



Additional Support Needs

DECISION OF THE TRIBUNAL

Word meanings: In this decision the following phrases or abbreviations are used

ASD	Autism spectrum disorder
2004 Act	Education (Additional Support for Learning) (Scotland) Act 2004
'rule' references	The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018
1995 Act	Children (Scotland) Act 1995
Code	Supporting Children's Learning: Statutory Guidance on the Education (Additional Support for Learning) Scotland Act 2004 (as amended) (third edition) 2017
CSP	Co-ordinated Support Plan
CSP Regulations	Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005
school	[details removed for anonymisation purposes]
CAMHS	Child and adolescent mental health services
IFSS	Intensive Family Support Service

Reference

1. The appellant believes that he requires a CSP in terms of section 2 of the 2004 Act. On or around 6 November 2019, the appellant's independent advocate wrote to the respondent to ask them to determine whether the appellant required a CSP. No response to that letter was received within the statutory time limit of eight weeks, as provided by regulation 4A of the CSP Regulations. Section 18(5A) of the 2004 Act provides that a failure to respond within that time limit is to be treated as a decision of the authority that the child does not require a CSP. This reference is therefore an appeal against the deemed decision of the respondent that the appellant does not require a CSP in terms of Section 18(3)(b)(i) of the 2004 Act.

Decision

2. I overturn the decision of the respondent and require them to prepare a CSP within four weeks of the date of this decision.

Process

3. Case conference calls were held on 31 March, 11 September, 6 October, 6 November and 10 December 2020 to case manage a number of processes. This included an assessment under section 18(2A) of the 2004 Act – capacity and wellbeing assessment (HEC015), as the appellant is a child. Following this assessment I am satisfied that the appellant has sufficient maturity and understanding to make, communicate, understand

and retain the memory of making a decision to submit the reference. It follows that he has the capacity to make the reference. Making the reference will not adversely affect the appellant's wellbeing.

4. The appellant decided to provide a written statement with the assistance of his independent advocate instead of attending a hearing. In light of this and on the basis that there is not much factual dispute, the parties agreed that the case might be decided by me without a hearing on the written evidence under rule 37(2)(d).
5. A written views statement was lodged for the appellant (HEC141); and written statements were lodged for the respondent's witnesses (HEC135 and HEC139). A joint minute of agreed facts was lodged (HEC147) along with written submissions from both representatives.

Findings in Fact

The child

6. At the time of making the reference the appellant was 13 years old. At the time of the decision he is 14 years old. He lives in the family home with his sister and mother. His older brothers live nearby.
7. The appellant has ASD and dyslexia (HEC091). He is being assessed for dyspraxia. The appellant has a history of childhood migraines and asthma, which is self-regulated with the use of an inhaler. The appellant can be anxious and distressed, he worries. He does not like loud noises or smells. He is good with numbers and computers. He struggles with reading because the words jump and he cannot follow them. He struggles with his writing, which upsets him (Planning Meeting HEC073). Busy places can make the appellant freeze. He can struggle with social interaction and communication (Joint Support Team Outcomes HEC076). He can mask his difficulties at school.

School

8. The appellant is a pupil in S3 at the school, having started there in September 2019 following a placing request.
9. The appellant's school attendance has deteriorated from 90% to 70% during the 2020/21 school term. He can arrive late for school (11%) (Wellbeing Assessment Plan 23 September 2020, HEC062). He does not always hand homework in on time (witness A HEC135).
10. The appellant travelled with his mother to Pakistan on 13 December 2020 returning on 13 January 2021. As a result he has missed a further period of his school education.
11. The appellant is not achieving consistently across his subjects. Of the fourteen subjects he is studying he is on target to achieve three of these. He is not on target to achieve six of these, with the remainder (five) not reported (S3 Interim Report, November 2020, HEC138).

CSP

12. On or around 6 November 2019, the appellant's independent advocate wrote to the respondent to ask them to determine whether the appellant required a CSP. No response to that letter was received within eight weeks.
13. The respondent arranged a meeting to consider the request. That meeting was originally due to take place in March 2020. Due to Covid-19 lockdown restrictions that meeting could not proceed until August 2020 (minute of meeting HEC078).
14. The respondent decided that the appellant does not require a CSP and having reviewed the circumstances the respondent remains of that view.

School Support to the child

15. The appellant has a Wellbeing Assessment Plan (HEC062).
16. The appellant is supported in school by school staff. Support includes:
 - a) Use of iPad in all subject areas.
 - b) Extra time for all assessments and separate accommodation for assessments.
 - c) Time out facility if classes become too overwhelming (Pupil Support being his safe space).
 - d) Leaving classes 5 minutes early to ensure corridors are not too busy and he can get the lunch he likes from the Fuelzone.
 - e) Receive electronic or paper copies of work where note taking is required.
 - f) Not to take the appellant out of class to discuss anything with him without giving his mother prior knowledge of this or his mother being present.
 - g) Ensuring the appellant has a safe space where he can go when feeling distressed to 'pace'.
 - h) All teachers implement a seating plan so the appellant knows where to sit in every lesson.
 - i) Teachers know that the appellant may sometimes use headphones when classrooms are noisy.
 - j) Use of Pupil Support Base toilets.
17. In addition to this, weekly check ins are carried out by the school and witness A checks on the appellant every second week (child protection minute HEC128)

CAMHS

18. The appellant was receiving input from CAMHS but was discharged from that service around August 2020. Ongoing support is provided to him by the Autistic Society, which is a voluntary sector organisation.

Social work support

19. The social work department were initially contacted by the school in November 2019 due to child protection concerns in the home environment. The appellant has witnessed a number of incidents within his home life.
20. The appellant's family has been assessed as vulnerable, requiring ongoing involvement and a high level of support from the social work children and families team. The

appellant's mother has ASD and mental health issues (witness B HEC140). There are difficult dynamics in the family home which impact on the appellant. Covid-19 lockdowns have amplified pre-existing difficulties at home (child protection minute HEC130).

21. A Child Protection Case Conference was held on 2 July 2020 (HEC123) in relation to the appellant and his sister. A decision was taken not to place them on the Child Protection Register; however, ongoing parenting support will be required and individual social work support for the appellant and his sister, to promote their emotional wellbeing.
22. The appellant has an allocated social worker, who visits as and when required. If the family is settled this could be once a month. As a result of the Covid-19 pandemic visits are presently only conducted if essential. Social work support is not time limited, they will provide support as long as required (witness B statement, HEC139).
23. Following a referral from social work, the family started a twelve week course on family functional therapy on or around September 2020. This is designed to relieve tensions and improve relationships within the family home and to assist the appellant's mother with parenting routine and boundaries (email of first allocated social worker HEC132).
24. Social work link with education through phone calls and meetings and share information about the support they are providing. Social work will also organise multi agency meetings, when required, to ensure agencies (including education) are working together where appropriate. A multi-agency meeting was organised on 7 December 2020 following concerns about the appellant and his mother travelling to Pakistan.

Intensive Family Support Service (*IFSS*)

25. The family were referred by social work to IFSS. Their first visit to the family home was on 10 November 2020. The appellant's social worker will liaise with the IFSS to obtain updates.
26. IFSS is managed (and funded) by social work. Staff (with the exception of the manager who is employed by the respondent) are employed by three separate voluntary sector providers. This is intended to ensure that the service is as flexible as possible and to benefit from the expertise and resources available from each agency. The objective of IFSS is to improve family dynamics and relationships, reduce stress, provide parenting strategies, reduce likelihood of placement breakdown, and support children to reach their potential (joint minute HEC147).
27. IFSS visit the family once a week. IFSS will help to organise better routines at home so that the appellant can at least attend school regularly and on time and complete his homework. Their support is not time limited, they will continue to support the family for as long as is required.

Reasons for the Decision

General remarks on the written evidence

28. The appellant's views statement was clear, compelling and consistent. He provided a lot of information which helped me to understand what he thought. I was able to conclude from this that he is not happy at school or home and that he does not feel listened to.

29. The written statements for the respondent were presented in a clear and balanced manner. Witness A appears familiar with the appellant's circumstances and seems to have a good relationship with him. Witness B is the more recently allocated social worker. He was able to provide a general picture of the family dynamics and some of the extent to which this impacts on the appellant.

General remarks on the legal test

Section 2 of the 2004 Act provides:

- (1) For the purposes of this Act, a child or young person requires a plan (referred to in this Act as 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,
 - (b) the child or young person has additional support needs arising from—
 - (i) one or more complex factors, or
 - (ii) multiple factors,
 - (c) those needs are likely to continue for more than a year, and
 - (d) those needs require significant additional support to be provided—
 - (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, or
 - (ii) by one or more appropriate agencies (within the meaning of section 23(2)) as well as by the education authority themselves.
- (2) For the purposes of subsection (1)—
 - (a) a factor is a complex factor if it has or is likely to have a significant adverse effect on the school education of the child or young person,
 - (b) multiple factors are factors which—
 - (i) are not by themselves complex factors, but
 - (ii) taken together, have or are likely to have a significant adverse effect on the school education of the child or young person.

30. The burden of proof sits with the appellant. I will answer each part of the legal test in turn.

(1) An education authority are responsible for the school education – s.2(1)(a)

31. Parties agree that the respondent is responsible for the appellant's school education. This condition is met.

(2) Additional support needs arising from complex or multiple factors – s.2(1)(b) and s.(2)

32. Parties agree that the appellant has additional support needs arising from a number of factors which include his health conditions and his difficult home circumstances, which has led to the appellant being assessed as a vulnerable child. A factor is a complex factor if it has, or is likely to have a significant adverse effect on the school education of the child. The respondent suggested that these factors are not multiple or complex as

they are not having a significant adverse effect on the appellant's education. I do not agree. There is evidence from a number of sources to suggest that the appellant's home circumstances are already having a significant adverse effect on his school education and that this is likely to continue.

33. Concerns are raised about the impact of his home situation on his development and sense of self or feeling secure (Assessment and Plan HEC098). The need to promote his emotional wellbeing is noted (child protection minute HEC 130). These are important aspects of the curricular areas of health and wellbeing. The Curriculum for Excellence, Health and Wellbeing, Principles and Practice guidance states that good health and wellbeing is central to effective learning.
34. The combined effect of the appellant's ASD and his home environment is having a detrimental impact on his homework and attendance (witness A HEC135). Good attendance would be above 90% and the appellant's is currently much lower. The appellant also arrives late at school at times. Witness B notes the need for better routines at home which would reduce the appellant's late coming (HEC139).
35. A child protection case conference was convened on 2 July 2020. This suggests heightened levels of multi-agency concern. There is a clear and continuing picture of a vulnerable child living in a vulnerable family home. This is having and is likely to continue to have a significant adverse impact on his school education. Some of the most compelling evidence here comes from the appellant himself.
36. The appellant describes his home as "bad" for the last few years. He says he gets into trouble at school for not listening but that is when he "goes into his own world", which he sometimes has to do to help him to cope. He would like the school to understand that. He feels that sometimes teachers don't remember that he needs help with things, they use words he does not understand. Homework is really hard for the appellant because it "merges school and home". The appellant has difficulties with reading and writing. Loud noise and smells upset him. He does not like change. He worries about things being clean and he struggles to wear a mask during Covid-19 because smell is an issue for him. The appellant does not feel he can safely share information with teachers. He has lied when asked questions to get through things quickly. He can control his emotions at school but if he is anxious he can "bottle it up" until he gets home, which can cause him to have a "meltdown" at home. This has been really hard for him, his sister and his mum.
37. The appellant does not feel seen or included at school or that they work together for him. He feels empty and sad about his difficulties with understanding words and writing. Most days are bad days for him. He cannot always sleep and has to walk up and down the room to think, which calms him. When things are really bad at school he cannot sleep at all. He feels "stupid" at school. He doesn't want to be "the kid who is singled out as the different one." (appellant views statement, HEC141)
38. When I contrast the statement of the appellant with the evidence of the respondent there is an obvious disconnect between the two. The school describe the appellant as happy and contented (Assessment and Plan HEC097). Witness A describes him as quite happy (HEC135). It is clear to me that the appellant feels the need to mask his difficulties at school, which is a common effect of ASD. It is not clear to me whether the school are alert to this.

39. The appellant's voice appears to have become lost in the broader complex needs of the family, which is a concern. An example of this can be seen in the CSP meeting that took place on 26 August 2020. This followed from the appellant's request for a CSP (not his mother's). It is unfortunate that time was not taken to amend the letter sent regarding his request (undated) (HEC077) to remove the line which begins "Dear Parent/Carer", which might have improved his sense of being listened to. The meeting also appears to have been conducted as if his mother had raised the request (HEC080) with only a brief reflection of the appellant's position (HEC079).

40. The Code states:

[13] The Act states that a factor is a complex factor if it has, or is likely to have, a **significant adverse effect** on the school education of the child or young person. The Act does not define the length of time over which a complex factor has an effect (although the additional support needs arising from one or more complex factors have to be likely to last for more than a year for a child or young person to require a coordinated support plan), nor does the Act define the term "significant adverse effect". However, since a complex factor is one that has a significant adverse effect on the school education of the child or young person, it is likely that it will affect most aspects of learning. (p. 69)

41. The Code lists examples of complex factors grouped according to the above themes, which include learning environment, disability or health and family circumstances. On disability or health, this is where the child faces barriers to learning and requires measures to be put in place if the child is to benefit from school education. On family circumstances, this includes where family life is disrupted (perhaps through mental health problems) and the child is not receiving parental support, direction and guidance to make the most of education; or where school attendance is very poor. There are obvious parallels between these examples and the facts and circumstances in the present case.

42. Having considered the complex factors which apply here, I am satisfied that these have or are likely to have a significant adverse effect on the school education of the appellant.

(2) Additional support needs likely to continue for more than a year –s.2(1)(c)

43. Parties agree that the appellant's additional support needs are likely to continue for more than a year. This condition is met.

(3) Significant additional support by the education authority in the exercise of any of their other functions as well education; or by one or more appropriate agencies– s.2(1)(d)

44. The respondent submits that the appellant's additional support needs and educational objectives are supported by the respondent exercising their functions relating to education only and therefore a CSP is not required. The respondent submits that the appellant is achieving in terms of the school curriculum and it is unclear what other additional support is necessary for the appellant to benefit from school education.

45. I am not sure it can be said that the appellant is achieving in terms of the school curriculum when I consider the most recent school report (HEC138; and para 11 above)

which shows a mixed level of achievement. Witness A suggests that the reason for this is an “unfortunate language choice on the reporting system”. However, no other report or detailed breakdown of achievement was lodged. I am entitled therefore to draw an inference from the report that the child is not achieving across all subjects. Even if he was achieving across his subjects this is only one part of his learning. The purpose of the curriculum for excellence is captured in the four capacities - to enable each child or young person to be a successful learner, a confident individual, a responsible citizen and an effective contributor.

46. A number of daily strategies are in place for the claimant in the school. The fact that he does not always access these is of no relevance. What matters is that he knows they are available and how and when he can use these. It is clear that the appellant does not want to be singled out, which may have a bearing on this. The appellant does not feel listened to. Given the “disconnect” I refer to earlier, it may well be the case that these school strategies are the least of what should be provided but even as a minimum, they amount to significant additional support from education to help the appellant to benefit from school education. Approximately 15% of the school cohort have similar plans in place (respondent case statement HEC037). It is not the norm across the school. This signals that the scale of the support provided stands out from the continuum of possible additional support. I say more on this below (para 56).
47. For the purposes of determining whether the appellant requires a CSP it is irrelevant to consider what other ‘agencies’ are involved with him unless they are either (a) the education authority exercising a function other than education or (b) appropriate agencies as defined in section 23(2) of the 2004 Act. It is also irrelevant how many agencies are involved unless their involvement is for the purpose of providing additional support to the appellant to enable him to benefit from school education (*City of Edinburgh v K* [2009] SC 625, para 18). I must therefore consider who is involved in providing support to the appellant and make specific findings on how that particular involvement contributes to the provision of additional support for the purpose of enabling him to benefit from school education (*City of Edinburgh ibid.*).

Social work support

48. The respondent referred me to Case Study 2 (p.167) in the Code, where the support from social work was not significant for two reasons. First, it was time limited and second, it was taking place in a setting where a high degree of co-ordination from the school was not necessary. The respondent submits that liaison between the school and social work does not mean that the overall support provided by social work is sufficient to trigger the requirement for a CSP. A high degree of co-ordination is not required. The case study is not entirely helpful here. It reflects a time limited period of social work support (3 months) rather than as here (for as long as required). I turn to the matter of co-ordination later.
49. The appellant is provided with social work support, which includes IFSS. This is provided by the respondent exercising a function other than education. The respondent submits that the support provided by social work is not additional support required to allow the appellant to benefit from school education. I do not agree. The appellant and his family are vulnerable. Social work support is being provided to the appellant through section 22 of the 1995 Act as he is a child in need. The extent of social work concern can be seen in the allocation of a social worker to the appellant and to his sister. Section

93(4)(a) of the 1995 Act provides that being “in need”, is to his being in need of care and attention because—

(i) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development unless there are provided for him, under or by virtue of this Part, services by a local authority;

(ii) his health or development is likely significantly to be impaired, or further impaired, unless such services are so provided;

(iii) he is disabled; or

(iv) he is affected adversely by the disability of any other person in his family;

50. School education is part of the appellant’s health and development. It is directed to the development of his personality, talents and mental and physical abilities to their fullest potential. Social work have an important role to play in supporting relationships, parent nurturing and family routines to ensure that the appellant benefits from his school education – not only in the areas of homework, attendance and time-keeping - but also those areas identified by the appellant in his written statement.

51. Witness B described a high level of social work support to the family. The fact that this is not provided *within* the school is irrelevant. It is the connection between the support and the purpose of providing additional support to the appellant to enable him to benefit from school education that matters.

52. Although social work and education communicate and share information, it seems to me that they view their involvement with the appellant separately rather than collectively, which may explain why they do not see a role for social work in supporting the appellant to help him to benefit from his school education. This is unfortunate. There ought to be a level of collaboration and overlap between the two. The appellant does not believe this is taking place. I can see from the appellant’s statement that further supports may be needed beyond those presently identified. The Curriculum for Excellence, Health and Wellbeing, Principles and Practice guidance states:

“Good health and wellbeing is central to effective learning and preparation for successful independent living. This aspiration for every child and young person can only be met through a concerted approach: schools and their partners working together closely to plan their programmes for health and wellbeing explicitly, taking account of local circumstances and individual needs. Planning to provide and manage the many different and complementary contributions may be challenging but is needed. Each individual practitioner must be aware of his or her roles and responsibilities.” (p.1)

IFSS support

53. As well as his allocated social worker, the appellant is supported by the IFSS. They provide flexible support to introduce better routines at home. The appellant submitted that with the pervasive nature of his additional support needs, it must be the case that effective supports at home will have a beneficial impact on his education, especially within the curricular area of health and wellbeing. I agree.

54. The three voluntary agencies who make up IFSS are not ‘appropriate agencies’ for the purpose of section 23(2) of the 2004 Act. They are neither another local authority nor a

Health Board. However, the structure of this service does not mean that it should be disregarded for the purposes of section 2(1)(d)(i). I agree with the appellant that it would be of concern if local authorities were so easily able to “sub-contract” out of their statutory responsibilities. It is not uncommon for social work departments to fund support from third sector agencies in order to discharge their responsibilities to a child or family. Such is the nature of finite department resources. The funded resource is an extension of the work of the social work department. The appellant and his family are being provided with support to meet a range of needs which social work has identified. The support provided by IFSS would not exist independently of social work. As their publication describes, the work of IFSS begins once an allocation is made to a worker by the social work department. They co-exist with social work, which can be seen from their access to social work departmental records (HEC106). The fact that this work is delegated to them does not remove the statutory duty on social work to provide support to the appellant.

55. I am satisfied that the appellant is being provided with additional support from the education authority in the exercise of one of their other functions (social work, which includes IFSS) as well as in their functions relating to education. The respondent submits that even if I am satisfied here, the additional support is not significant. The use of the term “significant” signals that the scale of the support provided, whether it is in terms of approaches to learning and teaching, or personnel, or resources, or a combination of these, stands out from the continuum of possible additional support. The issue of significance 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 it needs to be co-ordinated. The support must be of sufficient duration to make it worthwhile preparing a CSP in order to ensure that it is co-ordinated properly. (*JT v Stirling Council* [2007] SC 783).

56. The respondent submitted that the appellant is not the predominant reason for social work involvement and referred me to the case of *City of Edinburgh Council v ASNTS* [2012] CSIH 48, where the provision of social work support was given through care package funding made available to the child’s parents, who had a discretion on how the payments were disbursed; and where a respite provision was made essentially for the relief of the parents and sibling. However, the facts in the present case are distinct from this. Although there are principal concerns around the mother’s relationship with the appellant’s sister it is clear that this has a detrimental effect on the appellant. Witness B acknowledges that by supporting the difficult dynamics in the family home this will impact on the appellant. The family are vulnerable as a whole but the appellant is vulnerable in his own right. He has his own allocated social worker. This is direct support. It is not intended for the relief of his mother or his sibling.

57. The Code gives an example (p.72, para 21) where support is required from social work services to sustain the child’s attendance at school. The appellant’s attendance here has significantly decreased. He will need independent support to improve this. That support will need to be provided by education, in the school, and social work, in the home, working together.

58. The respondent acknowledged that social work involvement may help the appellant indirectly in relation to education. However, there is nothing in the 2004 Act which requires the impact on a child’s education to be direct. Indeed, many of the examples in the Code are of support which has an indirect impact. The support provided by IFSS will extend to the child. It is not intended exclusively for his mother or his sister. If family

dynamics improve so too hopefully will home routines, which will have a positive impact on the appellant's school education. The IFSS support was only introduced in November 2020. They have lost a month (between 13 December and 13 January) while the appellant and his mother were in Pakistan. In light of the levels of concern, which I see reflected in the frequency, nature, intensity and duration of their involvement, it seems likely that this will require to continue for some time. I am in no doubt that their support will be critical for the appellant.

59. Taking the evidence as a whole, it is clear to me that there is a need for coordination of the supports being provided. It is important that the appellant's additional support needs are not lost or drowned out by the larger scale of family difficulties. It is clearly important to him that he is able to be certain about these supports. A CSP would provide specification here.