



Additional Support Needs

DECISION OF THE TRIBUNAL

Reference

1. This is a reference by the appellant seeking certain remedies including an order requiring the respondent to prepare a co-ordinated support plan (**CSP**) for the child.

Decision

2. I overturn the respondent's (deemed) decision that the child does not require a CSP and I require the respondent to prepare a CSP for the child by 4 June 2026. This requirement is made under section 19(2)(b) of the Education (Additional Support for Learning) (Scotland) Act 2004 (**2004 Act**).
3. The Chamber President has made references to the Inner House of the Court of Session under section 34 of the United Nations Convention on the Rights of the Child (**UNCRC**) (Incorporation) (Scotland) Act 2024 (**2024 Act**) seeking clarification of the law on certain questions. These questions are intended to clarify the extent or limits of this Tribunal's jurisdiction where the UNCRC is relied upon in a reference. These questions arise following the decision of the Upper Tribunal for Scotland in *City of Edinburgh Council v SP* 2026 UT 34, dated 6 March 2026. While these questions are being considered by the Inner House, this decision remains binding on this Tribunal.
4. The appellant relies on certain of the 'UNCRC requirements' under the 2024 Act, namely articles 2, 23, 28 and 29 (see the reference form at Section 7, T019, the appellant's case statement at paragraph 135 (A017), her submissions at paragraphs 28-29 (A025) and paragraph 22 (A032) and at A068).
5. Rule 3A(8) of The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (**the Tribunal rules**) allows me to fix a hearing to consider UNCRC compatibility questions as a separate hearing from any other hearing in the proceedings. I am satisfied that it is fair and just to apply this provision here. This will allow me to decide the reference without unnecessary delay, while postponing the decision on the UNCRC compatibility question until the decision of the Inner House.
6. Parties will be informed once the decision of the Inner House is published and they will be given an opportunity to adjust or add to their submissions on the UNCRC compatibility question. A timescale for the decision on the UNCRC compatibility question will also be provided.

Process

7. This reference has been managed by three case management hearings, followed by submissions on the question of whether rule 37(2)(e) of the Tribunal rules applies.
8. On 15 April 2026 the reference was suspended until 28 April 2026 to allow the

respondent until the end of the permitted statutory period to prepare a CSP. The respondent did not produce a CSP by that date and instead argued that a later date should apply for its preparation, under the relevant regulations.

9. The appellant objected to the amendments made by the respondent to their submissions on the application of rule 37(2)(e). The main body of the respondent's submissions was lodged on time (by 12 May 2026). The amendments were made by tracked changes on the respondent's submission (R032-041) and involve the addition of an e-mail of 8 April 2026 (R042) referred to in those amendments. The respondent's solicitor explained why these details came late (e-mail of 14 May 2026 at R044), namely due to someone's absence from the office. I am mindful also of the fact that the respondent's regular solicitor was on holiday during part of the period for preparation of the submissions and an external solicitor had to be instructed at short notice to prepare them. The amendments carried out after the deadline are not substantial and are limited to one paragraph of the submissions (paragraph 20). No new points are made in those amendments. I am satisfied that there is no material prejudice to the appellant caused by allowing those amendments and the accompanying document to be made, and so I will allow them, since it is fair and just to do so.
10. The appellant seeks an order requiring the respondent to prepare a CSP 'with sufficient specificity' (submissions, A068). I indicated my views on the remedy powers of the Tribunal under the 2004 Act in my suspension direction of 15 April 2026, paragraph 21 (T141). I will repeat the substance of them here. The applicable remedy provision is section 19(2)(b), since the reference is made under section 18(3)(b)(i). The decision referred to is the decision that the child does not require a CSP. That decision may be overturned (unless it is to be confirmed). The logical order to make on doing so is to require the respondent to prepare a CSP. It is difficult to see what other action is envisaged in that provision. The broad wording used there has clearly been chosen not in order to expand on the powers that flow naturally from the decision taken; rather, it is designed to cater for the range of reference types covered by that single remedy provision (those under section 18(3)(a), (b), (d)(iv), (ea) and (eb), seven reference types in total). I therefore reject the argument that section 19(2)(b) gives the Tribunal the power to make orders about the content of a CSP which has not yet been prepared. The content of a CSP is described in section 9(2)(a) of the 2004 Act. There is a separate reference type where a parent wishes the content of a CSP to be changed: section 18(3)(d)(i), applicable where a CSP has been prepared, with a different remedy power, under section 19(4) of the 2004 Act.

11. I conclude that I should decide the reference under rule 37(2)(e) of the Tribunal rules.

Findings in Fact

General findings in fact

12. The child lives with the appellant. The child was born on 9 August 2018.
13. The child has been diagnosed with attention deficit hyperactivity disorder (**ADHD**). He is prescribed medication for his ADHD. The child awaits an assessment for possible autistic spectrum condition (**ASC**).
14. The child requires hearing aids. He wears prescription glasses. He has asthma.
15. The child finds sustaining his attention on tasks difficult. Information for routine tasks often has to be repeated for the child. He struggles to follow instructions, especially when they have more than one part. He does not comply with time limits. The child is

easily distracted and can struggle to switch off from external stimuli.

16. The child struggles to keep himself entertained and often expresses feelings of boredom. He is preoccupied with time and continuously asks for reminders of what time it is. He attempts to avoid tasks that involve sustained mental effort.
17. The child is restless and always moving, including running, jumping, climbing and spinning. This can lead to physical risks. He rarely relaxes. He is restless during sleep. He chats a lot and struggles to stop talking. He struggles to wait his turn and will interrupt conversations.
18. The child attends School A. He is in primary 3. He currently attends school on a significantly reduced timetable due to challenges he has faced there.
19. In school, the child is distracted by classroom and outside noise and requires redirection to tasks. He requires 1:1 attention in school in order to listen.
20. These challenges affect the child's ability to access the school curriculum as he cannot focus in class, he struggles to follow teacher instructions and he interrupts and distracts from classroom topics.
21. The child finds transitions and stopping and staring activities challenging.
22. The child has a number of strengths that apply to his education: he is articulate, with very good oral vocabulary, he has learned good, accurate letter formation and when he engages, he can write a sentence well. He has good number sense. He can be kind, empathetic and considerate to others and has a gentle but fun nature. When regulated, he has good manners.
23. On 3 November 2025, a detailed clinical psychology assessment report was issued by (T053-079) (**the clinical psychology report**). On 11 November 2025, the appellant sent the clinical psychology report to the headteacher at the child's school (T100). Its receipt was acknowledged on the same day (T099). This report is based on: a developmental history interview with the appellant; school observations of the child by a clinical psychologist; information gathered by from the child's teacher by the observing clinical psychologist; a school report dated 24 September 2025 prepared by the child's teacher and the acting deputy headteacher at the child's school; and questionnaires completed by the appellant and the child's school teacher. Based on this information, the conclusion in the clinical psychology Report is that the child meets the diagnostic criteria for a diagnosis of ADHD. A number of recommendations are made in the report relating to the school provision for the child (T077-079). On 12 November 2026, the appellant gave the child's headteacher permission to share the clinical psychology report with relevant school staff and with the respondent's educational psychology service (T098-99).
24. On 12 November 2025, the appellant made a reasoned request for a CSP to the respondent (T117-119). The respondent intimated its decision that the child requires a CSP by letter of 6 January 2026 (R008). That letter was sent to the appellant for the first time by e-mail on 15 January 2026.
25. On 10 February 2026, the appellant e-mailed the respondent setting out the services and conditions she wished to see taken account of for the purposes of a CSP (A035-037). These relate to: ophthalmology, audiology, psychiatry, psychology, autism assessment, asthma management and nutritional and dietary intake.

Reasons for the Decision

26. The parties agree that the child has additional support needs, as defined in section 1 of the 2004 Act. I agree, as supported by my findings in fact at paragraphs 13-21 above.
27. The respondent ought to have informed the appellant of its proposal to establish whether the child requires a CSP by 7 January 2026 (2004 Act, section 11(2)(a) and the Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Amendment Regulations 2005 (SSI 2005/518) (**the regulations**), regulation 4A, imposing a deadline of 8 weeks from the date of the request). The respondent did so on 15 January 2026 (see finding in fact 23 above). This failure leads to a deemed refusal of the request for a CSP under section 18(5A) of the 2004 Act. I have overturned that refusal under section 19(2)(b) of the 2004 Act.
28. I conclude that rule 37(2)(e) of the Tribunal rules applies. As is accepted by the parties, that provision carries two requirements: (a) that it has been established that the child requires a CSP and (b) the respondent has failed to prepare a CSP within the time limit provided. Where both parts of this provision apply, I may decide the reference without a hearing (rule 37(1)(e)). For reasons explained below, I find that both requirements are met and I have decided to proceed to make a decision on the reference without a hearing. I also address the reasons for the time limit for compliance with my decision.

(a) It has been established that the child requires a CSP

29. This part of rule 37(2)(e) is met. It is for the respondent to establish whether a child requires a CSP. This is clear from the wording of section 9(1) of the 2004 Act, which refers to the obligations that apply where an education authority establish that a child for whose school education they are responsible requires a CSP.
30. In a letter dated 6 January 2026, the respondent wrote to the appellant in the following terms (R008):
- Having now considered all current, relevant information with regard to [the child's] additional support needs, I am of the view that [the child] meets the definition within the Education (Additional Support For Learning)(Scotland) Act 2004 for a child/young person who requires a Coordinated Support Plan. Therefore, it is my intention to instruct the Head of School A to construct a draft coordinated support plan.
31. The letter goes on to state that the appellant will be consulted in the preparation of the CSP and confirms the appellant's right, if unhappy, to refer the matter to this Tribunal.
32. This letter represents confirmation by the respondent that, as of 6 January 2026, it had established that the child requires a CSP.
33. The respondent in its submissions (paragraph 5, R016) argues that despite the letter of 6 January 2026, the application of the regulations means that the respondent may still decide not to make a CSP by the end of the total period of 24 weeks (8 weeks plus 16 weeks) from the date of the request for a CSP (referred to as **the usual deadline**).
34. I agree that an education authority may ordinarily decide not to make a CSP on or before the usual deadline. However, that time limit represents the maximum period within which to make that decision. Rather strangely, it is also the deadline for producing a CSP, where the decision is taken to make one. An education authority may make the decision that a child requires a CSP at any time after the request is made (indeed, it may do so in the absence of any such request). The respondent made its decision that the child requires a CSP by 6 January 2026. Having made that decision, it then had until 27 April 2026 to issue a CSP, unless that time limit was validly extended.

(b) The respondent has failed to prepare a CSP within the time limit provided

35. The reference to 'the time limit provided' clearly means the time limit provided by the relevant statutory provisions. These comprise the provisions in the 2004 Act and in the regulations. In this reference, the CSP must be produced by 27 April 2026, being the usual deadline. However, that time limit does not apply where one or more of the situations in paragraphs (a)-(i) of regulation 7(1) of the regulations does. I conclude that more than one of those paragraphs may be argued as meeting the test in regulation 7(1) since the situations in those paragraphs are broad in their scope and do not represent alternatives.
36. The test in regulation 7(1) is that the situation(s) relied upon in paragraphs (a)-(i) mean that it is impractical to comply with the usual deadline. I do not accept the respondent's argument (submissions, paragraph 8, R017) that impracticality is deemed to exist where one of paragraphs (a)-(i) applies. The wording makes it clear that there requires to be a causative link ('because') between the situation described in the relevant sub-paragraph(s) and impracticality of compliance with the usual deadline. Regulation 7 could have simply stated that the education authority need not comply with the time limit if any of the (a)-(i) situations apply. It did not. Instead, it refers to an overall test of impracticality where one of a specified number of situations exists.
37. The respondent relies upon two of the regulation 7(1) paragraphs to justify non-compliance with the usual time limit. I will consider each in turn.
38. The first is the situation provided in regulation 7(1)(c):
- (c) the child's parent or the young person has made an assessment request under section 8 of the Act and the process of assessment or examination in pursuance of that request cannot take place or the results of that process are not available before the expiry of the time limit
39. The respondent relies upon the explanation for this sub-paragraph in its letter of 28 April 2026 (A057-059). There (at A058), the respondent refers to 'a number of communications pertaining to possible assessments'. Reference is also made to the clinical psychology report. There is mention of the child's school having made referrals to Psychological Services and Occupational Therapy. Reference is made to several agencies, services and assessments the appellant is said to have listed in more recent communications. Finally, mention is made of concerns the appellant is said to have around the impact of the child and adolescent mental health service (**CAMHS**) accepting the clinical psychology report in relation to the child's status as he awaits further assessment/diagnosis for areas not covered in that report.
40. In its submissions, the respondent expands on these points by listing assessments requested by the appellant on 12 November 2025 and then on 10 February 2026 (paragraphs 14-15, R034-035). The respondent goes on to argue (submissions paragraph 16, R035-036) that the 12 November 2025 requests and some of the 10 February 2026 requests fall within section 8 of the 2004 Act.
41. I conclude that the appellant's requests made on 10 February 2026 do not fall within section 8 of the 2004 Act. That provision applies where the education authority proposes to establish whether child has additional support needs or would require a CSP (section 8(1)(a)) and where a request is made that the education authority arranges for the child to undergo, for the purposes of that proposal, a process of assessment or examination (section 8(1)(b)).

42. Section 8 of the 2004 Act only applies during the period when the respondent proposes to establish whether the child would require a CSP. This is clear from the references to 'Where an education authority propose...to establish whether a child....would require a CSP' (section 8(1)(a)(i)) and 'for the purposes of the proposal' (section 8(1)(b)). As indicated above, the respondent established by 6 January 2026 that the child requires a CSP. From that date, section 8 no longer applies since there is no longer such a proposal: the proposal (whether to make a CSP) has been decided.
43. As for the requests made by the appellant on 12 November 2025, those requests became irrelevant following the issue by the respondent of its letter of 6 January 2026. Again, those requests, assuming they fall within section 8, only matter during the period up to the respondent's decision on whether or not the child requires a CSP. That period concluded by 6 January 2026.
44. The respondent refers in its submissions to an occupational therapy assessment request made on 28 April 2026 (paragraph 17, R036). Again, as this came after 6 January 2026 (and indeed a day after the usual deadline), it does not fall within section 8 of the 2004 Act. It also refers to ongoing assessment by educational psychology in November 2025, February 2026 and April 2026 (submission, paragraph 18, R036). For reasons outlined above, the November 2025 assessment ceased to be of relevance once the respondent established that the child requires a CSP (on 6 January 2026). Also as explained above, the February and April 2026 educational psychology assessments do not fall within section 8 since the respondent had by that time already established that the child requires a CSP.
45. This all means that the situation outlined in regulation 7(1)(c) did not apply on 27 April 2026.
46. The second such situation relied upon by the respondent is the one in regulation 7(1)(d):
- (d) the education authority has sought advice or information from an appropriate agency or other person under section 12(2)(a) of the Act and the appropriate agency or other person has not provided the advice or information before the expiry of the time limit;
47. The duty in section 12(2)(a) of the 2004 Act is (for present purposes) to seek and take account of relevant advice and information from such appropriate agencies and other persons as the respondent thinks appropriate in establishing whether a child requires a CSP and in preparing a CSP. While section 8 of the 2004 Act applies (for present purposes) only where an education authority proposes to establish whether a child requires a CSP, section 12 applies also to the preparation of the CSP (section 12(1)(c)). This means that the duty subsists until at least 27 April 2026, the usual deadline.
48. The respondent, in its submission, relies on the following information it has sought in compliance with its duty in section 12(2) (paragraphs 20-21, R036-037):
- (a) Information from NHS ophthalmology, requested on 8 April 2026 (R042);
(b) Internal consultation on 21 and 24 April 2026 with its sensory support service who confirmed that NHS audiology was not currently working with the child;
(c) Consultation with CAHMS in April 2026 in relation to the clinical psychology Report and the child's position on their waiting list; and
(d) Further information requested from audiology and respiratory medicine (no date provided, but the reference to 'now requested' suggests a recent request).
49. The problem with the argument that regulation 7(1)(d) applies is that the earliest of the

requests relied upon by the respondent was made on 8 April 2026, almost 5 months after the original request for a CSP was made, and more than 3 months after the respondent confirmed that the child requires a CSP. That delay is not directly explained by the respondent. In its submission, it refers to some initial 'internal confusion around where responsibility for these requests was held' (submission, paragraph 21, R037). In its letter of 28 April 2026, at A057, third paragraph, the respondent offers its apologies, conceding that there have been process delays and complexities around communication. The respondent also states that the appellant's experience will support service improvements. These are acknowledgements that delays have been caused by the respondent's internal processes.

50. I am not satisfied that the reason for the lack of provision of the sought for advice or information is that it was impractical to obtain it by 27 April 2026. The respondent ought to have started to perform its duty shortly after the request for a CSP was made on 12 November 2025. By 6 January 2026, the respondent had considered all 'relevant information' and concluded that the child requires a CSP. The respondent has not explained why, having reached that conclusion by that date, it allowed another 3 months (around half of the usual time limit) to pass before starting to make those enquiries. It was not impractical to have used those 3 months to perform its duty to seek and take account of advice and information relevant to producing the CSP. Indeed, it had 5 months to do so from the date of the appellant's request for a CSP. It is the respondent's failure to comply with its duty under 12(2) in good time that led to its difficulties in preparing a CSP. As the appellant notes in her submission (A067), the respondent cannot invoke regulation 7(1)(d) where the delay is of its own making.
51. Further, this is not a case where the respondent knew nothing of the child's additional support needs prior to the appellant's CSP request in November 2025. The appellant wrote in detail about her concerns and about the potential for a CSP as far back as 29 January 2024 (T026-027), over 21 months before her formal CSP request. The appellant wrote to the respondent again about the child's needs on 9 February 2024 (T025). The information in those e-mails only could reasonably be said to have triggered the duties on the respondent under section 12 of the 2004 Act.
52. It is also relevant to note that the additional support identified in a CSP is not support that is being provided or that might reasonably be provided. Instead, it is additional support that is required to meet the educational objectives. The respondent has the skills and expertise to frame the relevant educational objectives and to specify the support required to meet these, even support from health agencies. It is within the specialist knowledge of this Tribunal that education authorities require to liaise with health (and other appropriate) agencies on a regular basis. Further, an education authority could commission its own assessment of a child's health needs, where those needs could be relevant to their education: see the reference to 'and other persons' in section 12(2)(a) of the 2004 Act.
53. The clinical psychology report was made available to the child's headteacher (and therefore the respondent) on 3 November 2025. The current reference was lodged on 8 January 2026. The appellant lodged a number of documents with the reference. These include:
- a. An NHS asthma plan (T024);
 - b. An appointment letter for the child with an ear, nose and throat consultant (T028);
 - c. A Community Paediatric Nursing Assessment Report dated 18 July 2023 (T049-051);
 - d. A referral/further assessment request following an eye test result, dated 25 October 2022 (T080);

- e. An NHS appointment letter for a generic orthoptist appointment on 16 February 2023 (T082); and
- f. An e-mail of 8 February 2024 from the Depute Principal Educational Psychologist for the respondent following a request by the appellant for a referral (T083-087).

54. Given the information available to the respondent (see the findings in fact in paragraphs 23-25 and the information referred to in paragraph 53 above), it is clear that the respondent has (and has had for many months, and indeed years) available to it ample information from which it could frame the factors from which the additional support needs of the child arise, the educational objectives arising from those factors, the additional support needed to achieve those objectives and the type of professionals (not their identity, since this is not required) being the persons from whom the support should be provided. In other words, the respondent has had ample time and information to enable it to frame the essential parts of a CSP as set out in section 9(2) of the 2004 Act.
55. This all means that the situation outlined in regulation 7(1)(d) did not apply on 27 April 2026.
56. Since neither of the regulation 7(1) situations relied upon by the respondent applied by the usual deadline, this means that the phrase 'the time limit provided' in rule 37(2)(e) of the Tribunal rules refers, in the circumstances of this reference, to the usual deadline, 27 April 2026. The respondent did not prepare a CSP by that deadline. The decision as to how rule 37(2)(e) should be interpreted in a particular case is for the Tribunal, not the education authority. The same applies where the whole reference is one based on conditions similar to those in rule 37(2)(e) (see section 18(3)(c) of the 2004 Act).
57. I would add that given the breadth of the definition of 'additional support' (2004 Act, section 1(3)), additional support needs may include a need for an assessment required from another agency, where such an assessment may inform any specific support required for the child's education. Requirements for such assessments could, in a suitable case, be included in a CSP (subject to the expectation that such statements of support are 'clear and specific and, wherever possible, quantified': *Supporting Children's Learning: Statutory Guidance on the 2004 Act*, third edition, 2017, paragraph 60, pages 85-86). In addition, appropriate agencies do not decide what is to be included in a CSP, education authorities perform this task. It is then for the education authority to ensure that appropriate agencies comply with the required provision. The power in section 23 of the 2004 Act (and the relevant regulations made under that section) may be used by an education authority to request (and usually compel) appropriate agencies to comply with the support identified as required within a CSP.
58. The respondent addresses the distinction between sections 12(2)(a) and 23(1) of the 2004 Act. It argues that as the lack of a response to a section 23(1) request is one of the situations in which regulation 7 may be invoked (regulation 7(1)(e)), the fact that the respondent has not made any such requests is not relevant to the question of whether regulation 7(1) applies. I do not agree. While the failure by the respondent to make any such requests is not directly relevant, it could be indirectly relevant to the question of whether one of the other paragraphs of regulation 7(1) apply, given the overall 'impractical' test.
59. However, the lack of requests under section 23(1) are not relevant to my decision here since the respondent's failure is more basic than this: the respondent has failed to perform its duty under section 12(2) in good time. Section 23 is most appropriately used where an education authority has made a request under section 12(2) and it has not received a response within a reasonable time, or where an urgent request is necessary, such that the education authority goes straight to section 23. A section 23 request must

be complied with unless certain limited grounds of refusal apply (section 23(3)). Given that the respondent did not make any requests for advice or information to any appropriate agency until 8 April 2026, it could be said that the use of section 23 (a formal request) by 27 April 2026 would have been premature.

(c) Whether I should decide the reference without a hearing

60. Having concluded that rule 37(2)(e) of the Tribunal rules applies, I require to consider whether or not to decide this reference without a final evidential hearing. I 'may' do so, (rule 37(1)), so I have discretion on this question.
61. I have decided to do so, since all of the relevant evidence to enable me to conclude on the essential facts relevant to the applicable legal tests are available. Indeed, the relevant facts are not in dispute. Also, the reason for the inclusion of the specific situation set out in rule 37(2)(e) as one in which a hearing may be avoided is clear: a hearing should not be required where the two elements there come together. Where a CSP is needed and has not been produced in time, the question of whether one ought to be produced should not require a final evidential hearing. Fixing such a hearing would only delay matters (when the production of a CSP has already been delayed) and to delay further would be against the overriding objective (rule 2(2)(e)).

(d) Time limit for compliance with this decision

62. On the time limit for the production of the CSP, nine days from the issue of this decision is appropriate. By that time the respondent will have had 29 weeks since the date of the request for a CSP to produce one, 5 weeks later than the usual deadline. A later date would not be appropriate, especially as the respondent is largely responsible for the delay and the child is attending school on a significantly reduced timetable as a result of challenges he faces there; challenges that could be addressed within a CSP.

Paragraphs 23, 39, 48 and 53 in this decision have been edited by the Chamber President for privacy under rule 55(3)(b) of the First-Tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018.