



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. This is a reference in respect of a co-ordinated support plan ('CSP'), made by application dated 29 March 2019. It is made under s. 18(1) and s. 18(3)(d)(i) of the Education (Additional Support for Learning)(Scotland) Act 2004 ('the 2004 Act'). In making the reference, the appellant asks the tribunal to require the respondent to make amendments to the child's CSP under s.19(4)(b) of the 2004 Act.

Decision

2. The tribunal requires the respondent to make the following amendments to the child's CSP, and to carry out these amendments and produce a fresh CSP containing these amendments by 30th April 2020, or by such other date as is agreed between the parties:

(a) In the section on the 'Communication' part of the CSP, and in the 'Additional support required' column, the following text to be added:

"The child to receive weekly speech and language therapy (SLT) support according to assessed need. Support less frequently than weekly will only happen only where good reason exists. Progress and the level of support required from the SLT department will be reviewed at the end of each episode of care by SLT providers and outcomes of the sessions will inform daily, termly and CSP planning."

(b) In the section on the 'Communication' part of the CSP, and in the 'Additional support provided by' column, the following text to be added, to correspond with the added text in (a) above:

"Speech and language therapist/Speech and language therapy assistant."

(c) In the section on the 'Communication' part of the CSP, and in the 'Additional support required' column, the following text to be added:

"Staff responsible for implementing speech and language therapy (SLT) strategies on a daily basis to be trained by the SLT department in the specific techniques by accessing an appropriate method of training which could include, for example, coaching, shadowing, signposting to resources and when required, formal training courses such as in symbols for communication. New staff to access training by SLT or SLT Assistant as required. Refresher training to be offered on request."

(d) In the section on the 'Communication' part of the CSP, and in the 'Additional support provided by' column, the following text to be added, to correspond with the added text in (c) above:

"Speech and language therapist/Speech and language therapy assistant."

(e) In the sections 'Monitoring implementation and impact', under each of the following educational objectives headings in the CSP: 'Communication', 'Thinking skills', 'Social interaction', 'Independence' and 'Happiness and wellbeing' in the 'Additional support required' column, the following text to be added:

"Internal systems which track progress and evidence of progress made by the child to be shared with parents and all other agencies at termly Child Planning Meetings."

(f) For each of the additions required under (e) above and in the 'Additional support provided by' column, the following text to be added:

"Team around the child."

(g) In the section on 'Independence' in the CSP, the following text to be added in the column 'Additional support required':

"The child will receive learning assistant support as directed in the Risk Assessment in place at the relevant time."

(h) A new heading to be added to the 'Educational objectives' column in the CSP, namely 'Respite' and the following text to be added in the column 'Additional support required' against that heading:

"The social work department will assess respite needs as per the requirements of s.23 of the Children (Scotland) Act 1995. The outcome of any such assessment will be recorded in the Child's Plan."

(i) In the new 'Respite' part of the CSP, and in the 'Additional support provided by' column, the following text to be added, to correspond with the added text in (h) above:

"Social work department"

Process

3. A hearing took place over three days on 25, 26 and 27 June 2019. This hearing was a conjoined one during which a placing request reference for the child was heard. During the same hearing, placing request and CSP references for the child's twin brother were also heard. Prior to the hearing, a number of case management conference calls took place. Directions were issued to regulate the hearing and pre-hearing process. Following the evidence, oral submissions were heard. Although evidence was heard during the hearing on this reference (in particular from witness C), most of the oral evidence related to the placing request references for the two children.

4. This reference was suspended on 28 June 2019, to allow the decision on the placing request to be made. It was accepted that a decision on this reference could not be made until the decision on which school the child would attend had been made.

5. That suspension was lifted and a conference call took place on 9th October 2019 to discuss further procedure. The respondent agreed to lodge CSPs with the disputed proposed changes tracked onto them. It was agreed that the respondent would lodge a supplementary statement of witness C, updating her earlier evidence and that after that, written submissions would be presented. It was agreed that all of these documents would be lodged by 8 November 2019.

6. Following receipt of those documents, the tribunal deliberated. On doing so, it was decided that a written report would be necessary from the relevant speech and language professional, in order to have skilled evidence available on the viability of certain of the proposed changes. That report was directed to be produced and became available on 22 January 2020. Final comments from the parties on the report were invited by 29 January 2020. Following receipt of those comments, the tribunal deliberated and reached a decision, which, with reasons, is reflected in this document. Some of the documents referred to in this decision are those from the placing request reference for the child. Where that is the case it is stated, where not, references are to the bundle for this reference.

Findings in fact

General findings

7. The appellant is the mother of the child.

8. The child is 11 years old.

9. The child has been diagnosed with a number of conditions, namely: autism spectrum disorder ('ASD') and delayed cognitive development and he suffers from anxiety and has social, emotional and behavioural difficulties.

10. The child has a CSP under s.2 of the 2004 Act dated November 2018 (R13-21, with covering letter of 21 December 2018 at R14). There is also a Child Assessment and Plan Document for the child (R22-40).

11. The child's cognitive ability is currently at the level of a pre-school child.

12. The child's ability to perform certain tasks can vary depending on his state of mind and motivation.

13. The child attends a respite facility for six days per month. In addition, the child benefits from four additional hours of respite each week.

14. The child currently attends school A, a mainstream school under the management of the respondent. He has attended there since Primary 1. He is currently in Primary 6. The child is based in the Enhanced Provision Room at school A and follows the Gaelic mainstream provision there. That class is led by a Learning Support Teacher who is assisted by a number of Support for Learning Assistants (SLAs). There are a core of around four or five such assistants who generally support the child. Regular meetings between the Learning Support Teacher and the SLAs take place. During such meetings, the child's progress (along with that of all of the children in the class) is discussed, assisting with future planning for the child's education.

15. Due to his diagnoses, the child requires a high level of support from staff in school A. He requires to be supported in school by a support worker on a 1:1 basis at all times in class, and sometimes requires 2:1 support. The child is non-verbal. He has delayed social communication and interaction skills. The child also has sensory processing difficulties, delayed self-care skills and significant behavioural challenges.

16. At school A, the child follows a broad general curriculum within the Curriculum for Excellence. He benefits from a personalised timetable, focussing on improving the following: communication, life skills, increasing independence, engagement, attention skills, social interaction and peer participation.

17. In school A, the child has opportunities to spend some of his time in mainstream classes, although he spends little time there. There is a buddy system, allowing the child to be paired up with a child from the mainstream classes. He also swims with his mainstream peers. The child chooses to spend the majority of his school day away from peers in the Multi Sensory Room in the school, where he is supported by two members of staff. The child can be reluctant to participate in outdoor activities.

18. At school A, the child is being taught to use a communication method Picture Exchange Communication System ('PECS'). As a result, he is able to recognise some symbols. All staff working with the child have been provided with PECS training. The child's Speech and Language Therapist and Speech and Language Therapy ('SLT') support worker assist staff on a weekly basis in the use of PECS. The Speech and Language Therapist regularly liaises with the child's class teacher to update the work and symbols the child requires.

19. The child has been assessed by SLT professionals as being non-verbal and has difficulty communicating his needs to adults around him. He struggles to initiate communication using symbols. The child has made some progress in being able to discriminate and exchange symbols. When calm and positive, the child can understand some verbal requests and social stories. The child benefits from verbal instructions being accompanied by visual aids. The child has been able since January 2019 to much more consistently recognise symbols for food or favoured activities. He often needs to be prompted to communicate, although he has sometimes initiated communication by getting a symbol and taking it to a member of staff. The child's mood and anxiety levels greatly affect the child's communication abilities. Sometimes the child is affectionate and humorous and he generally interacts well with pupils and staff members. He is happy in school A most of the time. However, he can be shy at times and can lack confidence to do things independently. The child's current communicative skills are described by the Speech and Language Therapist in her report of April 2019.

20. At school A, the child has access to 'Gymclusion' classes, where he interacts with his peers. However, he can be reluctant to enter the room, and so does not always take part. He takes part in some assemblies and in some playground activities.

21. At school A, the child is assisted by occupational therapy input as set out in the report at A71-76 . In that report, a 'Sensory Diet' appears (A73-76) in which techniques are advised for the child's various activities at school (and at home). These techniques assist school staff in supporting the child. The child benefits from advice provided on a regular basis to school staff by educational psychology professionals.

22. At school A, the child requires assistance with toileting. He is making progress in this area.

23. At school A, the child can sometimes become distressed and upset and can exhibit challenging behaviour, such as head banging. Transitions (such as arrival at and departing from school and moving from one room to another) can be difficult for the child and can lead to him becoming distressed and displaying challenging behaviour. A positive behaviour support plan has been developed for the child by school A Enhanced Provision staff working in conjunction with witness B, and this is used to assist in promoting positive behaviour. A risk assessment has been carried out in relation to the child, including on the risks associated with transitions.

24. As evidenced by recent school reports, the child has made progress in the last two academic years in a number of areas: using PECS to exchange symbols; making positive steps in his communications; increased acceptance of adults and young persons being in his space and helping to guide him; sharing objects with others for example books, games and videos; increased tolerance of resources and expectations; progress on following instructions; remembering steps in a familiar routine; increased focus when completing short activities; ability to follow a verbal recipe; increased confidence in the swimming pool, including following instructions; moving from one room to another (with prior explanation and support); understanding of social stories; increased willingness to participate in sensory activities; spontaneity in interaction; playing numeracy games; tolerance of counting songs; coping with a fire drill; reacting well to boundaries for trampoline safety; making food choices; increased independence skills, for example with clothing and footwear; toilet training; fine and gross motor skills; understanding of cause and effect. The child's progress is monitored in targets set out in the Child's Plan and by a Daily Learning Log. Longer term plans are contained in his CSP. In addition, his school reports set targets for future development. It is clear from consideration of the last two academic years that the child is making progress in a number of key areas from one year to the next.

Reasons for the Decision

The relevant evidence

25. We accepted the oral evidence of all of the witnesses as being credible and reliable. This was not a case where many of the central facts were disputed; our decision involved an interpretation of the relevant facts and circumstances. We benefitted from the provision of detailed witness statements for all of the witnesses. None of the witnesses deviated in any significant way from their witness statements. We also found that the respondent's witnesses were highly qualified in the areas in which their opinions were expressed, as evidenced by the descriptions of their experience and qualifications in their witness statements.

26. On the written evidence, this is of some importance in this reference. The main evidence on the CSP came from witness C, who gave oral evidence at the hearing, and who provided a written statement in advance of the hearing (R85-92) and a supplementary statement following the hearing (R129-130); and from the speech and language therapist, who provided a report dated 16 January 2020 (received 22 January 2020 and mistakenly dated 16 January 2019) (R131-132).

General remarks on the legal test

27. The question to be considered here is whether the changes to the child's CSP proposed by the appellant should be made, and if so, whether fully or in part. There is no specific test in the 2004 Act, but it is clear that the changes should be based in the available evidence and taking into account the definition of a CSP as set out in ss. 2 and 9 of the 2004 Act.

28. Of importance in all CSP content references is the helpful guidance in the document *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 in December 2017. The main passages for the purposes of this reference can be found at pages 85-86:

"The starting point should be to establish what it is reasonable to expect the child or young person to achieve over the course of the next year, taking account of the assessment information available. The objectives should be described in terms that are specific enough to enable the education authority, and the other agencies involved in supporting the child or young person, to monitor and review progress over time. However, they should not be so overly specific that they narrow and constrain what should be learned. When setting an objective, a question that needs to be answered is "How will we know the objective has been achieved?" Since each co-ordinated support plan has to be reviewed on, at least, an annual basis, then the objectives should be those which can be achieved in a year approximately, or for which progression milestones will be identifiable within the year." (para 58)

"The co-ordinated support plan must describe the additional support required to achieve the educational objectives stated. This support should include any short-term support provided so that its impact on the achievement of the educational objectives can be determined. The additional support will cover teaching and other staffing arrangements, appropriate facilities and resources, including information and communications technology, and any particular approaches to learning and teaching or forming positive relationships. It will also include any provision made outwith the educational setting but which will contribute to the child or young person achieving his/her educational objectives." (para 60)

Discussion of the required amendments

29. The required amendments are stipulated above in paragraph 2 of this decision, in subparagraphs (a)-(i). The reasons for each of these amendments are set out here.

Amendments (a)-(d): speech and language therapy (SLT)

30. The appellant proposed certain SLT related amendments which were opposed by the respondent. Initially, we did not have the benefit of any evidence from a professional who would be involved in the provision of speech and language therapy on whether what was proposed would be feasible. We therefore directed the appellant to obtain a speech and language therapy report. That report was lodged on 22 January 2020. In it (as was prompted in our directions) the speech and language therapist helpfully provides suggested wording for the CSP to reflect what is required.

31. In terms of SLT delivery for the child (amendments (a) and (b)), the appellant indicated that she is content with what was suggested by the speech and language therapist, except that she suggests that 'regular' should be changed to 'weekly'. The respondent's position is that the CSP is already adequate in the area of SLT. The respondent relies upon the oral evidence and statements of witness C as well as the evidence of witness D.

32. In our view, given the wording suggested by the speech and language therapist, the addition of some further specification on SLT input is required. If the professionals providing the support feel that a particular level is required and can be provided (and is for the most part being provided, as seems to be the case), a very strong reason for not recording that in the CSP would have to exist. We see no such reason in any of the evidence or submissions available to us.

33. Further, we are mindful of the need for any reference to support to be specific enough to enable progress to be monitored and to enable everyone to understand whether or not the support is being provided (see the above comments taken from the Code of Practice). In our view, the current text in the CSP in this area is lacking specification. The speech and language therapist wording is better and more specific. We have therefore adopted much of her suggested text.

34. There is an issue around whether a reference to weekly support should be included. We note that the speech and language therapist reasons against this, since weekly support is not always available. We have therefore made support on a less than weekly basis conditional on the existence of a good reason. This injects flexibility into the CSP, while recording that weekly support is normally required.

35. Turning to staff training in relation to SLT, amendments (c) and (d) are again taken from the speech and language therapist suggested text. This text is specific in that it identifies the areas in which training is required, while leaving the detail of when and how it is to be delivered out of the CSP. Given that the CSP is to be a year-long strategic document, that level of detail would not be appropriate.

Amendments (e) and (f): Information sharing

36. The appellant seeks the following text to be added into all columned sections of the CSP (except under 'Respite'):

"Internal systems which track progress and evidence of progress made by the child to be shared with parents and all other agencies at termly Child Planning Meetings."

37. The respondent opposes these additions on the basis that the provision of information to parents is not an additional support need and so should not be recorded in a CSP (see witness C's supplementary statement). We agree that the provision of information is not an additional support need, but the part of the CSP into which the additional text is sought is the part which records 'Additional support required'. In our view, information to parents on a child's progress can be an example of additional support. Such information may assist with progress since it is well understood that support at home can be important for progress at school. In any event, it is difficult to see how, in the absence of adequate information, parents are able to assist in the delivery of the child's educational objectives. Despite witness C's objection to the appropriateness of such content in a CSP, she goes on to suggest alternative wording. Further, it is accepted that tracking of progress already happens as part of the

review. In these circumstances, we can see no valid objection to the inclusion of the wording sought by the appellant. It benefits from being more targeted than the wording suggested by witness C since it specifies what is to be done with the information. We refer again here to the Code of Practice and the need for specificity.

Amendment (g) – auxiliary support

38. The addition of wording in this area is not opposed in principle by the respondent. Witness C suggests alternative wording in her supplementary statement and we have based this amendment on that alternative wording.

Amendments (h)-(i) – respite

39. The appellant seeks the addition of wording around the provision of respite support for the child's parents. The respondent opposes this addition in principle on the basis that the respite care provided for the child is not targeted to an educational objective. The appellant referred to the Code of Practice paragraph 55 on page 84 where reference is made to the educational objectives covering 'relevant experiences beyond the classroom, including those in the community' and that they should be viewed in the widest sense as encompassing a 'holistic view of the child'. Further reference is made to paragraph 60 at page 85 of the Code where it refers to provision made out with the educational setting.

40. In our view, while it is clear that provision out with school might contribute to the attainment of a child's educational objectives, that does not mean that all such provision does so. The provision here is of respite support provided to the child's parents in the form of looking after the child for arranged periods of time. This no doubt assists both the child and his parents, but there was insufficient evidence available to us to suggest that the respite provision in itself contributes to any of the child's educational objectives. One might say that everything a child does contributes to his/her educational objectives in an indirect sense; that does not mean that all activities should appear in the CSP. Only where there is evidence of direct impact of an activity on an educational objective should that activity (whether or not it takes place in school) be recorded in the CSP. An example of an activity which does take place in school but which might not be recorded in a CSP is the activity which occurs during playtime. In other words, the environment in which the activity takes place is irrelevant; it is its contribution to educational objectives which determines whether or not it should appear in the CSP.

41. Witness E gave evidence about arrangements by the social work department around respite. It is notable that he felt unable to comment on the child's educational experience (other than in broad positive terms). This serves to highlight the lack of direct connection between respite provision (important for the family as that clearly is) and progressing the child's educational objectives. That is not to say, of course, that such a connection can never be established.

42. Despite this lack of connection, we note that the respondent (via witness C in her supplementary witness statement) suggests that reference is made to respite support in the CSP. Indeed, it is said that the suggested wording was to be added to the CSP in December 2019. Assuming that has happened, we would require its replacement with the slightly different (but substantially similar) wording we have outlined in paragraph 2(h) above.

Discussion of the amendments sought but not required

43. There are two areas where the appellant proposes additions to the CSP but where we are not persuaded that we should require any changes. We will explain why for each area in turn.

Direct teaching time

44. The respondent opposes the proposed addition on the basis that direct teaching is part of the core function of the school and so is not 'additional support'. In our view, this is not a valid reason for not adding a reference to direct teaching. The word 'additional' is not a reference to the support ordinarily made by a particular school, but is a reference to the support made generally for children of the same age in schools (see s.1(3)(a) of the 2004 Act). We feel that it is important that this distinction is understood.

45. Having said this, we do not feel that the added wording sought by the appellant is justified. The specification of a certain volume of teaching of a particular kind would, in our view, be overly specific (see the Code of Practice on this, cited above). The CSP is a document designed to last for one year, and the needs of children with additional support needs tend to change over the course of a year. The objectives are broad in nature, and the setting of a minimum level of a certain type of teaching does not, in our view, fit with this breadth.

Therapeutic input

46. The appellant seeks the addition of reference to the provision of music, swimming and rebound therapies. The respondent's position in opposing these proposed additions is simple: the provision of such therapies are not currently assessed. There was no evidence available to us to indicate that such therapies had been assessed, or that there was any professional view that the child would benefit from such inputs. We are not saying that the child would not benefit from such therapies, but we can only base any changes to the CSP on the evidence made available. For these reasons, we decline to order the respondent to alter the CSP wording in this area.