



Additional Support Needs

**DECISION OF THE TRIBUNAL**

FTS/HEC/AR/22/0197

**Reference**

1. The respondent has decided that the appellant does not require a co-ordinated support plan (**CSP**). In this reference, the appellant seeks to overturn that decision.

**Decision**

2. The respondent's decision to refuse to prepare a CSP is overturned and I require the respondent to prepare a CSP for the appellant in its final form by 28 April 2023.
3. The respondent's decision to refuse to prepare a CSP falls under section 18(3)(b)(i) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**2004 Act**). My decision to overturn that decision to refuse is made under section 19(2)(b) of the 2004 Act.

**Process**

4. I am satisfied that the appellant has the capacity to make this reference and that doing so will not adversely affect the appellant's wellbeing, all in terms of sections 3, 3A and 3B of the 2004 Act. I formed this view following a case management call (**CMC**) with the party representatives in February 2023. Both parties accept that these tests are met.
5. The respondent accepts that a CSP should be prepared for the appellant. This was stated by the respondent's representative by an e-mail to the Tribunal in January 2023. The respondent's representative confirmed this acceptance during a CMC that took place in January 2023.
6. On the agreement of the parties, I suspended the reference to allow the respondent to prepare a CSP. Following the end of the suspension, a further CMC took place, in March 2023. The respondent had begun preparing a CSP, but it was in its early stages. The respondent's representative accepted that it would be appropriate for me to make a decision requiring the making of a CSP by a particular date. The appellant's representative suggested that 28 April 2023 would be appropriate. The respondent's representative agreed with that suggestion.
7. I am content to produce a decision on the terms agreed. This decision is produced under rule 37(2)(c) of The First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366) (**the rules**), since the respondent has withdrawn its opposition to the reference. This decision is based on the documents available in respect of this reference, as envisaged in rule 37(3) of the rules. The parties

agreed that I could also have regard to the papers that exist in connection with another reference in which I have been appointed legal member, namely a placing request reference where the current appellant's mother is the appellant. The reason for having regard to the papers in that reference in making this decision is that they provide useful factual material in respect of the appellant.

## **Findings in Fact**

### *General findings*

8. The appellant is 14 years old.
9. The appellant was placed in the Centre, a secure residential care facility, in April 2022. The appellant was placed there since he had been running away from home.
10. In August 2022, a children's panel hearing took place for the appellant. The children's panel decided to vary the compulsory supervision order in place for the appellant to allow the appellant to return home and reside with his mother. Since then, the appellant has been living at home with his mother. Children's panel hearings for the appellant took place on earlier dates in 2022, namely May and July.
11. The appellant has not attended school since he left the Centre in August 2022. The future education of the appellant remains uncertain. The appellant's mother has made a number of placing requests to the respondent for a school place for the appellant. The refusal of one of those requests is the subject of a reference to this Tribunal. A hearing is due to take place on that reference in April 2023.
12. The appellant requires support from a number of professionals, namely those in education, social work, family outreach, advocacy and educational psychology.

## **Reasons for the Decision**

13. The appellant is looked after by the respondent within the meaning of section 17(6) of the Children (Scotland) Act 1995, as he is the subject of a supervision requirement under section 70(1) of that Act. He therefore has additional support needs under section 1(1A) of the 2004 Act. The respondent is the education authority responsible for the appellant's school education under s.29(3) of the 2004 Act. These are all matters of agreement between the parties.
14. In his case statement for this reference, the appellant's representative argues that the decision of the respondent that the appellant does not require a CSP is an implicit one that arises since the respondent has not expressly addressed the question, despite having had time and opportunity to do so. I agree that this is a reasonable approach, given the children's panel proceedings that took place in 2022 and given the appellant's absence from school since mid-August 2022. The respondent's representative does not argue otherwise.
15. It is clear (and conceded by the respondent) that the four requirements for a CSP in section 2(1)(a)-(d) of the 2004 Act are met in relation to the appellant. I will deal with each in turn. I am able to deal with each briefly, given the respondent's concession that the conditions for a CSP for the appellant are met.

16. Firstly, the respondent is the education authority responsible for the school education of the appellant (2004 Act, section 2(1)(a)).
17. Secondly, the appellant has additional support needs arising from complex factors. A complex factor is one that has or is likely to have a significant adverse effect on the school education of the appellant (2004 Act, section 2(2)(a)). As the appellant's representative points out, examples of complex factors suggested in the Scottish Government's *Supporting children's learning code of practice* (3<sup>rd</sup> edition), 2017 (**code of practice**) include (1) where the child is looked after either at home or away from home; and (2) where school attendance is very poor and is adversely affecting educational progress (see page 70 of the code of practice). Both examples apply to the appellant. Where a child has not attended school for a continuous period over 7 months within a single academic year, it is within the judicial knowledge of a specialist tribunal that this absence in itself (and in the absence of any evidence to the contrary) will adversely affect educational progress (2004 Act, section 2(1)(b)).
18. Thirdly, the appellant's additional support needs are likely to continue for more than a year. It is very unlikely that the disadvantage of the (so far) lost seven months of attending education will be recovered in less than one year. This is especially so given the uncertainty around the appellant's living and schooling future caused since the appellant's move into a secure residential care facility in April 2022 (2004 Act, section 2(1)(c)).
19. Fourthly (and finally), the appellant's additional support needs require significant additional support to be provided by the respondent in exercising its functions relating to education as well as in its exercise of other functions.
20. On education functions, as indicated above, the appellant has missed a significant proportion of a whole year of education, requiring significant input to enable the lost ground to be recovered, as far as is possible. I note that the appellant requires support from the respondent's educational psychology professionals.
21. On other functions, the appellant requires social work support, especially in relation to the compulsory supervision order in place. Even assuming that the 'significant support' requirement applies to both education and other functions, that part of the test is met. I note that the relevant statutory provision refers to the requirement for certain support, not to its current provision (2004 Act, section 2(1)(d)(i)).
22. Given that all four parts of the statutory test for a CSP are met, I order that the respondent prepares one. The agreed deadline is 28 April 2023.
23. The requirement is for the making of a CSP in its final form by that date. During a CMC, the respondent's representative expressed a desire to involve the appellant's mother in completing the 'Profile' section of the statutory CSP proforma. The question of how the CSP is prepared is a matter ultimately for the respondent. The appellant's mother may, of course, agree to become engaged in that process. I will leave that matter to the parties, as the Tribunal has no locus over this. The Tribunal may only, in a case like this, order that a CSP be prepared by a certain date.