



Additional Support Needs

**DECISION OF THE TRIBUNAL**

List of witnesses

**For the appellant:**

Appellant

**For the respondent**

Head of additional support needs at the current school (witness A)

Educational psychologist (witness B)

Head teacher of the specified school (witness C)

**Reference**

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

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

*(a) Paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act*

Placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment;

*(b) Paragraph 3(1)(a)(ii) of schedule 2 to the 2004 Act*

Placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or the facilities provided in connection with the school;

*(c) Paragraph 3(1)(b) of schedule 2 to the 2004 Act*

The education normally provided at the specified school is not suited to the age, ability or aptitude of the child; and

*(d) Paragraph 3(1)(g) of schedule 2 to the 2004 Act*

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

## **Decision**

3. In terms of section 19(4A)(a) of the 2004 Act, the tribunal being satisfied that:
- (i) one or more grounds of refusal specified in paragraph 3(1) of schedule 2 to the 2004 Act exist; and
  - (ii) in all the circumstances it is appropriate to do so,
- confirms the decision of the education authority.

## **Process**

4. A case management call took place in October 2022 attended by the legal member, a solicitor for the appellant and the solicitor for the respondent.
5. The reference proceeded to a two day hearing in February 2023. The hearing took place via video conference.
6. Parties lodged written submissions as agreed in February 2023.

## **Findings in Fact**

7. The child was 12 years old.
8. The child has a diagnosis of Autism Spectrum Disorder (**ASD**) with associated emotional and behavioural needs.
9. The respondent is responsible for the child's education.
10. The child is currently enrolled in the current school which he has attended since the beginning of the current academic year.

11. The child did not take part in enhanced transition from primary school to the current school.
12. The appellant made a placing request for the child to attend the specified school; the request was refused by the respondent in April 2022.
13. The child spends his time within the current school in a space known as the Pod, being a provision for children with additional support needs and which is separate from the mainstream classrooms.
14. The child receives twenty-five hours of support each week from a support for learning assistant (**SLA**). Other pupils receive a similar or higher level of such support. This support is met from within the current school's budget. The child does not receive additional support at school which requires expenditure from outwith the current school's budget. Originally the child was allocated ten hours of SLA support but the respondent increased this allocation to twenty-five hours to assist with his transition to secondary school.
15. Planning is ongoing to introduce the child to mainstream classes on a step by step basis.
16. The child is verbal;
17. The child is working within the second level of the Curriculum for Excellence in numeracy and literacy.
18. The child has written an essay which was graded as being third level – bronze. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
19. The child displays proficiency in kitchen skills in the Diner facility at the current school.
20. The child has been awarded a proficiency certificate. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**
21. The child has taken part in trips designed to develop the life skills of pupils. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy**

**under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

22. The child has an excellent attendance record at the current school.
23. The child has not been a flight risk during his time at the current school.
24. No bullying of the child has been reported during his time at the current school.
25. The child has attended a pantomime, the Sky Academy, a Lip Sync Battle and school assembly attend by some 600 people.
26. The child has played badminton and football at the current school with other pupils.
27. The child does not display challenging behaviour at the current school; he is not disruptive or a risk to himself or others.
28. The child displays challenging behaviour at home.
29. The child chooses not to use toilet facilities at school.
30. The child has a fatty liver.
31. The child has attended a doctor in respect of his liver.
32. The child has sensory sensitivities.
33. The current school has a roll of some 2,000 pupils, approximately 700 of whom are assessed as having additional support needs.
34. There are many pupils at the current school who have ASD.
35. The specified school is a special school. It has 175 pupils currently enrolled and 43.5 full-time equivalent teaching staff.
36. The profile of pupils admitted to the specified school has changed since 2018.
37. There are three classes of 10 pupils and one class of 8 pupils in S6 at the specified school; the classes are capped at 10 pupils; pupils in S6 have moderate learning difficulties;
38. There are four classes of 6 pupils in S1; the classes are capped at 6 pupils;
39. Classes in S2, S3, S4 and S5 are capped at 6 pupils;
40. Pupils in S1 to S5 have complex needs.

41. 50 per cent of the pupils at the specified school are verbal to a degree.
42. When taught numeracy at the specified school the education is practical and does not involve workbooks or textbooks.
43. Around 50 per cent of the pupils at the specified school are unable to read.
44. 60 per cent of teachers at the specified school are primary school teachers; the remaining 40 per cent are secondary schools teachers, only the minority of whom teach their specialist subject.
45. Pupils at the specified school require support not only to respond to tasks set but also to comprehend the tasks set.
46. Pupils at the specified school do not have 1:1 support on a full time basis; additional support is provided as required such as support with taking medication or where a pupil requires to be hoisted.
47. There is no access to mainstream classes at the specified school.

### **Reasons for the Decision**

48. The respondent relied upon the four grounds of refusal set out at paragraph 2 above. The appellant disputed that the grounds of refusal existed.
49. The tribunal had in the bundle of papers before it written statements from and heard oral evidence from **witness A** (head of additional support needs at the current school), **witness B** (an educational psychologist) and **witness C** (head teacher of the specified school) and the **appellant**.
50. The tribunal was impressed by the oral evidence of witness A, witness B and witness C, who gave their evidence in a straightforward manner, engaging thoughtfully with questions put to them, seeking to answer those questions to the best of their ability and acknowledging appropriately where they could not answer questions.
51. The appellant gave her oral evidence in a straightforward manner, engaging thoughtfully with questions put to her and seeking to answer those questions to the best of her ability. The appellant stated that she had been lied to by the school on a number of occasions. No questions concerning allegations of lying were put to witness A, witness B or witness C. The tribunal was not satisfied on the basis of the evidence before it that the

appellant had been lied to. The appellant stated that the child had been bullied on a number of occasions including at the current school. Oral evidence that the school had not received any reports of bullying of the child was not questioned. The appellant stated that an incident of bullying allegedly took place at the current school in September 2022. On questioning the appellant accepted that it was not bullying but was an accident when another child had sat on a bean bag, unaware that the child was beneath it. The tribunal was not satisfied on the basis of the evidence before it that the child was bullied at the current school. Otherwise, the appellant's evidence was clear, articulating her concerns about the child's placement at the current school and her preference that the child should join the cohort of pupils at the specified school.

52. In reaching its decision, the tribunal had regard to the views of the child as set out in the document at page T030 of the bundle of papers before it and the views he made known to the tribunal when he appeared before it; all of the papers before the tribunal and the oral evidence given to it and to the Minute of Agreement between the parties and the written submissions made by them. The tribunal reached its decisions on each of the grounds of refusal for the reasons given below.

***Placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment: paragraph 3(1)(a)(i) of schedule 2 to the 2004 Act***

53. The **specified school** – i.e. the school specified in the appellant's placing request – is a special school as defined at section 29(1) of the 2004 Act:

“special school” means–

(a) a school, or

(b) any class or other unit forming part of a public school which is not itself a special school,

the sole or main purpose of which is to provide education specially suited to the additional support needs of children or young persons selected for attendance at the school, class or (as the case may be) unit by reason of those needs”.

54. The specified school is a special school. Witness C explained that the number of pupils allowed to attend the school was currently 168 and that cap would be maintained for the next academic year; that the number of pupils attending the specified school was

currently 175; that, in accordance with Scottish Government guidance, all classes in S1, S2, S3, S4 and S5 are capped at 6 pupils per class because of the needs of the pupils. In S6 classes are capped at 10 pupils per class, that being the cap for moderate learners in accordance with the guidelines. In S1 there are four classes of 6 pupils. In S6 there is one class of 8 pupils and three classes of 10 pupils. In S2, S3, S4 and S5, while the cap per class is 6 pupils, some classes have fewer than 6 pupils.

55. Witness C explained that in the course of September 2022, when there were 174 pupils attending the school, an additional pupil who required complex provision was entered onto the school roll. An additional teacher was engaged. That teacher remains at the school for this academic year. No significant alteration or extension to the accommodation at or facilities provided in connection with the school was required.

56. Witness C clearly understood that there were caps on class sizes, as she had described, which required to be imposed. Witness C was however not certain as to the basis of those caps.

57. The matter of caps on class sizes is a matter within the judicial knowledge of this specialist education tribunal. Class sizes in special schools and units are capped in accordance with the provisions of Appendix 2.9 of the Scottish Negotiating Committee for Teachers (**SNCT**) Handbook. Appendix 2.9 of the SNCT Handbook specifies a maximum of 10 pupils where additional support needs arise from moderate learning difficulties or profound learning difficulties; 8 pupils where additional support needs arise from severe physical impairment or severe learning difficulties; and 6 pupils where additional support needs arise from significant hearing impairment, significant visual impairment, language and communication difficulties or social, emotional and behavioural difficulties. The SNCT is a tripartite body comprising members from teaching organisations, local authorities and the Scottish Government. The SNCT Handbook sets out conditions of service for teachers employed by Scottish local authorities. The caps for class sizes are agreed at a national level and fixed for special schools in accordance with the requirements of the cohort of pupils in the specified school. Breaching the class size cap in the specified school would breach the education authority's legal obligations by breaching the terms and conditions of its employee teachers. The class size caps in place are effectively mandatory.

58. However, on the evidence made available to it, the tribunal was not able to be satisfied that this ground of refusal was made out for two reasons. First, given that the arrival of the 175<sup>th</sup> pupil in September 2022 resulted in the engagement of an additional teacher at

least for this full academic year, it was not explained why this additional member of staff did not provide flexibility in allowing a 176<sup>th</sup> pupil being entered onto the school roll.

59. Second, while the four classes in S1 which are capped at 6 pupils per class are all full, it had been explained that in S2, S3, S4 and S5, where the classes are also capped at 6 pupils, some classes had fewer than 6 pupils in them and that in S6, where classes are capped at 10 pupils, there are three full classes of 10 and another class of 8 pupils. Given the evidence as to the child's educational and social ability and the educational and social ability of the cohort of pupils at the specified school, it was not clear to the tribunal that if the child was entered onto the school roll he would require to be entered into one of the S1 classes. Accordingly, to be satisfied that this ground of refusal was made out, the tribunal would require detailed evidence as to the make up of the classes in S2, S3, S4 and S5 and the possibility and appropriateness of the child being entered into a class in a year other than S1 and what, if any, flexibility existed to reallocate pupils in those classes to enable the child to be entered into a class other than a class in S1.

60. The tribunal makes no criticism of witness C. Witness C gave her evidence in a helpful and straightforward manner. However, it is for the respondent to produce and marshal all the necessary evidence required to enable the tribunal to be satisfied that this ground of refusal was made out. On this occasion, the tribunal was not able to be satisfied on the basis of the evidence before it that this ground of refusal was made out.

***Placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or the facilities provided in connection with the school: paragraph 3(1)(a)(ii) of schedule 2 to the 2004 Act***

61. The evidence in respect of this ground of refusal came from witness C. Witness C explained that the school is a two-storey building with two modular classrooms in its playground. The school has been running over capacity in terms of pupil numbers for a number of years and throughout the entire tenure of witness C. Over time, numerous changes have required to be made in terms of the use of accommodation within the school, for example removing the beauty room and converting the personal and social education flat to teaching space and considering making over the library to become teaching space also.

62. It appeared to the tribunal that, in respect of the practicality or otherwise of reorganising the use of rooms and other spaces within the building to accommodate an



additional pupil, the tribunal was not provided with sufficient detail as to how rooms and spaces are currently used and the precise reasons why those rooms and spaces could not be used differently in order to accommodate an additional pupil. Given that it has been possible to make changes to the organisation of the use of space in the building in the past and that consideration to make further changes is under consideration, the Tribunal was not satisfied on the evidence before it that such a reorganisation of space could not practically be achieved to accommodate an additional pupil in the event that a pupil additional to the current cohort of pupils in the specified school was placed in the specified school.

63. There was no witness who was able to speak to the costs of extending or otherwise altering the accommodation at or facilities provided in connection with the specified school. Witness C was clear that this was a matter beyond her remit.

64. Again, the tribunal makes no criticism of witness C. It is for the respondent to produce and marshal the evidence necessary to allow the tribunal to be satisfied that this ground of refusal is made out. On the basis of the evidence before it, the tribunal was not satisfied that this ground of refusal was made out.

***The education normally provided at the specified school is not suited to the age, ability or aptitude of the child: paragraph 3(1)(b) of schedule 2 to the 2004 Act***

65. It was a matter of agreement between the parties that the child was 12 years old and that the child has a diagnosis of Autism Spectrum Disorder (**ASD**) with associated social, emotional and behavioural needs. No physical impairment of the child was reported, other than his having a fatty liver.

66. The tribunal accepted evidence from witness A and witness B that the child attends the Pod at the current school which can be accessed by S1 pupils with additional support needs. Access to the Pod is planned and monitored and children who attend the Pod are not forced into mainstream classes. The child has been visiting mainstream classes, walking to those classes with a member of staff as an escort and has shown interest in mainstream classes, asking about science classes and the games hall and generally showing curiosity about what goes on in the school. The intention is to introduce the child to mainstream classes by a step by step process, introducing him to mainstream classes of a small size at the outset. This process will respond to what suits the child and take account of the child's issues. The child has twenty-five hours of support per week from an SLA. While this is a fairly high level of support there are other children attending the school who

have the same or a higher level of support. The support is not 1:1 in the sense of there always being an SLA always by the child's side, rather there are sufficient staff to attend to the needs of the children in their care and when that requires 1:1 direct support, for example in walking around the building, that will be provided.

67. We heard from witnesses that the child is verbal and is academically able such that he achieves more highly than some children who are full-time in mainstream classes at the current school. The child is working at the second level of Mathematics and Literacy of the Curriculum for Excellence in line with what would be expected for a child at his stage of secondary education. He achieved bronze in Level 3 for an essay and while no prediction can be made as to future achievement, is assessed as being on the trajectory for National 5. He has a very good attendance record at the current school of almost 100 percent. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

68. Witnesses told us that the child displays proficiency in kitchen skills in the Diner at the current school (which some other children are not allowed access to because of concerns about risk) and has achieved a proficiency certificate. He is not considered a flight risk as there has been no evidence at the current school to raise such a concern. The child has developed life skills through trips which involve elements of budgeting, that is spending money and receiving change. While the child does not access Physical Education directly at this stage he has played badminton and played football on the football pitch with other pupils. **[Part of this paragraph has been removed by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

69. We were told that while the child can struggle to build relationships – which is not unusual for children with ASD – he has been observed forming relationships, in particular with one boy. Although the child did not participate in the enhanced transition programme from primary to secondary school (as the appellant would not agree to it) he has been observed to make steady progress during his time at the current school. He is managing well at school accessing art, science, cooking in the Diner, developing life skills and – with appropriate preparation as with many children with ASD – attended a busy pantomime before Christmas 2022. He has also attended a school assembly with several hundred pupils and an event attended by some six hundred people. **[Part of this paragraph has**

**been amended by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

70. The appellant agreed that literacy and numeracy are strengths of the child. The appellant stated that she could not comment on what happens in the current school as she is not in the school during the school day.

71. With regard to the child attending the pantomime before Christmas, the appellant was clear that she had given her permission for him to go to the pantomime, which was attended by about 600 people, and she supported him doing so. The appellant explained that she had not stopped the child from doing things so long as the child himself was comfortable with doing those things. The appellant reported that she had not seen any change in the child in the course of his 6 or 7 months at the current school. The appellant explained that the child behaves in a distressed way at home and that there is only one weekday in five when he does not behave in a distressed way having come home from school. When this happens, his behaviour can last for hours. This behaviour does not occur on those occasions the child is able to take a telephone call from a friend of his when he arrives home from school. The appellant is concerned that the child hates school, does not want to go to school and feels that he is constantly being pushed into attending mainstream classes. **[Part of this paragraph has been amended by the Chamber President for reasons of safeguarding the interests of the child under rule 55(3)(a) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

72. With regard to his good attendance, the appellant was of the view that it is good because she threatens to remove his Xbox if he does not attend school. She tells him that if he does not attend school she will be in trouble herself, and on that basis he simply goes to school and puts up with it. The appellant explained that, in terms of evening life at home, during the week she has always wanted support from the school, has asked for it and that, if it was offered, she would accept it.

73. Where there was a conflict between the views of witnesses A and B on the one hand and the appellant on the other the tribunal preferred the evidence of witnesses A and B over that of the appellant on the basis of their professional qualifications and experience, observations of the child at school, review of relevant educational paperwork and

engagement with other educational professionals involved with the child on reaching their professional opinions with regard to the child.

74. In considering the evidence of witnesses A and B and the minutes of the various education meetings, the tribunal reached the view that the school has a good understanding of the child's additional support needs and was responding to those needs in a staged and appropriate manner. This included listening to and taking account of the views of the appellant as well as of the child.

75. With regard to the tribunal hearing from the child himself on the first day of the proceedings, the child answered questions from one of the tribunal members. It was noted that he appeared to be reading some responses from a sheet of paper attached to a clipboard which had been passed to him by the appellant before the tribunal member had begun to put questions to him. This matter was raised briefly and the appellant was asked some questions by the legal member. The parties' representatives had discussed the matter in private and were content that when giving his views to the tribunal the child had been reading from a sheet of paper which he himself had prepared. The appellant explained to the tribunal that, in advance of giving his views to the tribunal, the child had gone to his room with a pen and piece of paper and thought about what he wanted to tell the tribunal and made notes to refer to as an aid to explain his views to the tribunal. It appeared to the tribunal that this in itself was a small but important piece of evidence indicating the child's good literary, verbal and cognitive skills.

76. Witness C explained that S6 pupils at the specified school have generally moderate learning difficulties. However, the pupils in S1, S2, S3, S4 and S5 present with more complex learning difficulties. This is due to the entry criteria having altered a number of years ago.

77. Witness C explained that 50 percent of the cohort of pupils at the specified school are verbal to some degree. There is no access to mainstream teaching at the specified school. Teaching focuses on life skills, for example in terms of numeracy there are no worksheets or texts, rather the education provided is practical, may take place outdoors, and is focused on the children being able to add and subtract. In the upper school the focus is on shopping lists, planning a budget and what to buy and managing basic shopping skills. With regard to literacy approximately 50 percent of the cohort of pupils are unable to read, although 60 percent can read in S6. Pupils require a lot of support and are engaged by using items such as puppets and sensory books. Due to the low level of literacy of the pupils

at the specified school, 60 percent of the teachers are primary school teachers. Of the 40 percent of teachers who are secondary school teachers the majority are core teachers, meaning that they do not teach their own specialist subject.

78. Witness C explained that, in general, classes can be quite loud; there are episodes of aggression and recently one child who became aggressive had to be removed from the class. Classes can be calm or explosive. It is quite changeable depending on the children in each class and on the circumstances of the day and the child's own circumstances. Children struggle with dysregulation. Large number of pupils have sensory sensitivities around touch, noise, J-peg feeding and light. There are some quiet spaces in the school and pupils are regularly removed from class due to behavioural issues. The most serious forms of disruption include self-harm and attempting to harm others.

79. Witness C further explained that pupils at the specified school do not work independently but are provided with support every step of the way. Many use iPads as their quality of writing is so poor. The pupils generally struggle to read and write and are at the early level of numeracy and literacy. While there are some very good communicators, some of those pupils have limited understanding, simply repeating and listing rather than comprehending and engaging in conversation.

80. Witness C's view – having not met the child but having seen educational paperwork in the papers before the tribunal – was that at the specified school the child would be like “a fish out of water”. Given his verbal skills and academic ability, there would throughout the school be a lack of an appropriate peer group to support and challenge the child. There was a strong possibility that his learning could suffer or, indeed, regress.

81. Witness C explained that among the cohort of pupils at the specified school there is a high level of dependency requiring books to be read to pupils, answers to be scribed and pupils being enabled to point to visual images to answer questions. While the child requires adult support he does not require it to the degree that pupils at the specified school require it. That for pupils at the specified school support is required both to understand a task and to complete it, even if the task might be colouring in within lines. No pupil of the child's age at the specified school would be able to engage with books involving a particular character. Even in the senior school pupils are engaged in short stories (if any written stories) with short paragraphs. There is no essay writing and the pupils are not at the child's level of literacy. Engaging with books involving a particular character and being at level 3 in writing are far above what pupils at the specified school are capable of. **[Part of this paragraph**

**has been amended by the Chamber President for reasons of privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)]**

82. With regard to 1:1 support witness C explained that in fact there is no provision for direct 1:1 fulltime support for pupils in the special school and that even pupils who need to be hoisted do not receive fulltime 1:1 support. Pupils do however, receive more intensive staff support as and when required, for example to assist with medical issues.

83. The appellant accepted that in terms of academic progress the child is good in English, Reading and Writing and good on aspects of Mathematics. The appellant was of the view that there was no potential for the child to achieve at the current school. The appellant did not believe that the child would be better attending the current school than the specified school. The appellant did not believe that the child could learn life skills at the current school or that his needs could be met at the current school.

84. The appellant expressed concerns about the child being a risk if he were to run away; believed that the specified school offered more opportunity in developing life skills, social skills and independence in participating in art, drama, information technology, and that he would better learn how to keep safe; was of the view that it would be good for the child to engage with children at the specified school in respect of his feelings; and was of the view that 1:1 support in the specified school would be beneficial for the child and that he would be working in smaller groups, which would suit him. The appellant expressed clearly her view that she saw no problem with the child engaging with non-verbal pupils because he knows a 4 year old who is non-verbal and is very loving and nurturing and supporting in respect of that child.

85. The tribunal did not understand the appellant to challenge any of the evidence of witness C about the specified school or the cohort of pupils attending it. If there was any conflict between the evidence of witness C and the appellant the tribunal preferred the evidence of witness C on the basis of her professional qualifications and experience, in particular her long and detailed knowledge of her school and its pupil cohort. The appellant did not appear to have any detailed knowledge or understanding of the cohort of pupils at the specified school or the education normally provided by it.

86. In considering this ground of refusal, the tribunal has considered only the suitability of the specified school. This is not a comparison of the suitability of the current school with

the specified school. The sole reason for setting out here evidence which the tribunal heard with regard to the child's current circumstances is to set out evidence that the tribunal has considered in assessing the child's ability and aptitude. The tribunal has considered the suitability of the education provided at the specified school specifically for the child. The tribunal has considered whether the education provided at the specified school is not suited to the age, ability or aptitude of the child. Lack of suitability on any one of age, ability or aptitude, or more than one of those, is sufficient to conclude that the ground exists.

87. In weighing the evidence of witnesses A, B and C, the tribunal had regard to the professional roles, practice and experience of witness A, witness B and witness C. In weighing the evidence of the appellant, the Tribunal had regard to her knowledge and experience as mother of the child and in particular to her wish for the child to be taught in the specified school. Where the evidence of witnesses A, B and C conflicted with that of the appellant, the Tribunal preferred the evidence of witnesses A, B and C for the reasons given above.

88. For the foregoing reasons the Tribunal was satisfied that the education normally provided at the specified school is not suited to the ability or aptitude of the child.

***If, where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act: paragraph 3(1)(g) of schedule 2 to the 2004 Act***

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

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

...

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

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

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

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

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

90. In short, the education authority must provide school education to the child in a mainstream school (“a school other than a special school”) unless one of the three circumstances set out in section 15(3) of the 2000 Act arises.

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

91. The tribunal was satisfied that this circumstance, which arises only exceptionally, is not made out for the reasons set out at paragraphs 65 to 75 above. It is clear to the tribunal that, for the reasons given above, providing education for the child in the current school is suitable to the ability and aptitude of the child. The tribunal accepted the evidence that, despite not having been allowed to undertake an enhanced transition from primary to secondary school, the child is settled in the current school, has progressed there, is being provided with education suited to his ability and aptitude and has shown progress over the time he has been in the current school and that the education and the environment of the current school provides the child with the opportunity to develop appropriately academically, and socially and to develop his life skills.

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

92. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise. There was no evidence accepted by the tribunal that providing education for the child in the current school would be incompatible with the provision of efficient education for the children with whom the child would be educated. The tribunal was satisfied that the child is in an environment where he is being educated alongside and along with children and young people with additional support needs, other needs, difficulties and abilities on a par with his own and with needs, difficulties and abilities different from his own. The tribunal was satisfied on the evidence before it that while the child receives a high level of support, there are children in his cohort who receive similar or higher levels of support. There was no evidence accepted by the tribunal that the child is disruptive or that there is any other reason that educating the child in the current school would be incompatible with the provision of efficient education for the children with whom the child would be educated.



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

93. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise. The tribunal was satisfied on the evidence that, while the child receives a high level of support, there are children who receive similar or higher levels of support. The tribunal was satisfied that the education and support provided to the child are provided from the current school's budget. The tribunal did not discern from the evidence before it that there is any public expenditure being incurred which would not ordinarily be incurred by providing education for the child in the current school. The tribunal was not satisfied that there is any unreasonable public expenditure being incurred which would not ordinarily be incurred by providing education for the child in the current school.

94. Accordingly, the Tribunal was satisfied that placing the child in the specified school (a special school) would breach the requirement in section 15(1) of the 2000 Act.

Whether the Tribunal is satisfied that in all the circumstances it is appropriate to confirm the decision of the education authority: section 19(4A)(a)(ii) of the 2004 Act

95. The tribunal was not satisfied that the grounds of refusal at paragraphs 3(1)(a)(i) (placing the child in the specified school would make it necessary for the authority to take an additional teacher into employment) and paragraph 3(1)(a)(ii) (placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodated at or facilities provided in connection with the school) of schedule 2 to the 2004 Act were made out.

96. The tribunal was satisfied the grounds of refusal at paragraph 3(1)(b) (the education normally provided at the specified school is not suited to the age, ability or aptitude of the child) and paragraph 3(1)(g) (where the specified school is a special school, placing the child in the school would breach the requirement in section 15(1) of the 2000 Act) of schedule 2 to the 2004 Act were made out.

97. Accordingly, the tribunal must look at matters afresh and determine whether in all the circumstances it is appropriate to confirm the decision of the education authority refusing the placing request. In doing so, the tribunal must take account of all of the circumstances including those relevant to the consideration of the grounds of refusal and those that are not.

98. The tribunal again considered and took into account its reasons for finding that the two grounds of refusal set out at paragraph 96 above were made out. In particular, the tribunal had regard to its reasons for finding that the ground of refusal at paragraphs 3(1)(b) and 3(1)(g) of schedule 2 to the 2004 Act were made out.

99. The tribunal also considered again the evidence with regard to the specified school, its cohort of pupils, the support that they require and the needs from which that support arises and was of the view that, given the profile of the cohort of pupils in the specified school, placing the child in the specified school would not in all of the circumstances be appropriate.

100. Having considered all of the foregoing and taking account of the fact that the tribunal has already found that the requirement that education could be provided to the child in mainstream education as set out at section 15 of the 2000 Act was made out, the tribunal was satisfied that the child is best and most appropriately placed in his current school, accessing all of the supports and interventions set out above, rather than in the specified school. Accordingly, the tribunal is satisfied that in all the circumstances it is appropriate to confirm the decision of the education authority (refusing the placing request).