

Health and Education Chamber
First-tier Tribunal for Scotland



Additional Support Needs

DECISION OF THE TRIBUNAL

FTS/HEC/AR/23/0088

List of witnesses

Witnesses for Appellant:

- Service manager, Target Specific Service (witness A)
- Lead youth worker at A group (witness B)

Witnesses for Respondent:

- Head teacher, current school (witness C)
- Head teacher, specified school (witness D)

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 to place the child in the specified school.

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

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

Placing the child in the specified school would be likely to be seriously detrimental to the educational well-being of pupils attending the school;

(b) *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;

(c) *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 September 2023. No solicitor attended for the respondent on September due to a diary error. In a later date in September the call was attended by the legal member, the solicitor for the appellant and a solicitor for the respondent.
5. The reference proceeded to a hearing in January 2024. The hearing took place via video conference.
6. Parties lodged written submissions as agreed in February 2024.

Findings in Fact

7. The child was born in January 2018.
8. The child has diagnoses of genetic duplication at 1q2 and Autism Spectrum Disorder with associated social, emotional and behavioural difficulties. The child has delayed communication skills and uses echolalic language, typically singing or shouting words he knows. The child communicates needs and wants by gesture, by symbols and by limited verbal communication. The child uses Picture Exchange Communication System (**PECS**) for some communication. The child struggles to manage transitions between locations and tasks and can require support to regulate his emotional responses when distressed.
9. The child can become dysregulated at school, in the form of hitting, kicking or biting.
10. The child is doubly incontinent and requires support from adults throughout the day with personal care and changing.
11. The child previously attended nursery school on the same campus as his current school. The child's entry to Primary 1 was deferred by one year. The child entered Primary 1 at the current school (a mainstream school) in August 2023. The child has an attendance

rate of 88% at his current school. The respondent is responsible for the child's education.

12. The child does not usually participate fully in the work set for his class. He requires supervision to concentrate on certain tasks. His interaction with other children is limited. He interacts more with adults at school.

13. The child is supported by a team of professionals, including a paediatrician, speech and language therapy, the respondent's additional support for learning service, an occupational therapy, the Tailor Ed Foundation and the staff and support staff at his current school.

14. The child has an Individual Education Plan (**IEP**) at his current school recording these supports: a visual timetable; his own workstation in the classroom; a visual choices board; use of Now and Next visuals to help with transitions; 1:1 support during small group work; adult support with toileting; and adult support to communicate and share with others during free play opportunities by modelling language.

15. The child's current school caters for children with a wide range of needs. Some pupils in Primary 1 at the child's school have needs similar to, or greater than, the child's. Staff at the child's school are experienced in meeting the needs of the children in their charge.

16. There are three Primary 1 classes in the child's current school which follow a free flow play-based pedagogy model. The child's class has one class teacher (job-shared by two teachers); one Pupil Support Assistance (**PSA**) who supports children as required; and the services of an Early Years' Practitioner who works across all three Primary 1 classes.

17. The child undertook transition visits to his current school; has an individualized learning plan; accesses an interest-based curriculum; has his own work station; is the subject of child planning meetings involving a wide range of educational professionals; has a worry monster to assist indicating his feelings; uses visual aids to assist communication, including PECS, which is available throughout the school; has access to a sensory room and a multi-purpose classroom, which are quieter than the three classrooms, or free flow space; and has access to an iPad.

18. The child does not pose a risk of flight or of risk to himself or to others.

19. The child displays biting, kicking and pushing behaviours.

20. The child can follow routines and follow simple instructions.

21. The education of the child at his current school does not incur expenditure beyond the school's current budget.

22. The specified school has budget for seventy-two pupils with a current school roll of seventy-two pupils. The classes and numbers of pupils in each class are at the discretion of the head teacher and are decided according to the needs of the cohort of pupils. The limits set on class sizes set out in the Scottish Negotiating Committee for Teachers Handbook are sometimes breached depending on the requirements of the pupils. The school has the physical space to accommodate more than seventy-two pupils.

23. The child's abilities in communication, numeracy, interactions with others and independent living skills exceed that of the great majority of the cohort of pupils at the specified school. Eight pupils at the specified school, in Primary 6 and Primary 7, have similar abilities to the child.

24. The education provided at the specified school is geared towards promoting, supporting and, where possible, sustaining and developing skills and behaviours such as eating and drinking; toileting; putting on and taking off garments, such as a coat; communicating, whether verbally or by other means, such as use of symbols or gestures; indicating a choice or choices; sitting on a chair in a room with other pupils; tolerating the presence of other pupils; avoiding conflict; regulating and mitigating disruptive and harmful behaviours; following routine and following instructions.

Reasons for the Decision

25. The respondent relied upon the three grounds of refusal set out at paragraph 2 above. The appellant disputed that the grounds of refusal existed.

26. The tribunal had in the bundle of papers before it written statements from and heard oral evidence from witness B, witness C and witness D and the appellant. The respondent indicated that it had no questions for witness A. The tribunal considered the witness statement of witness A and indicated that it had no questions for witness A. Witness A did not give oral evidence. The tribunal considered the witness statement of witness A.

27. Witness B, witness C and witness D each 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.

28. 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.

29. In reaching its decision, the tribunal had regard to the views of the child as set out in

the document at pages T040 to T049 of the bundle of papers before it; all of the papers before the tribunal and the oral evidence given to it and to 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 be likely to be seriously detrimental to the educational well-being of pupils attending the school: paragraph 3(1)(a)(v) of schedule 2 to the 2004 Act

30. In response to questions by the appellant's solicitor witness D accepted that an additional pupil could physically be accommodated in the specified school.

31. It was not a ground of refusal relied upon by the respondent that placing the child in the specified school would give rise to significant expenditure on extending or otherwise altering the accommodation at or facilities provided in connection with the school (paragraph 3(1)(a)(ii) of schedule 2 to the 2004 Act).

32. It was not a ground of refusal relied upon by the respondent that 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).

33. Witness D explained that the school roll is seventy-two pupils. The school is provided with budget for there being nine classes of eight pupils. The cohort of pupils is divided into nine classes, each with its own name. The cohort of pupils is divided into classes in accordance with the needs and abilities of the pupils. For example, a named class may include Primary 2 and Primary 7 pupils. The respondent sets maximum sizes of classes and in doing so has regard to the limits set out in the Scottish Negotiating Committee for Teachers (**SNCT**) Handbook. The limits set out in the SNCT Handbook are not adhered to only where the needs of the children justify that. The limits set out in the SNCT Handbook are currently exceeded in three classes which have nine pupils (rather than eight). Three classes have eight pupils. Three classes have seven pupils. Each class has one teacher and three pupil support assistants (**PSAs**). In each of two classes one pupil is currently taught in a separate room without any other pupils in it. Those two pupils are each supervised separately by a PSA each. The aim is, in due course, to return each of those two pupils to being taught in the classroom along with their own class.

34. Witness D explained that taking an additional pupil into the school would result in the overall staff to pupil ratio in the school being “diluted” which would have a negative impact. The negative impact was not itself specified. It was not explained why it would not be possible to re-formulate classes to obviate any identified detriment to the educational well-being of pupils attending the school.

35. On the evidence made available to it, the tribunal was not able to be satisfied that this ground of refusal was made out. The specific nature of the detriment to the educational well-being of other pupils was not identified. The tribunal did not have the evidence before it to quantify any detriment which might be identified. Accordingly, the tribunal was not able to be satisfied that placing the child in the school was likely to be seriously detrimental to the educational well-being of pupils attending the school.

36. The tribunal makes no criticism of witness D. Witness D gave her evidence as best she could. 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. The tribunal was not able to be satisfied on the basis of the evidence before it 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

37. In considering this ground of refusal, the tribunal has considered only the suitability of the specified school. The tribunal has not undertaken a comparison of the suitability of the child’s current school with the specified school. Where the tribunal makes reference to the child’s current circumstances it does so only as a means of addressing 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 ability or aptitude of the child. Lack of suitability on both ability or aptitude, or on either one of those, is sufficient to conclude that the ground exists.

38. The child was born in January 2018. The specified school caters for children in Primary 1 up to Primary 7. The respondent does not dispute that the education at the specified school is suited to the child’s age.

39. 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”.

40. Witness D is the head teacher of the specified school. Witness D has not worked in a mainstream school for some twelve years. She explained that she has experience of mainstream schooling and that her ongoing training, professional development and relationships with other teachers – such as being part of a primary school headteachers group – keeps her up to date with developments and practice in mainstream schools.

41. Witness D’s witness statement focused mainly on comparing the child with children in Primary 1 and Primary 2 of the specified school and their education. However, in her oral evidence she gave greater detail of the full cohort of pupils and the education normally provided for them.

42. Witness D was clear that if the child was placed at the specified school she was of the view that the child would make progress in learning and developing skills. Witness D was keen to point out that pupils at the specified school do progress. Nevertheless, Witness D gave a number of clear reasons why on the basis of her detailed knowledge of her own school (the specified school), its cohort of pupils, the education normally provided there, her reading of relevant papers and her ninety minute observation of the child at his current school on 11 January 2024, the education provided at the specified school was not suited to the child’s ability or aptitude.

43. Witness D explained the child’s communication abilities exceed that of the vast majority of children at the specified school. Witness D explained that of the cohort of seventy-two pupils at the specified school only eight pupils have abilities in communication, in letters and in counting similar to the child’s and they are all Primary 6 or Primary 7 pupils. Children in Primary 1 to Primary 5 have significantly lesser abilities as a consequence of the entry criteria to the specified school having tightened considerably over time. As these Primary 6 and Primary 7 pupils leave the specified school and move on there will be no

children at the specified school with abilities similar to the child's. In short, the child will have only a very limited group of peers of similar abilities and that will disappear within a fairly short period. This will reduce to nil the cohort of pupils at the child's level of communication so eliminating the possibility of the child modelling peer behaviour. While the child would have the opportunity to model staff behaviour, witness D explained that peer modelling is more desirable.

44. Witness D explained that when she observed the child in January 2024 at his current school at break time she observed him fetching his snack, putting on his coat and going outside himself. He then indicated to witness D that he wished her to peel his banana, which she did. Thereafter the child ate his snack himself. While he did not interact with the other children he played alongside them in the playground. He waited while other children completed an obstacle course made from some blocks and then completed this himself a couple of times. He did not have adult support during this time. When the bell rang he lined up with the other children without prompting (R081 of the bundle). Witness D explained that these abilities – such as getting his snack himself, putting on his coat himself, taking his snack outdoors – are greater than those of the children at her school. She explained that they would need prompting and assistance with such things, that they would need the snack given to them and that some would need assistance to eat the snack.

45. The tribunal noted that the forgoing observation is similar to that recorded in the non-instructed advocacy report (T044 of the bundle):

“[The child's class teacher] said that [the child] knows the class routines and takes cues from other children. As the bell rang for break [the child] made his way to the cloakroom and picked out his jacket which he put on independently and also changed into his outdoor shoes. He then went to his tray and took out his snack (an apple, a banana, and a bag of crisps). The other children formed a line and [the child] waited until he saw R and then went out behind her. R is a quiet little girl whom [the child] seemed to feel comfortable with although he does not speak to her”.

46. Witness D observed the child be taken to the toilet by a PSA. He went in and toileted himself, pulled his trousers up and reminded himself to wash his hands (R081 of the bundle).

47. The tribunal noted that the forgoing observation is similar to the information recorded in the non-instructed advocacy report (T044 of the bundle):

“When I arrived at the school [the child] was sitting at his own workstation. He had been working with a PSA as he does most mornings until break time. The class were just about to go for their break and the PSA took [the child] to the toilet. [She stated that he can pull down his pull ups and sit on the toilet but that he does not seem to really know when he needs to go. His teacher, ... stated that he does not tell her if he needs a change and that it is usually one of the children who alerts them to the smell.]”

48. In terms of independent activity (such as getting a snack, eating, putting on a coat or shoes, toileting, going out into the playground, coming back into school from the playground), verbal ability (using words and short phrases), comprehension, following routine, following instructions, recognizing letters, saying the alphabet, counting to 20, ability to concentrate for a period of time and tolerating being in the same space as others, the child is significantly more advanced than most of the pupils at the specified school. At the specified school a lot of time is devoted to getting pupils to sit in a chair in a room with others, eating, fetching a coat, putting on a coat, getting a snack, learning to take turns, regulating emotions. These are areas in which the child is more developed and is developing and which he does not require the same level of curriculum focus upon as the pupils at the specified school receive and require.

49. The tribunal carefully noted the evidence of the appellant. The appellant is articulate, well informed and motivated by seeking the best educational environment for her child. The tribunal noted the appellant's evidence of steps she has taken to engage professionals with her son and with the current school. In particular the tribunal notes the appellant's belief that her son would benefit from smaller class sizes at the specified school and would receive greater support from staff. On that point, however, the tribunal noted the evidence of witness D who pointed out that even with smaller classes because the demands of many of the other pupils would be significantly greater even than the child's it is possible that staff focus would require to be given over to the greater demands of other less able children and so there would be no greater input available to this child. The Appellant acknowledged in oral evidence that witness D, in her professional capacity as head teacher of the specified school, understands the needs of pupils at the specified school better than the Appellant herself does.

50. The tribunal also carefully noted the evidence of witness B, in particular how the child presents at the A group each Friday and her view that the child would benefit from

smaller class sizes at the specified school. Witness B's most recent interaction with pupils at the specified school was in 2019. Witness B's expressed positive views about the specified school and negative views about the child's present school. However, Witness B acknowledged in oral evidence that witness D, in her professional capacity as head teacher of the specified school was better placed to comment on the suitability of the education provided at the specified school for the child than was she.

[Part of this paragraph has been removed by the Chamber President to maintain 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)]

51. In weighing the evidence of witnesses D and B the tribunal had regard to their respective professional roles, practice and experience. 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 placed in the specified school. Where the evidence of witness D conflicted with that of witness B and the evidence of the appellant, the tribunal preferred the evidence of witness D for the reasons given above.

52. The tribunal was satisfied on the basis of the evidence of witness D that the education normally provided at the specified school is geared towards supporting, promoting and, where possible, sustaining the development of skills and behaviours such as sitting on a chair in a room with other pupils; tolerating the presence of other pupils; avoiding conflict; regulating and mitigating disruptive and harmful behaviours; indicating a choice or choices; following routines; eating and drinking; toileting; putting on garments, such as a coat; and communicating, whether verbally or by other means, such as use of symbols. The tribunal was satisfied that the child's abilities and aptitude exceed this level of educational support.

53. 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

54. 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.”

55. 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 the child

56. Witness C, the headteacher of the child’s current school, explained that the child attended the nursery in the grounds of the current school, joining the current school in August 2023. Witness C stated that the current school caters for pupils with a wide range of needs and that in Primary 1 there are pupils with similar needs to the child’s, if not greater. Staff at the current school are experienced in meeting these needs. The depute head of the current school has a specific remit for pupils with additional support needs. The current school calls on the additional support for learning support service as required.

57. There are three Primary 1 classes in the current school. The child’s class has 19 pupils. However, the child can be with more pupils due to the free flow environment (see below). The child’s class is taught by two teachers who job-share the role. There is a full-time Early Years’ Practitioner (a qualified member of staff assigned to assist play-based learning) who works across all three Primary 1 classes. The child’s class has one PSA who supports pupils in the class as required.

58. The teaching method in all Primary 1 classes is free flow play-based pedagogy for about 60% of the time. The free flow space is across all three Primary 1 classrooms. When required to focus on a particular topic a classroom door can be closed and the children grouped into their separate classes. There is a fourth classroom used as a multipurpose room.

59. In the child's classroom there is a teaching table in a horseshoe shape, where children gather in groups, generally of six to eight, to engage with the teacher focusing on written work, word building and word finding. Initially the child would almost never go to the teaching table, but over time has gradually become more likely to go there, taking his whiteboard. At present the child will not fully engage with the other children but instead parallel plays.

60. The child undertook transition visits to the current school to accustom him to facilities; has an individualized learning plan; uses an interest-based curriculum; is the subject of child planning meetings involving a range of educational professionals; uses his own work station, which faces the wall to aid concentration; has a worry monster to help show his feelings; uses visuals, such as symbols, to aid communication; has access to a sensory room and to the fourth classroom, which allows the child to be in a quieter environment as needed; like the other children, has support from the PSA as required; and has access to an iPad (of which there are five per class). PECS is used throughout the school.

61. Witness C's evidence was that the child has good attendance of 88% (80% attendance being a cause for concern) and has settled into his teaching environment. There have been no reports of attempts to run away, just as there were no such reports at nursery school. The school has no concerns as to risky behaviour or for his safety at school. While the child exhibits biting and kicking behaviours these are considered to be sensory matters or occur during periods of transition. They are not a cause of concern for staff and are considered to be within the usual range of behaviours for children of the child's age and stage, and indeed in other years throughout the school. There have been no incidents that required first aid and no complaints from the parents of other pupils. The child is able to follow routines (such as at break times putting on his coat, collecting his snack, going to the playground and coming back into class in response to the bell) and is also able to follow instructions (such as after break trying to give his coat to the class teacher, being told to hang it up himself, letting out a short scream, but then going on to hang his coat up): see non-instructed advocacy report at pages T044 and T045 of the bundle.

62. Witness C explained that in the six months the child has attended the current school he has settled well. Most mornings he works at his work station supported as required by the PSA. He will now approach the teaching table and spend time there, though he will not fully engage with the other children, instead paralleling their behaviours. This parallel play is considered to have become more sophisticated since nursery school. The child is not

disconcerted by the school bell or by a noisy classroom. He has access to the sensory room and the fourth classroom if he wishes a quieter environment. The child appears to be more verbal there, using longer sentences. He previously did not attend PE but now does so and will engage for a period. He is accompanied to PE by a PSA who provides materials – putty, Lego, toy animals – so that when he does begin to disengage he has an activity to engage him in the PE hall, thus encouraging him to remain in the same environment as the other children. There is no observation of other children being unkind to the child.

63. The instructed advocacy report at page T045 of the bundle observes that the child:

“... was brought back to his workstation by Mrs H (EYP) who had already put a playboat with some little plastic figures on the table. I sat down by [the child] and asked him what he was playing with. He said, “A boat”. He then shouted to Mrs H “Where’s the shark?”. She brought a toy shark to him, and he played with it making it ‘eat’ the figures. He screamed as they were being ‘eaten’. He then placed two of the figures on the side of the boat and said, “Need some water. Oh water, water”. He turned to me and said smile.”

This observation, along with others, illustrates that the child will accept a stranger into his presence; is able to interact with others; can develop an imaginative play scenario and could identify the elements involved namely the shark, the boat, the screaming passengers and the water. The child was able to sequence the events and act them out using models during play. He identified the shark toy as a missing element. This demonstrates that the child has the ability to access a story in a logical sequence internally, naming and gathering relevant elements.

64. The forgoing observation, along with other observations, taken with evidence of the child’s increased concentration (for example, at page R099, paragraph 27 of witness C’s statement concerning the child spending 20 minutes working alongside a peer in his class to build a model zoo) and witness C’s evidence that the child is more secure in his alphabet, (knowing the letters, identifying them and understanding their sounds) and counting indicate that the child is settling, responding to the educational environment and benefitting from it.

65. The tribunal noted witness C’s professional qualifications, his lengthy experience as head teacher of the current school, his observations of and interactions with the child and his involvement with planning for the education and support of the child. Neither witness B nor the appellant has had the same opportunity to observe the child in school. Where the

evidence of witness C was contradicted by the evidence of witness B or the appellant the tribunal preferred the evidence of witness C for the forgoing reasons.

66. The tribunal was satisfied that this circumstance, which arises only exceptionally, is not made out for the reasons set out 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.

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

67. 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 child has attended the current school for six months. The oral evidence of witness D, which the tribunal accepts, is that the child is liked and well-treated by the other pupils and by staff. The incidents of biting, kicking or pushing are judged by the school to be minor and in line with the behaviour of other children in the child's class and in other classes throughout the school. There is no evidence of behaviour by the child in the school which witness C considered to be incompatible with the provision of efficient education for the children with whom the child would be educated. Given witness C's role as head teacher of the current school, his knowledge of and engagement with his school's staff and the cohort of pupils at the school and his engagement with and knowledge of families of pupils at his school, the tribunal accepted that evidence and preferred it to any contrary evidence.

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

68. The tribunal was satisfied that this circumstance, which arises only exceptionally, does not arise. Witness C was clear that "There are no significant additional costs for [the child] to attend [the current school]" (see paragraph 47 of Witness C's statement at R104). He explained that the current school has budget for 14 PSAs, with only 11 currently in post. Even if – and no decision has been made as no requirement has yet been identified as being necessary – the child did require full-time allocated PSA support and, or, support from a PSA, that support would be provided from the school's PSA budget. Given witness C's role

as head teacher of the current school and his knowledge of his school's staff, staffing and budget the tribunal accepted that evidence and preferred it to any contrary evidence.

69. 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

70. The tribunal was not satisfied that the ground of refusal at paragraph 3(1)(a)(v) (placing the child in the specified school would be likely to be seriously detrimental to the educational well-being of pupils attending the school) of schedule 2 to the 2004 Act was made out.

71. 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.

72. 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.

73. The tribunal again considered and took into account its reasons for finding that the ground of refusal at paragraph 3(1)(a)(v) of schedule 2 to the 2004 Act was not made out. In particular, the tribunal had regard to its reasons for finding that the grounds of refusal at paragraphs 3(1)(b) and 3(1)(g) of schedule 2 to the 2004 Act were made out.

74. 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.

75. 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).