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Decision

Date of Birth:	2002	
Appeal of:	The Parents	
Type of Appeal:	Contents of a Statement	
Against the Decision of:	Local Authority	
Date of Hearings:	May, June & July 2011	
Persons Present:	The Parents	<i>Parents</i>
	Parents Representative	<i>Solicitor</i>
	Parents Witness	<i>SALT</i>
	LA Representative	<i>Solicitor</i>
	LA Witness	<i>Educational Psychologist</i>
	LA Witness	<i>AENCO</i>

Appeal

The Parents appeal under s.326 of the Education Act 1996 against the contents of a Statement of Special Educational Needs issued by the Local Authority in respect of their Child. The Statement is dated January 2011. The appeal is against Parts 2 and 3 of the Statement.

Preliminary issues

The hearing follows on from an adjourned hearing that took place in May 2011. At that hearing the Tribunal made a number of orders and directions which were set out in a written decision.

The Local Authority applied to strike out the appeal under Regulation 44 paragraph 2 (b) of the Special Educational Needs Tribunal Regulations 2001. The Local Authority claimed that in light of the diary evidence submitted by the Parents in response to the directions given in May the appeal had become scandalous, frivolous and vexatious. The application was opposed by the Parents and their reasons for this are set out their written response dated June 2011.

Having considered the application and the written reasons for opposing the appeal and having heard oral evidence from both representatives the Tribunal decided to refuse the application. The Tribunal gave an oral explanation for the decision at the hearing. The Tribunal did not accept that the content of the diary entries was such as to render the appeal scandalous, frivolous or vexatious. In the view of the Tribunal the content of the diary entries did not alter the fact that there were relevant areas of dispute between the parties relating to the Child's special educational needs and the provision that is necessary to address these needs. The Tribunal was of the view that it was in the Child's interests to

resolve these issues. The Tribunal considered that the arguments made by the Local Authority were more relevant to the issue of the reliability of the diary entries and the weight that the Tribunal ought to attach to them. The Tribunal also noted that similar diary entries had been submitted as evidence in the bundle for the first hearing and these had not prompted the Local Authority to make an application to strike out.

The Local Authority applied to admit 2 documents as late evidence under Regulation 33 (3) of the Special Educational Needs Tribunal Regulations. The first was a document prepared by the Educational Psychologist relating to the percentage of time that the Child spends out of class. The second document was a file note of a conversation that was had with the NHS Consultant Child and Adolescent Psychiatrist, in June 2011 seeking clarification of the recommendations set out in their report of March 2011. The application was opposed by the Parents. The Tribunal decided to refuse the application on the basis that the Local Authority had not established that there were exceptional reasons to warrant the admission of either document and neither had it established that there would be a serious risk of prejudice to the interests of the Child unless either of the documents were admitted.

Both parties were in agreement that the Child's revised timetable should be considered by the Tribunal in place of the earlier documents that had been submitted by the Local Authority as a result of the directions given in May. The replacement document illustrated more clearly and accurately how the Child was being supported in school. The Tribunal agreed to consider this document in place of the earlier timetables that had been submitted.

At the hearing in May 2011, the parties had been able to agree a number of the outstanding issues in respect of Parts 2 and 3 of the Child's Statement. The Tribunal clarified and agreed with the parties the points that remained outstanding and therefore needed to be determined by the Tribunal.

Facts

1. The Child is now 8 years and 9 months old.
2. The parties agree that the Child has overall cognitive abilities within the broad average range. They also agree that the Child has specific learning difficulties, visual motor integration difficulties, some difficulties with some gross motor activities that require precision and control and hyper mobility affecting their joints, weak fine motor skills, and sensory processing difficulties. In the SALT report dated April 2010 they indicated that they believe that the Child has subtle but complex language difficulties linked to a diagnosis of Asperger's Syndrome and the SALT recommended further specialist assessment to confirm this diagnosis. In March 2011 it was reported that it fulfilled the criteria for a diagnosis of Asperger's Syndrome. The Local Authority has agreed to record this diagnosis in Part 2 of the Child's Statement.

3. The Child attends School A and is in Year 3. The Child will transfer to Year 4 in September 2011.
4. In the Year 3 class, the AENCO said there are presently 26 children. When the Child transfers into Year 4, it is anticipated that class numbers will be in the region of 26 -27. The AENCO is the Additional Needs Coordinator at School A and has over 20 years of teaching experience. The AENCO knows the Child well as they teach the Child on a regular basis.
5. The AENCO said that the School has a team of Teaching Assistants working across Key Stage 2. They are deployed to provide general support to all Key Stage 2 classes and to deliver specialist group and individual work based on the individual needs of pupils. This arrangement will continue next year. It was explained that because the School has had considerable experience in teaching children with special educational needs, a number of these TA's have become experienced in providing specialist group and individual support to children with specific special educational needs. The School therefore presently has TAs experienced in delivering specialist support in relation to specific learning difficulties, speech and language and communication difficulties and in relation to difficulties with gross and fine motor skills. The Child is familiar with all the TA's working in the team. In addition the School has a Pupil Support Worker who is responsible for providing welfare and counselling support to pupils and again the Child is familiar with this.
6. The AENCO explained that the Child is presently receiving 25 minutes of individual support from the TA each morning on the days when the TA is in school. This time is used to work on all aspects of the Child's literacy skills and allows time for the Child to be prepared for the day ahead. The Child also receives 20 minutes of individual support at the end of each school day so the Child can discuss any issues or concerns. The Child takes part in 2 x 30 minutes weekly group sessions that focus on fine motor skills, 30 minutes per week ball skills session and another 30 minutes per week group social skills session. The School also runs a lunch time coordination club for 30 minutes each week and the Child has been allocated a place in one of the 2 groups now being run, subject to the Parents giving their approval for the Child to participate. The Child also has access to support from the class TA who is available for approximately 3-4 hours each week and has access to support for the morning literacy sessions as part of the group.
7. In addition to the provision delivered in school the Child is withdrawn from school on Tuesday mornings by the Parents until 11.30 so the Child can attend a 1 hour session with Dyslexia Action. This provision is organised and paid for by the Parents. The Child also attends blocks of Vision Therapy, again organised and paid for by the Parents, which results in the Child sometimes missing Wednesday morning school sessions. The School has provided the Tribunal with a copy of the

Child's current timetable (3 weekly cycles) to illustrate how current support is delivered.

8. The AENCO explained to the Tribunal that the Child is not presently part of the school cohort that is referred for guidance and assistance from the Local Authority Support Services because their assessment scores have been at a level above those that would normally prompt the School to make such a referral, and because the Child is making age appropriate progress within National Curriculum Levels. The Local Authority Case Statement indicates however that because of the levels of concern expressed by the Parents about the Child, the Specific Learning Difficulties Team has offered advice to the School on strategies and programmes that could assist in supporting the Child. The AENCO said that the School has implemented many of the recommendations from the County Team along with many of the recommendations made by parentally instructed professionals. In addition, when the Parent has raised issues with the School, steps have been taken to try to address them.
9. The Child's views, as recorded by the Local Authority, are set out in Appendix 7 of the Local Authority Case Statement. In this account the Child is recorded as saying that the Child likes maths, reading and writing in school but does not like smelly smells or not finishing work. The Child's views are also set out in the 2 reports of the Educational Psychologist. In the report of March 2010 the Educational Psychologist said that the Child had told them that they like school, especially writing and maths. The Child said that the school office worries them but could not say why. At home the Child said they like to play football, jumping on the trampoline and playing with their brother and dog. In the second report of April 2011 the Child told the Educational Psychologist that they like to play football with their brother and also likes to play on the Xbox and the Wii with their brother.
10. The Parents have provided the Tribunal with a detailed account of how the Child presents when the Child is at home in their parental advice in support of the Statement dated April 2010. The Parents also provided two detailed diary accounts of school related events. In these documents the Child is described as being a generally well behaved child who is keen to do well. The Child is described as liking routine and is finding it difficult to cope with change. The Child is reported to bring anxieties about school home. At home, at times, the Child has had outbursts of distress, frustration, and anxiety, and is also reported to have vomited and to have demonstrated other psychosomatic symptoms. Historically, the Child has at times been reluctant to attend school, although this is not an issue at the present time. The Child has to date found it difficult to engage in activities outside school. The Parents report that the Child tends to see things in literal terms and can at times have an inflexible outlook regarding rules. The Child is described as being forgetful and at times appears to misunderstand or not follow what is said to them. The Child is reported to demonstrate

heightened sensory sensitivities in relation to foods, smells, noise and in relation to clothing. The Child is also reported to be prone to trips and falls.

11. The Local Authority has provided a witness statement from the Child's Class Teacher dated April 2011, undated observations of the Child from the School AENCO, an undated statement from the School Pupil Support Worker, and a statement from one of the Child's TAs, dated March 2011. These accounts present a very positive picture of the Child in school. Notwithstanding their difficulties and very much to the Child's credit, and to the credit of the parents and teachers. The Child is reported to be motivated to learn and to want to do their best. The Child is described as a polite and confident pupil and as being someone who is kind and thoughtful to their peers. The Child is reported to have friends in school and to engage positively in classroom activities, and also in play at break time and at lunch time. The Child is said to demonstrate the ability to ask for help in class. The Child is reported to have been anxious about certain specific situations, such as participation in the School Christmas concert, and the School put in place measures to address this.
12. It is accepted by both parties that although the Child has special educational needs the Child is making progress with their learning with the current levels of support being provided to them. School assessments of the Child's work show that the Child is currently performing at an age appropriate level in the context of National Curriculum Attainment Levels. A statement indicates that in English and Maths the Child's realistic attainment levels are 2b with aspects of 2a and in Science their realistic attainment level is 2a with aspects of 3c. Testing of the Child's literacy skills, by the School, the Educational Psychologist and by the Dyslexia Action Team, particularly relating to reading, have shown an inconsistent performance pattern and neither the Educational Psychologist nor the AENCO were able to fully explain this at the hearing. The AENCO reported that although the Child had been moved from reading books at a Level of 19 back to a Level 16 during the year, the Child is now reading texts at Level 16 and sometimes above with confidence and fluency and with understanding. The Child continues to have difficulties with writing. The samples of the Child's work provided by both parties show that the Child's written work can be difficult to read and that the Child continues to have difficulty with spelling. In Maths the Child has progressed from Group 3 to Group 2 in their class during the course of the year.
13. Although the Parents agree that the Child is now making progress and is more settled in school they argue that the Child's needs are such as to require higher levels of specialist input and higher levels of TA support. They remain concerned about the Child's literacy skills and motor skill and coordination difficulties and they continue to believe that as a result of having Asperger's Syndrome and sensory integration difficulties the Child has problems in coping with day to day life in and

out of school without clear routines and structure and help. They believe that the additional support they are seeking would enable the Child to spend less time and energy coping with the Child's environment and give the Child a greater capacity to focus on the Child's learning. The Parents are supported in this regard by the AENCO.

14. The Local Authority considers that the Child's special educational needs are being met with the current levels of support that the Child is receiving. It is concerned that the additional provision being requested by the Parents is over provision. The Local Authority is also concerned that the provision is likely to be detrimental to the Child's learning and to developing their levels of self confidence and independence. The Local Authority is supported in these concerns by the School and by the Educational Psychologist. It is argued that the Child is already missing considerable time from school to participate in the sessions at Dyslexia Action and in sessions of Vision Therapy. In addition, the Child misses a number of other curriculum related class activities to receive individual and group based support throughout the week as required by the Statement. In the view of the Local Authority and the School any further withdrawal from class based curriculum related work is likely to adversely impact on the Child's ability to participate fully in the broad and balanced curriculum on offer at the School and this is likely to adversely affect their learning. Further, it is believed that the proposal to increase TA support to cover all of the school teaching week could curtail the development of the Child's independent learning skills and is likely to mark them out as being different to peers, thereby impacting on their self esteem.
15. There remain only 3 issues between the parties in respect of Part 2 of the Child's Statement. The first relates to point (2) of the agreed working document. The Parents are asking that the wording, "The Child's severe sensory processing difficulties interfere with the Child's ability to engage in school activities," be included in Part 2 of the Statement. The Parents point to their own experiences of how the Child functions at home and to the anxieties that the Child has shown in relation to certain things, such as anxiety over taking part in the school Christmas production, as evidence to support the inclusion of the statement. In addition, they also point to the evidence from the Occupational Therapist instructed by them. The AENCO gave evidence to support this contention. The AENCO pointed to the effort that the Child needs to put into blocking out external sensory input in class and to the difficulties that the Child has using the toilets at school because the Child thinks that they smell. The AENCO also referred to the problems that the Child had historically in eating packed lunch in the dining room.
16. The Local Authority oppose the amendment on the basis that whilst it accepts that the Child has sensory difficulties the evidence from School suggests that the Child engages well with school activities and is

making progress with their learning. The Educational Psychologist supported the Local Authority position, making reference to the results of the school-related questionnaire that the Child completed in April 2011 during the assessment of the Child and to own observations of the Child in school. The Local Authority therefore considers that the inclusion of this statement would create an inaccurate picture of how the Child presents in school overall.

17. At point (8) of the working document, the Parents are seeking the inclusion of the sentence, "The Child finds it difficult to complete the amount of homework which they receive." In support of this the Parents gave evidence to the Tribunal of the difficulties that they experience with the Child in doing homework. This is opposed by the Local Authority. It is the contention of the Authority that this is a school issue and not a matter for the Tribunal. The AENCO explained that the School set spellings and timetables but the majority of homework set is not compulsory and children are not disciplined if they do not complete the work. In response to further discussion with the Tribunal during the hearing both parties agreed that the phrase, "homework is a significant source of stress for the Child and their family," was an accurate reflection of the current situation.
18. The final outstanding issue in respect of Part 2 of the Statement relates to point (12) of the agreed working document which states, "The Child also does not have the social language skills to read people's faces or understand jokey language." The Parents point to their own experience of the Child to support the inclusion of this phrase. They are supported in their view by the SENCo who said that this is quite a common feature in children with Asperger's Syndrome. The Local Authority oppose the inclusion of the phrase because they argue it is not supported by the School's experiences of how the Child presents in school and neither is it supported by the Educational Psychologists assessments of the Child or the assessment undertaken by the local NHS Speech and Language Service in May 2010.
19. In respect of Part 3 and the provision needed to address the Child's specific learning difficulties the parties were in disagreement as to the level of specialist input and in class support that the Child requires. The specific points at issue are set out at points (20), and (23) – (26) of the working document. The Parents Representative argued that the provision outlined at point (20) needs to be more specific. The additional provision being requested by the Parents at points (23) – (26) is based on advice from an Educational Psychologist from Dyslexia Action. The recommendations are set out in the reports dated November 2009, February 2010 and September 2010. The Parents are asking for the current provision being provided by Dyslexia Action to be supplemented by an additional weekly session of specialist dyslexia teaching from the Local Authority specialist teacher. When asked they said they would be reluctant to replace the Dyslexia Action provision with Local Authority specialist provision because they had

confidence in the provision being made by Dyslexia Action. On their behalf neither the Educational Psychologist nor the AENCO were able to fully address how this additional provision might fit into the Child's current timetable. The Parent Representative suggested that there might be an opportunity for a specialist teacher to work with the Child during class IPC (Topic) sessions. In any event it was argued that the prime consideration should be whether the provision was necessary. In regard to additional TA support for all literacy tasks the Parents argued that this was required to ensure that the Child fully understood the tasks being set.

20. The position of the Local Authority is that the Child does not require any additional support over and above what is now being provided. The AENCO told the Tribunal that they agreed with the Local Authority. They were of the view that the Child's needs are being met. The AENCO said that the Child is undertaking phonics work and focusing on strategies to improve all literacy skills in the morning sessions the Child has. The AENCO also said that the Child has access to in-class TA support during morning literacy sessions and at other times during the school week. The AENCO said that additional specialist provision would adversely impact on the Child's access to the school curriculum and was likely to have an adverse impact on the Child's learning. The AENCO said additional TA support was likely to mark the Child out as different and thereby risk increasing anxiety levels, and impact on the Child's self confidence and the development of independent learning skills.
21. In respect of point (21) of the working document, target setting, the Parents contend that it is not appropriate to include the Child in the setting of their targets as they are not able to make fully informed decisions and the Child is likely to become anxious. They believe that the Child's Statement should reflect this. The Local Authority contends that point (21) should be retained and that the Child should be included in target setting in line with good working practice. It argues that Educational Psychologists and schools are able to seek the views of children without causing them to become anxious.
22. In respect of point (31) and the issue of whether the Child should have daily access to a computer and software appropriate to their special educational needs, the Parents refer to advice received to this effect in their report dated March 2010. The SALT told the Tribunal that she supported this recommendation. The Local Authority opposes the inclusion of the provision on the basis that it believes the Child should, at this time, continue to focus on improving handwriting. The Educational Psychologist said that the Child does not need an alternative means of recording work as they can generally produce a good amount of written work within the time allotted to a task. The Child needs to focus on handwriting to improve spacing and spelling and overall legibility. The Educational Psychologist also said that to introduce use of a computer at this point may cause confusion or be

distracting for the Child. The AENCO told the Tribunal that the Child already has access to computers on a daily basis via the Nessy programme and is being taught key board skills.

23. In respect of occupational therapy provision, the additional support being requested is set out at points (33) – (35) and point (44) of the working document. This is based on advice from 2 reports, dated March 2010 and April 2011. Both reports indicate that the Child has sensory processing difficulties and a severe impairment in manual dexterity, although the second report reflects that there has been some improvement in relation to certain aspects of the Child's overall manual dexterity.
24. The Local Authority argues that the level of intervention being sought is not necessary. They rely on the assessment and advice of the NHS Occupational Therapist, dated September 2010. The NHS Occupational Therapist appears to broadly agree with the view that the Child has sensory processing difficulties and difficulties relating to manual dexterity and coordination. However, based on school accounts of how the Child functions in class and based on their own work with the Child carried out via assessment and through working with the Child in school, the Occupational Therapist does not agree with the recommendations regarding support.
25. The AENCO told the Tribunal that at present the Child is taking part in a fine motor skills group twice each week, in a ball skills group once per week and has been allocated a place in the lunchtime coordination group. These sessions are conducted by a TA who specialises in gross and fine motor skill difficulties. They said that the Child is also working on handwriting skills as part of their sessions. The AENCO believes that this provision is meeting the Child's needs.
26. In respect of point (36) relating to the inclusion of provision for exam concessions, the Parents argue that this is one of the recommendations in the advice provided. The Local Authority take issue with the inclusion of this recommendation arguing that it is not necessary or relevant at this time in view of the fact that the Child is in only in Year 3 and will be moving into Year 4 in September. In any event in due course it is the relevant examination board that determines what if any concessions are required.
27. In respect of point (37) and support relating to general announcements, the Parent explained that this was needed because of problems that had been encountered when the Child became confused and upset in response to 2 recent announcements. The AENCO told the Tribunal that provision had been put in place to address this concern. It was also accepted that this difficulty had been identified as an agreed issue in Part 2 of the Child's Statement. In light of this the Local Authority agreed to include this provision in Part 3.

28. In respect of points (38) – (39) in the working document, the Parents are requesting that the Child's language programme should be prepared jointly in consultation with the Class Teacher and a Specialist Speech and Language Therapist and they also want the Child to take part in a social use of language programme delivered in a small group by a trained TA in consultation with a Speech and Language Therapist and the Local Authority Autism Service. These requests are based on advice from the SALT. The involvement of the Speech and Language Therapy Service and the Autism service is opposed by the Local Authority. The AENCO explained that the Child is being provided with support via a language programme and is taking part in a social use of language group. The AENCO and Educational Psychologist dispute the need to involve the Speech and Language Therapy Service or the Autism Service as they both consider that the Child's overall language skills and social skills are at a level where this input is not needed. The Local Authority refers to the advice received from the NHS Speech and Language Therapist, dated May 2010 in which the Child's language skills and social communication skills are noted as being age appropriate and in which they recommend that the Child be discharged from the Service.
29. In respect of point (40) and the use of the scaled approach in regard to the Child's mentoring sessions, the Parents point to this as being based on a recommendation made in a report dated April 2010. The Local Authority does not take issue with the need for mentoring. The AENCO explained that this is taking place in the 20 minutes daily sessions the Child has. The issue for the Local Authority is the specific reference to the use of the scale, when this is only one of the methods that would be used in the sessions to support the Child.
30. At point (42) of the working document the Parents request that targets are shared with them on a weekly basis. This request is based on a recommendation made of the SALT. The SALT said that they felt that this would be helpful in developing a more effective partnership between the Parents and the School for the benefit of the Child. The Local Authority said that the proposal was not necessary and set an unrealistically short time frame. It argued that targets would be better shared in the context of IEP reviews that take place on an at least 6 monthly basis. The AENCO supported the Local Authority in this view.

Tribunal's conclusions with reasons

In reaching the decision the Tribunal carefully considered the written evidence submitted by the parties and the evidence given at the hearing. The Tribunal also considered relevant sections of the Education Act 1996 and supporting Regulations and relevant provisions of the Special Educational Needs Code of Practice for Wales.

- A. As indicated above the parties were able to reach agreement over many of the outstanding issues in relation to Part 2 of the Child's Statement.

The terms of the agreement are recorded in an amended Statement which is attached to this decision and is marked Appendix A.

- B. In respect of the issue of whether the phrase, “The Child’s sensory difficulties interfere with their ability to engage in school activities,” should be included in Part 2 of the Child’s statement and the Tribunal decided not to order the inclusion of the phrase.
- C. It is agreed by both sides that the Child has difficulties with sensory processing and that at times these difficulties create high levels of distress for them, which the Child currently struggles to manage. This is recorded in the Statement. The issue between the parties is whether or not these difficulties impact on the Child’s ability to engage in school activities.
- D. In the explanation of the working document prepared on behalf of the Parents the Tribunal is referred to a particular section of the report dated April 2010, in support of the inclusion of the phrase. It is noted however that the section referred to makes reference to interference with the Child’s “ability to engage in social activity” rather than “school activities.” Be that as it may, and in any event, the Tribunal was of the view that the School is best placed to make the most informed judgment on this issue given that staff are aware of the Child’s difficulties and are able to witness and monitor engagement with school and the curriculum on a daily basis. Moreover, the evidence of the School is supported by the assessments of the Educational Psychologist and by the fact that the Child is making progress with their learning, as evidenced by their current National Curriculum Attainment Levels. The Tribunal was mindful of the examples presented by the SALT and the Parent in support of the inclusion of the phrase, but it felt that these examples were adequately addressed by the agreed description of the Child’s sensory difficulties as set out in the second paragraph of Part 2 of the Child’s Statement.
- E. On the issue of homework difficulties the Tribunal decided that it was appropriate to include a reference to this matter in Part 2 of the Child’s Statement. The Tribunal took into account the evidence that the Parents gave on this point and also took into account the fact that in Part 3 of the Statement at point (19) it has been agreed that homework tasks will need to be differentiated for the Child. On this basis the Tribunal decided that the wording that was agreed by the parties at the hearing, namely that “homework is a significant source of stress for the Child and their family” should be included in Part 2 of the Child’s Statement at point (8) of the working document instead of the original wording sought by the Parents.
- F. On the issue of whether or not the Child has the social language skills to read people’s faces or understand jokey language there is a divergence in opinion between the evidence of the Parents and SALT on the one hand and the School and Educational Psychologist on the other. Having considered all of the evidence presented to it the Tribunal decided that as the School has direct, regular first hand experience of how the Child

functions in school it preferred the evidence from the School on this issue, supported as it was by assessments from the Educational Psychologist. The Tribunal therefore decided that it was not necessary to order the inclusion of this difficulty in Part 2 of the Child's Statement.

- G. In respect of the additional provision requested to support the Child's specific learning difficulties, as discussed at the hearing the Tribunal had concerns that the Parents are seeking an increase in provision in a way that would result in a further reduction in the Child's participation in the school curriculum. The Tribunal shared the concerns of the Local Authority and the School, outlined in the Facts above, regarding the possible adverse impact of increasing specialist input in this way. The Tribunal did not accept the Parents Representative's contention that if provision is required it is not necessary to consider how that provision might impact on curriculum delivery and upon the learning of the child concerned or to consider how that provision might be delivered in practical terms. The Tribunal felt that it was telling that neither the Parents Representative nor SALT could effectively address the issue of how increased specialist input could be scheduled into the Child's school week if the Child is to continue to be withdrawn from school as at the present time.
- H. The Tribunal was concerned that the current provision made via Dyslexia Action is quite an inefficient use of the Child's time in that it necessitates them being away from school for the majority of a school session each week in order to receive only 1 session of individual specialist tuition. Further, it appeared to the Tribunal that the provision is not coordinated with school provision so as to maximise the potential benefit of the specialist input.
- I. Whilst it understood the reasons why the Parents had introduced support from Dyslexia Action and why they were keen to continue this input and it took this into account in reaching a decision, the Tribunal was of the view that the concerns of the Local Authority and the School relating to the proposal were legitimate. The Tribunal decided that these concerns outweighed the likely benefits to be gained in increasing provision whilst continuing with the present arrangements in respect of Dyslexia Action.
- J. Taking all of the above into account, and bearing in mind that the Local Authority agrees that the Child has specific learning difficulties which are being effectively addressed through provision that includes direct specialist teaching, and that the School appears to have authorised the Child's absence for the majority of a school session each week, the Tribunal took the view that it would be of greater benefit to the Child if the current provision being delivered through Dyslexia Action were replaced by 2 sessions each week of individual specialist tuition delivered by the Local Authority's specialist teacher in respect of specific learning difficulties. In the view of the Tribunal this means of securing specialist input would be preferable since it would maximise specialist input as recommended without increasing the amount of time that the Child

spends each week out of class. Also as this support would take place in school through Local Authority Support Services the provision could be more easily coordinated with the support the Child is receiving in school, thereby maximising the effectiveness of both sets of support.

- K. Based on the reasoning set out above, the Tribunal decided not to make the amendments being sought at points (23) and (26) of the working document. The Tribunal was of the view that point (23) was not necessary as it served to repeat what was said in point (26). Instead the Tribunal decided that it should order the inclusion of wording which reflected the current arrangement being made by the Parents and set out the provision, outlined above, to be made by the Local Authority as an alternative, in the event that the Parents agree to discontinue the provision delivered by Dyslexia Action in school time. The wording to be included in the Statement at point (23) of the working document is set out in the order below.
- L. In respect of points (20) and (25) the Tribunal was of the view that the these points seemed to be alternative ways of describing similar provision and based on the evidence given by the AENCO it appeared that this is provision which is presently being delivered to the Child as part of their morning sessions. The Tribunal agreed with the representations made by the Parent Representative that in line with current case law this provision should be quantified more clearly and it also took the view that this applied equally to the amendment sought at point (25). As a result the Tribunal decided to amalgamate the 2 points and further specify the provision to be made, taking account of the evidence given by the AENCO relating to the morning sessions. The wording to be included in the Statement at point (25) is set out in the order below.
- M. Bearing in mind that the Child is currently performing at age appropriate National Curriculum Attainment Levels, and taking into account the evidence of the School concerning this matter, the Tribunal considered that it was not necessary for the Child to be provided with individual TA support in all lessons. The Tribunal agreed with the Local Authority that such provision is likely to mark the Child out as different to peers and may create over reliance on help, thereby impacting negatively on self esteem and the development of independent learning skills. In reaching this decision the Tribunal took into account the evidence given by the Parents and by the SALT on this matter and had regard to the advice of the Occupational Therapists also. However, the Tribunal considered that the evidence given by the School, based as it was on regular day to day experience of how the Child performs in school was compelling, supported as it is by evidence from the Child's National Curriculum Attainment Levels, and advice from the Educational Psychologist.
- N. The evidence from the AENCO shows that the Child is presently receiving additional TA support in morning literacy sessions and at other times during the school week. The precise rationale for the allocation of

TA support at these other times is not clear from the evidence given by the AENCO. It is clear nonetheless that the Child does require some TA support in class. The Tribunal was of the view that in line with case law in class TA provision should be reflected in the Child's Statement.

- O. Based on a recommendation, the Parents are asking the Tribunal to record that the Child requires support in literacy based tasks. The Tribunal considered this recommendation as it stands to be too vague. It is open to a number of interpretations and it is a recommendation that appears to have been made without consideration of the School context.
- P. The Tribunal concluded that a preferable form of wording would be as follows, "In addition to sharing access to any general TA support allocated to the Child's class, the Child will have individual or shared in class TA support for at least 1 period per week in all of the major literacy based subjects to help consolidate and reinforce understanding and to prepare the Child for new areas of work."
- Q. In respect of the issue of target setting the Tribunal was firmly of the view that the Child should be included in this process. The Tribunal accepted that the involvement of children in these matters is good practice and it accepted the evidence of the Local Authority and the School that they are able to include the Child in a way that takes account of their special educational needs and manages any anxiety. The Tribunal was mindful of and understood the Parents concerns about involving the Child in these matters but it felt that these concerns could be effectively taken into account in the way in which the Child's views are sought and should not prevent these views being ascertained entirely. As a result the Tribunal decided that Point (21) of the working document should be retained and the alternative wording sought by the Parents should be deleted.
- R. The Tribunal also felt that this point would be better placed in the Monitoring Section of Part 3 of the Child's Statement rather than in the provision section and it therefore ordered that point (21) should be moved into the Monitoring Section of the Statement.
- S. In respect of point (31) and making provision for the Child to use computers as well as continuing to work on addressing handwriting skills, the Tribunal considered that this should be included in the Child's Statement. In reaching this decision the Tribunal bore in mind the fact that the Local Authority has agreed to include a very similar provision at point (27) of the Statement. The Tribunal also bore in mind the evidence of the AENCO to the effect that the Child is making use of computers in school on a daily basis. It is agreed that the Child has specific learning difficulties and that handwriting is something that the Child finds difficult. The evidence from the samples of work provided by both parties shows that at the present time the Child's handwriting can be difficult to read. Contrary to the view of the Educational Psychologist therefore the Tribunal felt that the Child is likely to benefit from learning to use

computers so as to be able to record some of their work, provided, as is reflected in the amendment sought, the Child continues to work on and use handwriting also. The Tribunal did not accept the Educational Psychologist contention that this may be a source of confusion or distraction for the Child.

- T. In view of the fact that the Tribunal agreed to include point (31) in the Child's Statement the Tribunal considered that it would be sensible to remove point (27) from the Statement as this serves to repeat what is said in point (31). The reference to additional time within examinations in Point (27) should also be deleted for the reasons set out below in respect of point (36).
- a. After careful consideration of the advice provided the Tribunal decided that the Child's difficulties in sensory processing and in motor skills are not such as to require direct intervention from an Occupational Therapist as requested at point (33) of the working document. Neither are they such as to require a therapist to provide a specialised programme for delivery by the School. In reaching this decision the Tribunal took into account the qualifications and experience of the Teacher, however, it preferred the evidence of the SALT because of its greater contextual content and because it is supported by the evidence from the AENCO and other staff at school concerning the Child's functioning and the evidence from the Child's current National Curriculum Attainment Levels which demonstrate the Child is making age appropriate progress in key areas of the curriculum. The Tribunal considered that the Child's needs in these areas are being adequately addressed at the present time through the current provision being delivered by the School.
- U. The Tribunal did however consider that ongoing oversight and monitoring from an Occupational Therapist of the current support was necessary. The Tribunal considered that the request at point (44) of the working document that the monitoring should take place on a half termly basis was too short a time period to allow sufficient time for the work being carried out by the School to translate into an improvement in the Child's skills. The Tribunal was of the view that a more realistic and sensible time frame would be to make provision for termly monitoring.
- V. For the reasons outlined in paragraph U and in paragraph M above, the Tribunal decided that it was not necessary for the Child to have high levels of 1:1 support in all curriculum areas as requested at point (35) of the working document. In respect of support during PE, the Tribunal took the view that the advice offered, which is recorded in the Statement, would be sufficient to meet the Child's needs.
- W. The Tribunal also decided that it was not necessary for an Occupational Therapist to provide advice to the School on the Child's social activities as requested at point (34) of the working document. The AENCO

reported that the Child has been able to develop friendships successfully and is able to engage in play during play times and at lunch time. The Tribunal took the view that the Child's confidence in this area could be bolstered appropriately through use of social stories and organised games as recommended. The Tribunal noted that the Child's Statement already contains this provision and it felt that this was an area that the School would be able to address during the weekly social skills group in which the Child takes part.

- X. In relation to exam concessions at point (36) of the working document the Tribunal agreed with the Local Authority that this provision was not needed at this point in the Child's education. The Tribunal also took the view that this recommendation was premature and could potentially be out of date by the time it became relevant. The Tribunal acknowledged that it was a matter that would need consideration in due course when the Child is scheduled to take part in examinations and at that point in time informed decisions could then be taken based on the Child needs at the relevant time. The Tribunal therefore decided not to include this provision in the Statement.
- Y. In relation to support for announcements at point (37) of the working document the Tribunal noted the agreement that was reached by the parties during the hearing. In the event that the parties had not agreed to include this provision the Tribunal would have ordered that it should be included in view of the fact that Part 2 of the Statement identifies this issue as being one of the Child's needs.
- Z. In relation to points (38) – (39) of the working document after careful consideration, the Tribunal decided that the Child's needs were not such as to require oversight and input from either the Speech and Language Therapy Service or the Autism Service. The Tribunal preferred the context based evidence of the School concerning this matter.
- AA. In relation to the issue of the provision of mentoring at point (40) of the working document, the Tribunal agreed with the Local Authority that the reference to use of the scaled approach should not be included in the provision. The Tribunal accepted that it was appropriate for a variety of strategies to be used in the mentoring process and that the reference to one single approach was unhelpful therefore. The Tribunal therefore decided that the provision referring to mentoring should be included in the Statement but that the reference to the scaled approach should be removed from this provision. The Tribunal noted that the paragraph is repeated in the next paragraph of the working document and it decided that this should be deleted.
- BB. In relation to the request at point (42) that targets should be shared weekly with the Parents the Tribunal agreed with the Local Authority that it was not necessary for targets to be shared with the Parents in this way. The Tribunal felt that this suggestion may be unhelpful because it did not allow sufficient time for the work being

carried out with the Child to be translated into any form of progress, which in itself could cause the Parents undue worry and concern. The Tribunal preferred the proposal that targets be shared with the Parents in the context of the IEP review process. The Tribunal noted that this was provided for in the paragraph following on from point (42) and felt therefore that it was not necessary to include point (42) in the Statement.

CC. The Tribunal decided that it was not necessary to include point (44) of the working document in the Child's Statement. The issue of the ongoing involvement of an Occupational Therapist has been dealt with in the Tribunal's consideration of the requests made at points (33) – (35) of the working document. In addition, the Tribunal was of the view that it was not necessary to stipulate that a Therapist should advise and input into the IEP as this is implicit in the earlier paragraph in the Statement that deals with the matter of IEP review.

Order

- I. By agreement of the parties the Local Authority is to amend Part 2 of the Child's Statement in accordance with the agreements reached by the parties as set out in the working document Appendix A.
- II. In respect of points (2) and (12) of Part 2 of the working document Appendix A the appeal is dismissed.
- III. In respect of point (8) of Part 2 of the working document Appendix A the wording is to be amended to include the following:

“Homework is a significant source of stress for the Child and the Child's family.”

- IV. By agreement of the parties the Local Authority is to amend Part 3 of the Child's Statement in accordance with the agreements of the parties as set out in the working document Appendix A.
- V. In respect of Point (20) and Points (23) – (26) of the working document Appendix A the Tribunal decided not to include these points in Part 3 of the Statement and in the alternative ordered that the following amendments be made:

“The Child is presently receiving 1 hourly session per week of specialist tuition relating to their specific learning difficulties provided by Dyslexia Action and paid for by their parents. In the event that this provision is discontinued the Child will be provided with 2 hourly sessions per week of specialist tuition relating to their specific learning difficulties provided by a specialist teacher for specific learning difficulties from the Local Authority's Specific Learning Difficulties Advisory Service.”

“The Child will participate in daily individual or small group sessions to consolidate and reinforce literacy skills delivered by a TA in liaison with

the Specialist Teacher for Specific Learning Difficulties from the Local Authority's Specific Learning Difficulties Advisory Service."

"In addition to sharing access to any general TA support allocated to the Child's class, they will have individual or shared in class TA support for at least 1 period per week in all of the major literacy based subjects to help consolidate and reinforce understanding and to prepare the Child for new areas of work."

- VI. In respect of point (21) of the working document Appendix A the Tribunal decided not to include the wording sought by the Parents and ordered the following wording to be included in the Monitoring Section of Part 3 of the Statement:

"The Child should be involved in setting targets and in reviews so that they can see progress made".

- VII. In respect of point (27) and point (31) of the working document Appendix A the Tribunal ordered that point (27) should be deleted from the Child's Statement in its entirety and that point (31) should be added to the Statement.

- VIII. In respect of points (33) – (35) and point (44) of the working document Appendix A the Tribunal decided not to include these points in the Statement and in the alternative ordered that the following amendment be made:

"An Occupational Therapist should be involved in monitoring the provision being made by the School on a termly basis."

- IX. In respect of point (36) of the working document Appendix A the Tribunal decided not to include this provision and ordered that the appeal be dismissed on this point.

- X. In respect of point (37) of the working document Appendix A the Tribunal ordered that this provision should be added to the Statement.

- XI. In respect of points (38) and (39) of the working document Appendix A the Tribunal ordered that point (38) should not be included in the Child's Statement and dismissed this aspect of the appeal. The Tribunal ordered that point (39) should be included in the Statement save that the requirement that there should be consultation with a Speech and language therapist and the Autism service should be removed.

- XII. In respect of point (40) of the working document Appendix A the Tribunal ordered that the amended wording should be included in the Child's Statement without the reference to the scaled approach.

XIII. In respect of point (42) of the working document Appendix A the Tribunal decided not to include the provision and ordered that the appeal be dismissed on this point.

Dated July 2011