him. This is not a situation that could continue without having an immense negative impact on the child's health and wellbeing.
117. Following her visit to the current school, witness C identified two main concerns that she did not feel could effectively be addressed. Firstly, the sensory challenges the child is faced with within a large, very busy school environment; secondly, due to the environment's sensory challenges and the child's social difficulties, he is unable to have any meaningful interaction with his peers. Witness B concurs. Witness C said that the only way the sensory challenges could be removed, is by socially isolating the child even more, which would be catastrophic for the child as an individual (A140) or by building a purpose built sensory sensitive small school environment.
118. Witness E has observed the child on a number of occasions in school, usually on an informal basis (R085). He conducted a planned brief observation in June 2019 in the classroom and the playground. His handwritten notes state that unstructured social environments are the most challenging for the child and that an adult needs to be aware of what the child is doing throughout the day (R40). His witness statement (in connection with same observation) states that the child can and does play and interact with other children; which we have explained is at odds with other evidence in the respondent's school reports.
119. The witnesses for the respondent believed that the recommendations of the skilled witnesses could be met in the current school. We do not agree. In any event the current school has made no attempt to introduce these. Recommendations were made in 2018 by the Speech and Language Therapist (A91), in February 2020 by witness C and in March 2020 by witness B. Witness D advised that she did not see the need to implement these. We have concluded that the level of adaptation which would be required has not and could not be established in the current school.
120. School ought to be a safe, healthy, respected, included, nurturing and progressive environment for the child. Instead, it is causing him to experience significant stress and distress, which we see evidenced at home. The fact that these pressures are far reduced

when the child is not attending school (during school holidays and lockdown) is strong evidence of the impact of his current schooling on his home life.

Suitability – the specified school (paragraphs 36 to 42)

121. During her visit to the specified school the first thing that caught witness C's attention was how quiet and tranquil the school was. She said that this would significantly reduce the visual and auditory distractibility in the child and assist in attention and focus on tasks. In addition, a small group setting, with adequately trained staff, would support the child in forming and maintaining meaningful friendships with his peers - a very relevant developmental milestone for the child's age and a meaningful and important goal for him, as he himself expressed at the hearing and to his independent advocate.

122. Witness B advised that the child needs a calm, quiet, sensory sensitive classroom environment with close learning and behavioural support and goes on to list a number of points that would aid his learning (A098).

123. During lockdown the child could not participate in online learning and had difficulty in managing the change to his daily routine; whereas he would have been able to attend the specified school with little change (report of witness C at A177).

Conclusion on respective suitability

124. The respondent maintains that removing the child from the current school and placing him in the specified school would affect the continuity of his education and would be seriously detrimental to that continuity. The respondent relies on the child's consistent attendance at the current school, his access to the curriculum and the supports they have structured for him; and submits that he has obtained educational benefit throughout. He has been present, participating, achieving and supported at school and there are no exceptional circumstances to trigger his education being provided other than in his current school. We do not agree. It is plain to us that the provision in the specified school is by far more suitable to meet the child's additional support needs than the provision in the current school.

125. The child wants to attend the specified school. He is positive about that prospect, whereas he would be sad about returning to the current school. We attach some weight to the child's views. He has described loneliness, bullying, segregation, social isolation, sadness and difficulties at the current school, none of which was identified by the respondent's witnesses, indeed they described a wholly different world, which does not align with the child's perceptions. It is important that the child feels listened to. He wants to play with friends at playtime, he wants to be part of the class group. He likes writing, he says he struggles with maths. He wants to be part of school activities, he feels bored when he can't stay in class. He feels it is unfair that he sits apart from the remainder of the class – it should be one or other – all sitting separately or all sitting in a group.

126. These are not unreasonable hopes and aspirations for a primary school child to have but they cannot be provided for in the current school; whereas they can in the specified school.

Conclusion – reasonableness arising from cost and suitability comparisons

127. Considering respective cost and suitability factors in the round, we take the view that it is reasonable to place the child in the specified school, notwithstanding the cost of this. We recognise this is not an insubstantial cost; however, the cost of continuing the child's education in the current school could be catastrophic for him. In any event, as the evidence for the respondent states and we respect this, cost is a secondary consideration, secondary to the child's needs. We do not accept that the child's additional support needs can be met in the current school. The child's additional support needs can clearly be met in the specified school.

(d) Respondent has offered to place the child in the current school - paragraph 3(1)(f)(iv)

127. The condition in this paragraph is met – the respondent has offered to place the child in the current school (where he is presently being educated) by allowing him to continue to be educated there. This is not disputed.