

Summary of decisions issued by the First-  
tier Tribunal in National Trial cases:  
anonymised summary of decisions issued  
not subject to onward appeals  
Jan 2019 - March 2019

Quarter 2	Jan – Mar 2019			
Appeal no	YP	Grounds of appeal	Case summary	Outcome
1.	No	Sections B and F; Sections C, G D H1 and H2	15 years old with diagnosis of ASD in year 10 at a mainstream secondary Academy. Parents appealed to the tribunal on 21 May 2018 following the transfer of the statement of special educational needs into an EHC Plan on 26 April 2018. The issues had narrowed since the appeal was first registered and, by the time of the hearing, the only outstanding issues were whether physiotherapy provision should be included in Section F or in Section G and the description of physiotherapy provision.	<p>The tribunal do not accept the argument that the provision of physiotherapy in general is educational. There was nothing to suggest that the physiotherapy is educating or training the child to act in a particular way or that it is helping him to access education. The assessment of physiotherapy needs in the September 2018 report is the most comprehensive and up to date assessment available and although the physiotherapist recommended regular reviews, his letters are short and he did not give any reasoning for this recommendation. The September 2018 report is more recent and follows a review of the child's physiotherapy history and an observation of him during a PE lesson. Therefore, we consider it appropriate to adopt recommendations from the September 2018 report, rather than the parents' proposed wording. However, we have moved the provision about advice to the child's PE teacher from Section G to Section F. We consider that this is educational because it concerns the child's ability to access PE lessons, which are part of his education.</p> <p><b>Order</b></p> <p>It is ordered that the LA amend the Education, Health and Care Plan in Sections B and F by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</p> <p>It is recommended that the LA amend the Education, Health and Care Plan as follows;</p> <ol style="list-style-type: none"> <li>1) In Section C, by replacing the existing wording in the EHC Plan with the [agreed]amendments set out in the final working document</li> <li>2) In Section G, by replacing the existing wording in the EHC Plan with the amendments set out in the final working document</li> <li>3) In Section D, by replacing the existing wording in the EHC Plan with the amendments set out in the final working document</li> <li>4) In Section H1, by replacing the existing wording in the EHC Plan with the amendments set out in the final working document.</li> </ol>
2.	No	Sections B, F and I ~Sections C, G H1 and H2	Four years old with a diagnosis of FOXP1, a genetic condition leading to neurodevelopmental disorder. A range of special educational needs, including global developmental delay, social communication difficulties, delayed gross and fine motor skills due to bilateral Cerebral Palsy, severely delayed expressive and receptive speech and language, delayed independence and self-care, oro-motor difficulties	Placement was agreed by date of hearing at a maintained mainstream school. The quantity of therapy provision was agreed but the LA submitted that it should only be specified in the Plan from September 2019 when the child started in Reception class. Tribunal concluded that provision of an ABA programme should be included in Section F because she requires intervention to address her head banging which is causing her physical harm and puts her at risk. We consider that the

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Appeal number	YP	Grounds of appeal	Case summary	Outcome
1.	No	Section B, Section F, Section I Section G, Section H	<p><b>Background</b> 11 years old and is currently in year 7 with diagnosis of quadriplegic Dyskinetic Cerebral Palsy, Gross Motor Function Classification System Level 4. Experiences epileptic seizures and has alternating esotropia, meaning that his left and right eye turn inward alternately. Difficulties with gross and fine motor skills, balance and co-ordination, functional vision, proprioception, sensory sensitivity, learning and communication.</p> <p>Sections B and F: issues</p> <ul style="list-style-type: none"> <li>a. cognitive ability;</li> <li>b. the level of direct therapy to be provided;</li> <li>c. access to eye gaze technology and other high tech AAC devices;</li> <li>d. peer group;</li> <li>e. provision of 2:1 support;</li> <li>f. use of a powered wheelchair.</li> </ul> <p>Section I: Whether the maintained special school was an appropriate educational placement. The suitability of non-maintained special was not in dispute and the key issue was whether naming would be an efficient use of the LA's resources.</p> <p>Health and Social Care: Sought changes to the description of his health and social care needs but did not seek substantive changes to the provision specified in Sections G and H.</p>	<p><b>Sections C, D, G and H</b> The parties agreed changes to Section C and we moved material about visual impairment from Section C to Section B as we considered it an educational need, in this context. The parties agreed changes to Section D and we made some minor changes, which we felt reflected the evidence in the bundle as to social care needs.</p> <p>Parent's only issue with health and social care provision had been whether some of it should be categorised as educational provision. We did not have clear evidence about the minor additions she proposed. Therefore, we made no amendments to Sections G and H.</p> <p><b>Order.</b> Appeal allowed. It is ordered that LA amend the Education Health and Care Plan</p> <ul style="list-style-type: none"> <li>1) In Sections B and F, by replacing the existing with the amendments set out in the appended working document</li> <li>2) In Section I, by replacing the existing with the following: "A non-maintained special school (named)"</li> </ul> <p>It is recommended that LA amend the Education Health and Care Plan in Section D, by replacing the existing with the amendments set out in the appended working document.</p>
2.	YP	Section B, Section F, Section I and Section H1 and H2	<p>19 year old with diagnosis of ASD and associated communication difficulties. Overall level of functioning is most likely to be less than or equal to a typical child who is not yet of school age. Appeal brought by YP supported by his mother and not represented at the hearing.</p> <p>Issues at date of hearing: the parties had resolved most of the outstanding issues in sections B and F. The remaining issues related to speech</p>	<p><b>Order</b> <i>Appeal allowed in part.</i></p> <ul style="list-style-type: none"> <li>1) <i>In sections B and F by adding the amendments ordered by the Tribunal and set out by hand on the Working Document attached to this Order</i></li> <li>2) <i>Delete all references to waking day or extended day curriculum</i></li> <li>3) <i>In Section I setting: From September 2018: An independent specialist college for further education for young adults aged 19 to 25.</i></li> </ul>

			and language therapy provision; occupational therapy provision, the need for a waking day curriculum, length of the educational provision, together with recommendations in H1 and H2.	<p>4) <i>In section I School: From September 2018 College for 38 weeks a year as a weekly boarder.</i></p> <p><b>Recommendation in Sections H1 and H2</b></p> <p>43. <i>Direct payments to provide social care support for 25 hours per week outside term time” and “direct payments to provide social care support for 6 hours per week during term times”</i></p>
3.	YP	Section B, Section F Section I  Health and social care	<p>19 years old. Just finished school and wanted to start college in September 2018. Global developmental delay. Some basic maths skills and is able to read and understand texts. Needs a lot of encouragement to complete tasks correctly. Struggles to listen in a group. Social interaction is not always appropriate and still needs support to take turns in conversation. Struggles to process verbal information and is prone to impulsive shouting out, which can be disruptive. Does not like noisy or busy environments. Often requires prompts for self-help tasks.</p> <p>Issues for determination:  <i>A number of issues in relation to the content of Parts B and F but compromise was reached in relation to most, leaving some wording issues in relation to Part B and some significant issues for the panel to determine in relation to part F, including:</i></p> <p><i>a. whether YP requires a waking day curriculum,</i>  <i>b. what support YP requires with activities of daily living,</i>  <i>c. whether YP requires a behaviour programme.</i></p> <p><i>The Tribunal must also determine which educational establishment is to be named at Part I. Parental preference:</i> an independent specialist college for learners up to 25 years of age. The LA has declined to name independent college as it contends that to do so would be incompatible with its duty in relation to the efficient use of public funds. It accepts that independent can make appropriate provision and following assessed at independent college including an overnight stay, which was said to go well. He has been offered a place at independent college and the College feels that his needs could be met within its lowest tariff.</p>	<p>No finding as the suitability of the LA's proposals to meet special educational needs, but we conclude that even if both settings were found to be suitable, to name Independent specialist College at Part I of the EHC Plan would not represent an inefficient use of resources. This is the case whether or not the parents continue to transport him because the required 4 reasonably local journeys per term are not reasonably likely to make any significant difference to the cost of the provision over all.</p> <p>It is recommended that LA amend the EHC Plan to include at Section C a need during holidays from college for social inclusion in community activities and promotion of YP's interests and independence in pursuing them.</p> <p>As to Part H2, 12 hours has been proposed. This is not contested. Parents and Grandparents will also want to spend time with YP during holidays and so this is likely to be sufficient. We therefore recommend the inclusion of 12 hours social care support.</p> <p><b>Order</b></p> <p>Appeal is allowed in part.</p> <p>LA shall amend Parts B and F of YP's EHC Plan in accordance with the terms of the attached working document, and in accordance with the terms of the conclusions reached above.</p> <p>LA shall amend YP's EHC Plan at Part I to name a specialist independent college able to meet the needs of young people up to the age of 25.</p> <p>It is recommended that LA amend Part C of YP's EHC Plan with the inclusion of the following:</p> <p>“During holidays from college YP will require social care support for social inclusion in community activities and promotion of YP's interests and independence in pursuing them.”</p>

			<p>The LA also accepts that residential accommodation is required and it intends to provide this through shared social care accommodation with 3 or 4 peers with similar difficulties. Special educational provision would be delivered through attendance at local FE College. The LA contends that a waking day curriculum is not required. Parents feel that he does, because he has failed through a day placement at a special school to acquire vital independence skills, which will be key to his development into adulthood. If YP were to go to independent college during term times they would like YP to live at home during holidays. YP would need social care provision during these times in order to access the community and pursue YP's interests.</p> <p><i>Health and social care</i></p> <p>The Tribunal is asked to make non-binding recommendations in relation to the social care provision YP will need whichever educational setting is named. If he were to go to independent college this would mean only holiday provision for 14 weeks per annum. The LA suggests that 12 hours social care provision per week will meet YP's needs during holidays and this is not contested.</p>	<p>It is recommended that LA amend Part H2 of YP's EHC Plan with the inclusion of the following:</p> <p>"YP will receive 12 hours social care support per week during holidays from college."</p>
4.	YP	Section B, Section F Section I Section D, Section H1 and H2	<p>Aged 16 years 10 months and suffered an acquired brain injury following a spontaneous left intracranial haemorrhage which resulted in permanent visual, cognitive, physical, and language difficulties.</p> <p>Issues</p> <p>There are a number of unresolved disputes as to the wording in Section B, although most of the proposed amendments were agreed by the parties either prior to or during the hearing. The unresolved matters are discussed below.</p> <p>b) The extent of SALT provision and OT provision to be made.</p> <p>c) Whether a residential placement and a waking day curriculum are required?</p> <p>d) Whether YP should be taught in small classes supported by integrated therapeutic provision and within a peer group with similar difficulties?</p> <p>Whether the provision at FE College is a suitable placement?</p> <p>f) Whether independent college is a suitable placement?</p>	<p>The need for detailed recommendations regarding Section D and H1/H2 is also limited by our findings regarding Section F.</p> <p>We therefore recommend that Section D states that the Child In Need assessment be undertaken and a CIN and Care Plan issued. We recommend that Section H2 states that all the provision set out in the finalised CIN and Care Plan is provided by Social Services.</p> <p>ORDER</p> <p>1.) Section B and Section F should be amended in accordance with the attached Appendix.</p> <p>2.) The appeal in respect of Section I is allowed. Section I should state independent specialist college (38-week residential placement).</p>

			<p>g) If both placements are found to be suitable, what are the costs of each placement, and would it be incompatible with the efficient use of resources, or would it amount to unreasonable public expenditure, to name independent college in Section I?</p> <p>h) Should the Tribunal make recommendations in respect of Section D and Section H1/H2 and if so, what are those recommendations</p>	
5.	NO	<p>Refusal to make an EHC Plan</p> <p>Section C Section G Section D Section H1/H2</p>	<p>Background: 8 year old pupil in Year 3 at Primary School, which is a mainstream maintained primary school. Diagnosis of Autistic Spectrum Disorder (ASD) and receives support in school at SEND Support level. Statutory assessment undertaken in Spring of 2018 following a Tribunal decision. LA concluded an EHC Plan was not necessary.</p> <p>Issues. LA accepts that has special educational needs, although their description and extent is disputed. Tribunal is not asked to identify these needs or to decide what the necessary provision should be to meet those needs as part of this appeal.</p> <p><b>Health and Social Care Recommendations</b> Parents requested recommendations to amend Sections C, D, G, H1/H2 of the EHC Plan. The Tribunal will consider the extent to which recommendations can be made once it has determined whether or not it is necessary for an EHC Plan to be issued.</p> <p>Outstanding issues to be considered were:</p> <p>i) Whether child needs a CYPS assessment from a mental health professional?</p> <p>ii) Whether child needs a structured sensory occupational therapy programme delivered by a fully trained occupational therapist as part of health provision?</p> <p>iii) Whether child needs a structured speech and language therapy programme as part of health provision?</p> <p>iv) Whether child is a Child in Need under s17 of the Children Act 1989 and if so whether provision under the Chronically Sick and Disabled Children Act 1970 required?</p> <p>v) If so, whether child requires implementation of the previous recommendations for PA support?</p>	<p>Having concluded that an EHC Plan is necessary we next considered whether or not it was appropriate to make any recommendations, in respect of health or social care. In respect of health, note that child has been awaiting assessment by mental health professionals through CYPS for well over a year and in view of the evidence from the school and the parents of inability to understand the consequences of actions, and the application of rules, we consider that it would be appropriate for child to be assessed. Our Recommendation is that in preparation for the drafting of the EHC plan, a CAMHS assessment is arranged within the next 6 weeks.</p> <p>We considered whether child needs a structured sensory occupational therapy programme delivered by a fully trained occupational therapist. No evidence that one has been devised or implemented. We are not able to order what should or should not be included in EHC Plan, as our jurisdiction in this matter is whether or not an EHC Plan is necessary. However, we recommend that a full occupational therapy assessment should be carried out including an educational setting to establish needs and corresponding necessary provision.</p> <p>We considered whether or not child needs a structured speech and language therapy programme as part of health provision. We were persuaded by the evidence that recommendations are currently being implemented successfully, and in addition we note that our jurisdiction does not at this stage extend to specifying what should be included in EHC Plan, only whether or not he should have one. Therefore, we make no further comment in this regard.</p> <p>In respect of social care, we first of all conclude that child is a Child in Need under s17 of the Children Act 1989. We therefore recommend that the LA review the conclusion of their Child in Need assessment, having considered their legal duty under legislation as opposed to any policy consideration and reconsider whether child should be defined as a disabled child. For the sake of clarity, we consider it necessary to explain that whilst we consider child to be a Child in Need, it cannot be assumed that provision will necessarily flow from a social care</p>

			<p>vi) Whether child requires a reassessment of social care needs to take account of violent and risk-taking behaviours?</p> <p>vii) Whether any other social care provision should be specified?</p>	<p>assessment at this point in time although we were not persuaded by the evidence that the withdrawal of the previous PA and respite support was withdrawn from the family for statutory reasons, with changes in policy and eligibility criteria. Therefore, our recommendation is that the previous PA and respite support should be reinstated.</p> <p><b>Order</b> Appeal allowed It is ordered that the LA issue an EHC Plan. It is recommended that LA do the following to inform the Education, Health and Care Plan as follows; 1) To inform Section C, by ensuring that a mental health assessment of child is obtained</p> <p>2) To inform Section C, by ensuring that an occupational therapy assessment of child is carried out</p> <p>3) In Section D, by reinstating the previous PA and respite support provided by social care prior to its withdrawal in summer 2018.</p>
6.	NO	Section B, Section F Section D Section H1/H2	<p>14 years old. ASD and anxiety disorder and as a consequence has been out of education for a considerable period of time. New EHC Plan in previous LA. Family moved and new LA rewrote it using their particular format but their version is much more discursive and far less specific. This plan did not identify a school. Another final EHCP was issued naming a private school.</p> <p>Issues at the hearing The parties had been able to reach a measure of agreement as set out in the working document and there were further agreements reached during the hearing. Part B was agreed leaving Section F of the plan as, although Part E was not agreed, amendment of that is outside our remit.</p>	<p>We have adopted "Outcomes Meeting September 2017 (columns 3 -6) as representing Part F but we have struck out those parts not supported by the evidence, thus; Page 1 SALT 2 x 1 hour per week, Page 4 Occupational therapy 1:1 weekly Page 5 Support for anxiety issues to be met by staff not a Psychologist and key member of staff to have specialist training Page 6 SALT weekly and dietician as required Page 7 SALT weekly Social care: We make no recommendations regarding this and any reference to social care in the Outcomes meeting document shall be excluded. It is ordered that LA amend the Education, Health and Care Plan at Section F as set out above.</p>
7.	NO	Section B Section F Section I Section C Section G Section D Section H1/H2	<p>3 years old and has a diagnosis of Cerebrocostomandibular Syndrome (CCMS), breathes through a tracheostomy which she has had since the age of 3 months and uses a ventilator on BIPAP settings when she sleeps. Needs constant observation from someone fully trained in her care. Nutrition and water through a PEG gastrostomy several times during the day and overnight. Unable to vocalise because of tracheostomy and has a moderate bilateral hearing loss. No identified learning delay and is typically developing with play.</p>	<p>There were no outstanding issues in section B. Section F issues relate to her attendance at nursery but as the HCSW is funded by the CCG we consider that they should also be included in Sections G. Due to complex medical needs can only attend nursery if she has a 1:1 support by a Health Care Support Worker (HCSW) who is fully trained in tracheostomy and gastrostomy care. The HCSW is a health provision necessary to attend the nursery as tracheostomy requires constant supervision.</p>

		<p>Also, physically able and enjoys running, climbing, bouncing and riding wheely toys. Cannot be left with someone not trained in tracheostomy care as this would put life in danger. Currently attends a mainstream nursery, for 15 hours a week. Entitled to 30 hours of nursery provision but unfortunately the nursery does not have capacity to increase the number of hours offered. The LA has agreed to a dual placement in section I. Parent has identified a nursery but a place has not yet been offered by the nursery.</p> <p>Due to start school in September 2019. Supported at nursery on a 1:1 basis by a trained support worker who we have described in the EHCP as a Health Care Support Worker (HCSW). A support worker provides night time cover at home from 10pm to 7am.</p> <p>The main issues relating to the appeal are the level of cover for the 1:1 HCSW at the nursery during breaks and periods of absence, the training/ qualifications of support/ replacement for the HCSW and the availability of appropriately trained support staff; clarity on who will cover the 1:1 support in the education plan.</p> <p>With regard to social care provision: parent sought a review and clarity of the social care provision; consideration of the hourly rate of direct payments and whether this is sufficient to enable the appropriately trained cover to be purchased for respite care. Specifically seeking a recommendation that the LA funds the full agency rate to enable 4 hours of respite per week</p> <p>Issues at the hearing: Whether the CCG should commission that the agency supplying the HCSW has at least two or three fully trained HCSWs to cover nursery hours.</p> <p>In the event that there is no HCSW available to attend the nursery, who should provide back-up cover.</p> <p>Against which guidelines the competencies of the HCSW should be assessed.</p>	<p>Staff at Nursery have been trained by medical staff and are able to provide supervision for short periods during the HCSW's comfort breaks. Due to their existing commitments they are unable to provide 1:1 support and supervision if the HCSW is absent from work due to annual leave or sickness.</p> <p>HCSWs are sourced and paid for by the CCG. The CCG obtain HCSWs through approved agencies who meet the requirements of the CCG's commissioning board. The agencies may have different working practices and meet a number of different guidelines but all agencies must comply with the requirements of the CCG's commissioning board. Currently agency is commissioned to provide the HCSW. We understand that some agencies have arrangements whereby reciprocal cover is provided. The CCG is content with this practice so long as all staff meet the CCG's overall requirements.</p> <p>The agencies will have a spectrum of staff on whom they can call and place personnel who support child. They require specific training on child's medical needs. This includes the changing of tracheostomy, which on medical advice can only take place once a month. Parent considers that the agency commissioned to provide HCSW support should have at least three HCSWs to cover nursery hours as without this cover child cannot attend nursery and misses out on education. Missed a substantial number of days due to the lack of a HCSW. Initially, parent had requested that the agency contracted to provide the HCSW has a least two fully trained HCSWs.</p> <p>Parent also proposed that the training and assessment of competencies of the HCSW should be based on the Great Ormond Street Hospital clinical guidelines for tracheostomy care for long term ventilated children. Not persuaded that the training of the HCSW needs to be so narrowly defined and recognise that a number of professional organisations will have their own guidelines and competences. We consider that to include this in EHCP would be too restricting, and may limit the number of agencies that can be used. We are satisfied that it is sufficient that the HCSW's competencies are assessed by a suitably qualified nurse.</p> <p>It is not always possible for an agency to provide a HCSW despite reciprocal arrangements. Parent is proposing that a nurse should be sourced through the care agency and if a nurse was not available that the CCG should commission a tracheostomy competent paediatric nurse via an external agency. We preferred the wording proposed by the LA that if the contracted agency cannot provide a nurse the CCG will commission the contracted agency to source a nurse trained in</p>
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				<p>tracheostomy from other agency providers. We make a recommendation that:</p> <ul style="list-style-type: none"> <li>• In the event that the HCSWs are not able to carry out the shifts, the CCG will commission that the contracted agency provide a nurse trained in tracheostomy to cover as 1:1</li> <li>• In the event that the contracted agency cannot provide a nurse, the CCG will commission the contracted agency to source a nurse trained in tracheostomy from other agency providers.</li> </ul> <p><b>Educational placement (Section I)</b> This is not in dispute the LA has agreed that child can attend a dual nursery placement once another nursery has offered a place. However we have described the type of placement as “a mainstream nursery” as this had not been included in EHCP.</p> <p><b>Health provision (Sections G)</b> Set out above</p> <p><b>Social care provision (Sections H1/H2)</b> The parties agreed at the tribunal that, to the wording set out in section H1 to provide respite care for parents.</p> <p><b>Order</b> The appeal is allowed in part. It is ordered that LA amend the Education, Health and Care Plan as follows:</p> <ol style="list-style-type: none"> <li>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>3) In Section I, by adding “a mainstream nursery” under Type of Placement.</li> </ol> <p>It is recommended that LA amend the Education, Health and Care Plan as follows;</p> <ol style="list-style-type: none"> <li>1) In Section C, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>2) In Section E, D and G, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>3) In Section D, (but included in section F of EHCP): <ul style="list-style-type: none"> <li>• The CCG should commission that the agency contacted has three (3) fully trained HCSW to cover nursery hours.</li> <li>• In the event that the HCSWs are not able to carry out the shifts, the CCG will commission that the contracted agency provide a nurse trained in tracheostomy to cover as 1:1</li> </ul> </li> </ol>
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8.	NO	Refusal to make an Education Health and Care (EHC) Plan Section C Section G Section D Section H1/H2	<p><b>Background</b></p> <p>10 years old and is a pupil in Year 6 at a mainstream maintained primary school. He has a diagnosis of Autistic Spectrum Disorder (ASD) and receives support in school at SEND Support level.</p> <p>By the date of the hearing, there remained the following issues for consideration:</p> <p>i) What are the nature and extent of special educational needs?</p> <p>ii) What special educational provision is he receiving?</p> <p>iii) What progress has he made with the special educational provision?</p> <p>iv) Does he require additional special educational provision, and if so, what?</p> <p>v) Can the special educational provision required reasonably be provided from within the resources normally available to mainstream schools or is it necessary to make the provision in accordance with an EHC Plan?</p> <p>vi) Are any recommendations necessary in respect of social care provision?</p> <p>vii) Are any recommendations necessary in respect of health provision?</p> <p><b>Health and Social Care Recommendations</b></p> <p>The parents requested the Tribunal make recommendations to amend Sections C, D, G, H1/H2 of the EHC Plan. At this time no EHC plan has been issued. The Tribunal's jurisdiction in an appeal against a refusal to make an EHC Plan, extends only to decide whether such a plan should be made and not its contents. We will consider the extent to which any recommendations can be made once it has determined whether or not it is necessary for an EHC Plan to be issued.</p> <p>At the start of the hearing it was identified that the outstanding issues to be considering making a Recommendation under the National Trial were:</p>	<p>Can the necessary provision to meet all of child's needs be made by a mainstream school from within its own resources? On the basis that the cost of implementing the recommendations of the LA's own professionals would be significantly in excess of the notional SEN budget of £6000, coupled with the fact that he will be transitioning to secondary school during the lifetime of this EHC Plan, we conclude that on balance an EHC Plan is necessary to enable all of his special educational needs to be met.</p> <p><b>Social Care and Health Recommendations</b></p> <p>Having concluded that an EHC Plan is necessary, we next considered whether or not it was appropriate to make any recommendations in respect of health or social care. In respect of health, we note that child has been awaiting assessment by mental health professionals for well over a year and we consider that it would be appropriate for him to be assessed, given the evidence of his tendency to self-harm at home, coupled with his levels of anxiety. Our Recommendation is that in preparation for the drafting of the EHC plan, a CAMHS assessment is arranged within the next 6 weeks.</p> <p>In respect of social care, we first of all conclude that child is a Child in Need under s17 of the Children Act 1989. We therefore recommend that the LA review the conclusion of their Child in Need assessment, having considered their legal duty under legislation as opposed to any policy consideration and reconsider whether child should be defined as a disabled child. For the sake of clarity, we consider it necessary to explain that whilst we consider him to be a Child in Need, it cannot be assumed that provision will necessarily flow from a social care assessment at this point in time.</p> <p><b>Order</b></p> <p>LA to make and maintain an EHC Plan.</p> <p>It is recommended that the LA undertake the following to inform the Education, Health and Care Plan as follows;</p> <p>1) To inform Section C, by ensuring that a mental health assessment is obtained</p> <p>2) To inform Section C, by ensuring that an occupational therapy assessment of is carried out</p> <p>3) In Section D, by reinstating the previous PA and respite support provided by social care prior to its withdrawal in summer 2018</p>

			<p>i) Whether a CYPS assessment from a mental health professional is necessary</p> <p>ii) Whether a sensory programme as part of health care provision is required</p> <p>iii) Is child a 'Child in Need' under s17 of the Children Act 1989 and if so, does he need provision under the Chronically Sick and Disabled Persons Act 1970</p> <p>iv) Is it necessary for social care provision to be specified and in particular, whether respite provision and PA support which has been withdrawn should be reinstated</p>	
9.	YP	<p>Section I</p> <p>Section D</p> <p>Section H1/H2</p>	<p>Background</p> <p>Born prematurely and a moderate learning disability, cerebral palsy with bilateral spasticity predominately affecting his legs. Has had a number of operations to improve mobility and positioning. Profoundly deaf and has Bilateral Cochlear Implants. Completely deaf without the use of two cochlear implants. Unable to use sign language due to cerebral palsy and the effect it has upon hands. Can understand sign language and can lip read.</p> <p>This appeal requested the Tribunal make recommendations under concerning Section D (social care needs) and Section H1/H2 (social care provision).</p> <p>Section F, Version 8 of the Working Document clearly states that YP requires a waking day curriculum. Giving that this is agreed, the only remaining issue is whether YP receives a combination of college and social care, such as LOCAL FE College state they can provide, or whether YP requires a residential placement, which Specialist independent college can provide.</p>	Appeal Allowed.
10.	YP	<p>Section B</p> <p>Section F</p> <p>Section I</p> <p>Section D</p> <p>Section H1</p>	PtA received	
11.	NO	<p>Section B</p> <p>Section F</p> <p>Section I</p> <p>Section C</p> <p>Section G</p>	<p>Background</p> <p>12 years 2 months old and experiences high anxiety and social communication difficulties. Evidence following a recent clinical psychology assessment suggests that she has a diagnosis of Asperger's Syndrome. This has been confirmed to parents orally following a holistic medical assessment</p>	Confirmed at the start of the hearing that they were no longer seeking that the Tribunal make a Recommendation concerning Health needs or the provision required to meet those needs. During the course of the Tribunal appeal, any concerns raised had been successfully addressed and the LA had agreed to specify a programme of CBT delivered by

			<p>which will be confirmed in writing imminently. Has not been attending school since September 2017.</p>	<p>CAMHS in Section G of the EHC plan. Agreed wording is included in the final working document.</p> <p>The appeal is allowed.</p> <p>It is ordered that LA amend the Education, Health and Care Plan of as follows:</p> <p>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>3) In Section I, by replacing the existing wording with the following: <i>“An independent special school placement. [school named].”</i></p> <p>It is recommended that LA amend the Education, Health and Care Plan:</p> <p>1) In Section G, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</p>
12.	NO	<p>Section B</p> <p>Section F</p> <p>Section I</p> <p>Section C</p> <p>Section G</p> <p>Section D</p> <p>Section H1/H2</p>	<p>Background</p> <p>14 years old and has a diagnosis of ASD and also of ADHD</p> <p>Agreed that the issues had narrowed, and as child was out of school until the Tribunal made a decision on the remaining areas in dispute, it was important the case was determined as soon as possible. They agreed it could proceed as a paper hearing without attendance of either party and without oral evidence being given, as this would enable the case to be listed sooner. The Tribunal therefore considered the written evidence in the Tribunal bundle.</p> <p>Sections B and F of the EHC plan. The outstanding issues identified at the start of the hearing which the Tribunal needed to decide included;</p> <p>a. The description of special educational needs in Section B and the specification of the special educational provision (including therapy) required to meet those needs in Section F having considered parents' proposed amendments and any agreements reached between the parties</p> <p>b. Whether there were other amendments indicated by the evidence before us which should be made to Section B and/or F</p> <p>Recommendations to amend Sections C, D, G, H1/H2 of the EHC Plan.</p>	<p>Appeal is allowed in part.</p> <p>It is ordered that LA amend the Education, Health and Care Plan as follows:</p> <p>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document, specifically the parental wording for the delivery of Speech and Language Therapy and Occupational therapy.</p> <p>We do not make any other recommendations to amend the existing agreed wording of the EHC Plan in respect of Sections C,D,G or H.</p>

			<p>a) To amend the description of her health needs to include all her existing health needs</p> <p>b) To include information obtained as a result of a social care assessment that was being carried out</p> <p>c) To identify the social care provision to meet the needs identified in that social care assessment.</p> <p>At the hearing: still some matters to be decided in relation to Sections B and F, and these were largely in relation to the provision of both Occupational Therapy and Speech and Language Therapy to be delivered in school.</p>	
13.	YP	Section I	<p><b>Background</b></p> <p>17 years of age and has just commenced Year 12. Diagnosis of Worster-Drought syndrome which is a mild form of cerebral palsy and affects the facial area in particular. Also has Attention Deficit Hyperactivity Disorder and has been diagnosed as being on the autistic spectrum. The combination of these conditions means YP experiences difficulty in learning, particularly ability to independently access the curriculum and also difficulties in managing behaviour.</p> <p>Attended a number of schools until moved to final placement in September 2012. Took about two years to settle into the placement at a specialist school and college, being a non-maintained special school for children with ASD and complex needs. It caters for students up to the age of 19 and the school confirmed their offer to maintain YP's place until July 2021, which would be the end of Year 14. It is the clearly expressed wish of YP and his mother that he should remain at placement until then.</p> <p>Sought recommendations from the Tribunal with regard to both Health and Social Care provision.</p> <p>Originally listed for an oral hearing, there had been difficulties in complying with the timetable set by the tribunal. During the appeal process the parties reached a measure of agreement and a Case Management hearing took place to identify the outstanding issues, during which the parties agreed the case could proceed as a paper hearing</p>	<p>Although the appeal did not ask us to deal with sections B and F, we find that as a consequential amendment it would be appropriate to include the diagnosis in section B for clarity and consistency. Section D, we found it very difficult to ascertain exactly what assessments had been carried out by social care and the statutory nature of these assessments.</p> <p>We were however of the view that given YP's age, planning for transition to adult services should already be underway. We therefore felt that if it had not already been undertaken, then a needs assessment and a carer's assessment under the Care Act needed to be completed as soon as possible</p> <p>We also recommend that it would be helpful if the social worker undertaking those assessments attended the annual review as well as any EHC planning meetings.</p> <p><b>Order</b></p> <p>The appeal is allowed and the Tribunal orders:</p> <p>a) that the local authority shall amend section B of the Education Health and Care Plan to include "<i>an autistic spectrum disorder diagnosis and anxiety disorder diagnosis</i>" as part of his special educational needs;</p> <p>b) with regard to section I we order that the plan shall be amended to name [current placement] Specialist School and College, a non-maintained special school, to be the named provision.</p> <p>The Tribunal recommends:</p> <p>a) that Section C of the plan should be amended to include an autistic spectrum diagnosis and anxiety disorder diagnosis;</p> <p>b) that section D of the plan should include an updated Child and Family assessment, if one has been completed, together with a needs assessment and carer's assessment under the Care Act together with</p>

			<p>Specifically, with regard to health she wished to have the diagnosis of autism and also anxiety disorder included in both the description of needs in the education section and also in the health section.</p> <p>It was noted that the LA did not dispute these additional descriptions being included in principle but were awaiting a confirmatory letter from CAMHS.</p> <p>Social care: wanted a full social care assessment and provision to be included in the EHC Plan.</p> <p>Not clear whether the LA was asking the tribunal to direct in the order that the placement should only be for one year and that there should be an ongoing transition plan to another placement. We concluded that the appeal before the tribunal was only in relation to Section I and was in effect concluded by consent, and that this had been evident at the case management hearing on 26 August when the local authority had conceded the placement.</p>	<p>any relevant information concerning any transition to the Adult Social Care Team including personal budgets;</p> <p>c) that the assessing social worker should contribute to any EHC Plan reviews and planning meetings</p>
14.	YP	<p>Section I</p> <p>Section C</p> <p>Section G</p> <p>Section D</p> <p>Section H1/H2</p>	<p><b>Background</b></p> <p>24 years of age and has a diagnosis of Neurofibromatosis type 1. This is a genetic neurological disability diagnosed in 2001. He also has an associated autistic spectrum disorder, a social phobia and anxiety. Has had a complex educational history, starting at mainstream infant and junior schools, having some "education otherwise", and attending various centres being parts of the Hospital Special Schools. Also attended Colleges but did not consider received sufficient support to progress at either college. Did complete a course in 2014 at FE College, but took 2 years to complete a 1-year course.</p> <p>Statement of special educational needs had ceased when was 19 years of age, and self-referred for an EHC Plan needs assessment in May 2017.</p> <p><b>Issues for decision</b></p> <p>During the course of the tribunal process, the LA had agreed that YP could attend choice of college, an independent specialist college rather than vocational College which had been the LA's preferred option. Attendance had commenced in September 2018 and was attending 3 days a week, although, as this was an access type course, the parties hoped may be able to progress to some other vocational or educational provision at a later stage.</p> <p><b>Issues</b></p>	<p><b>Leave is given to withdraw his appeal.</b></p>

			<p>Sections B and F were not, and had never been, in dispute. Section I was no longer in dispute. The issue remaining in dispute was whether social care needs should be met at the college, or by other means. The Tribunal queried whether it was being argued that this amounted to educational provision on the basis that a waking day curriculum was required.</p> <p>YP rep immediately and properly conceded that there was no educational need for residential provision. The Tribunal sought clarification from the parties as to exactly what they were asking the Tribunal to do, given that Section I was agreed and implemented, and under the National trial we could not determine a free-standing application to make recommendations relating to health or social care. It was conceded that nothing was in fact being sought in respect of health.</p> <p>It was also accepted that the Tribunal could not order one type of social care provision in preference to another, but only make a recommendation. In practical terms, even if it was argued the tribunal did have jurisdiction to consider social care in isolation, it would not be feasible for the Tribunal to do so as no assessments had yet been undertaken and it was therefore not known what type of provision was going to be available, nor which (if more than one feasible option) could meet child's needs, nor any potential costs comparison.</p> <p>YP rep accepted the Tribunal was not in a position to make any determination and sought leave to withdraw the appeal.</p>	
15.	YP	<p>Sections B, F and I</p> <p>Section C</p> <p>Section D,</p> <p>Section G</p> <p>Sections H1 and H2</p>	<p><b>Background</b></p> <p>A complex presentation of special educational needs. This includes a diagnosis of autism, a severe language impairment and a clinical anxiety disorder including periods out of school due to anxiety.</p> <p>Attended an independent special school approved by the Secretary of State under section 41 of the Children and Families Act 2014. Started on a fortnightly boarding basis but from September 2016, was struggling with the travelling. Requested termly boarding but this was initially refused by the LA and there was a period when parent stayed in a local bed and breakfast to avoid the journey.</p> <p>Issues</p>	<p>YP does require a waking day curriculum.</p> <p>Beh programme: we considered that the important feature was that the person delivering the programme had relevant training and supervision and we could see that there would be advantages to this being delivered by a staff member who works with child throughout his school day. We amended Section F accordingly.</p> <p>In Section F we considered the question of the single room. Section F (in the parts already agreed) already included this wording: "<i>He will also need the availability of an Individual space to enhance his concentration for formal work and to minimize distraction for focused independent work.</i>" We concluded that this should be extended so that this "individual" – or as we preferred to say "private" space would be available throughout his waking day and amended Section F accordingly. However, we considered that this did not amount to same</p>

		<p>By the conclusion of the hearing, some elements of the plan were agreed the final position being as follows: Section B agreed; Section C was agreed other than one amendment about the difficulties has had with his teeth, which the LA did not accept was related to his special educational needs; Section D was entirely agreed; Section F was agreed other than in relation to three issues: (1) does YP need a waking day curriculum, i.e. is a residential placement required on educational grounds;</p> <p>(2) in relation to an agreed element of the special educational provision - a positive behaviour and anxiety management programme – the parties did not agree about who would be responsible for the weekly delivery psychologist who devised the programme who would also deliver it; the LA's position was that it could be delivered by a member of staff with ELSA or equivalent training); and</p> <p>(3) YP was asking for the need for a single room to be included as special educational provision in F; Section G was agreed; Section H1 was agreed; Section H2 there were two issues; it was the local authority's position that the residential aspect of the placement should appear in Section H2 because it amounted to social care provision (i.e. and not in F); similarly the local authority was saying that the reference to the single room should appear in H2 and not in F for the same reason; and Section I was agreed (i.e. named on the basis of a 38 week termly residential placement).</p> <p>What orders should be made about the agreed parts of Sections B, F and I;</p> <p>What recommendations, if any, the Tribunal should make about the disputed parts of Sections C and H2 as described above (to some extent this depended on our conclusions in relation to Section F);</p> <p>What recommendations should be made about the agreed parts of Sections C, D, G, H1 and H2</p>	<p>thing as saying that a single room, in terms of the description of his accommodation, itself was special educational provision.</p> <p>We had accepted the waking day curriculum which means that the placement is residential. But how the rooms within the residential setting are organised appeared to us to be a feature of how the residential setting organises itself. We considered this point further below in the context of our conclusions about Section H2.</p> <p>We were satisfied that the amendments the parties have agreed reflected the evidence and that the agreed amendments to Section F, together with the amendments in accordance with our conclusions above, should form part of our order. All of these amendments are now contained in the Appendix to this order.</p> <p><b>Section I</b></p> <p>We reviewed the evidence about placement and we were satisfied that the agreement the parties have reached (now set out in the Appendix to this order) about Section I was appropriate and should form part of our order.</p> <p><b>Health care needs and health care provision (Sections C and G)</b></p> <p>Section C was agreed subject to wording about issues with his teeth. We were satisfied based on our expertise and the evidence we heard that these difficulties are related to YP's special educational needs, i.e. specifically autism and learning difficulties. Accordingly, we have accepted the amendment to Section C.</p> <p>Section C and Section G (all of which were agreed other than the one amendment we had decided to add) and concluded that they reflected the evidence and we concluded that Sections C and G as set out in the Appendix, which incorporates the agreed amendments, should form part of our recommendations.</p> <p><b>Social care needs and social care provision (Sections D and H1/H2)</b></p> <p>Given that we have accepted that child requires a waking day curriculum, the references to the residential placement currently in H2, should, in our recommendation, be removed as it would be confusing to have the provision repeated in two sections of the plan. Further, since we have accepted that it is special educational provision, because it educates and trains, it is to be treated as such <i>instead of</i> social care provision (as provided by Section 21 (5) of the Children and Families Act 2014). Our amendment therefore here is a deletion of the</p>
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				<p>relevant wording in Section H2 and we have made some minor consequential amendments to this deletion.</p> <p>In relation to the requirement for the single room, LA had accepted that this was required at the hearing, as social care provision. We concluded that this was social care provision reasonably required by YP's learning difficulties and disabilities and amended Section H2 accordingly.</p> <p>Sections D and H1 and H2 (all of which were agreed). We noted that they reflected the evidence and we concluded that Sections D and H1 and H2 as set out in the Appendix, which incorporates the agreed amendments, should form part of our recommendations.</p> <p><b>ORDER</b> LA to amend EHC plan as follows:</p> <ol style="list-style-type: none"> <li>1. By deleting Sections B and F and replacing them with the Sections B and F set out in the Appendix to this decision; and</li> <li>2. In Section I, by deleting the current contents and replacing it with the Section I set out in the Appendix to this decision.</li> </ol> <p><b>Recommendations</b> It is recommended that the LA amends the Education, Health and Care Plan as follows;</p> <ol style="list-style-type: none"> <li>1. In Section C, by replacing the existing wording with the amendments set out in the Appendix to this decision;</li> <li>2. In Section G, by replacing the existing wording with the amendments set out in the Appendix to this decision;</li> <li>3. In Section D, by replacing the existing wording with the amendments set out in the Appendix to this decision;</li> <li>4. In Section H1, by replacing the existing wording with the amendments set out in the Appendix to this decision; and</li> <li>5. In Section H2, by replacing the existing wording with the amendments set out in the Appendix to this decision.</li> </ol>
16.	<b>NO</b>	Section C Section G	<p>Background 10 year old who is in year 6 at a special free school. Diagnosis of PLMD and ASD with complex difficulties in the areas of social interaction and behavioural difficulties, non-verbal.</p> <p>The following issues for consideration:</p> <ol style="list-style-type: none"> <li>i) The description of special educational needs in Section B of the EHC plan;</li> </ol>	<p>It is ordered that LA do amend the EHC Plan as follows:</p> <ol style="list-style-type: none"> <li>1) In Section B, by replacing the existing with the amendments set out in the final working document.</li> <li>2) In Section F, by replacing the existing with the amendments set out in the final working document.</li> <li>3) In Section I, by replacing the existing with the following: "A special school placement. [named school], from January 2019"</li> </ol>

			<p>ii) The description of special educational provision in Section F of the EHC plan;</p> <p>iii) The parents request that the following recommendation be made in respect of Section C – information in respect of weight</p> <p>iv) The parents request that the following recommendation be made in respect of Section G – to include activities such as swimming and input from a school nurse/dietician.</p> <p>At the start of proceedings Section I was also at issue. The issues around Section I have been resolved between the parties.</p> <p>The parties had been able to come to a considerable amount of agreement in relation to Sections B and F. However, there were still a few matters to be resolved.</p> <p>The request with regard to Section G was also no longer at issue.</p>	<p>It is recommended that LA do amend the EHC Plan as follows: i) In Section C replace the existing wording with that as set out in the final working document.</p>
17.	<b>NO</b>	Refusal to make an EHC Plan social care provision	<p>Background</p> <p>13 years old and is currently in year 9 at a mainstream academy school. Diagnosis of ADHD at 6 years old.</p> <p>The only education issue was whether it was necessary for the LA to issue an EHC Plan in order to make special educational provision.</p> <p>There were no health issues.</p> <p>The only social care issue was whether child should have support from a youth worker.</p>	<p>Not necessary for the LA to issue an EHC Plan. An EHC Plan would create legal obligations and a requirement for annual review, but what is required is more of a shift in approach. An EHC Plan is not necessary in order to ensure that this happens.</p> <p>Child is receiving support from a family worker who has made positive Suggestions. Parents were not able to explain what a youth worker would provide in addition to the services already being provided to the family. In the absence of any evidence to the contrary, we accept the view in the social care assessment that the support being provided is sufficient and that a youth worker would not add anything.</p> <p><b>Order</b></p> <p>Appeal dismissed.</p>
18.	<b>YP</b>	<p>Sections B, F and I</p> <p>Section C</p> <p>Section G</p> <p>Section D</p> <p>Section H1/H2</p>	<p>During the appeal period and at the hearing the parties reached full agreement on all issues.</p> <p>The parties notified that an undertaking had been given for LA to issue an amended EHCP in the form agreed and that they no longer sought a determination or order by the Tribunal.</p> <p>The Tribunal observes that the parties' agreements have followed consideration during the period of the appeal which has afforded discussion between the parties and their witnesses and opportunity to reflect on the specification now agreed.</p> <p>The Tribunal accepts the circumstances of the withdrawal and finds it appropriate.</p>	<p><b>Order</b></p> <p>Tribunal consents to YP's appeal being withdrawn.</p> <p>No order for costs.</p>

19.	YP	<p><b>B and F</b> Section C Section G Section D Section H1/H2</p> <p>suitable for consideration on the papers and consented to conclude the appeal without an oral hearing.</p>	<p><b>Background</b> 19 years old and has a diagnosis of autism spectrum condition. First referred to Educational Psychology Service at the age of 5 and again a number of times subsequently due to concerns about ongoing difficulties with social communication, organisation and learning. Underlying cognitive abilities fall within normal limits with spoken language and verbal reasoning skills on the average/high average cusp. Difficulties include organisation of and recording of work, struggles with peer relationships and social communication, anxiety and low mood. In second year of college undertaking Level 3 Diploma in Creative and Performing Arts, a practical vocational program, equivalent to 3 A Levels. Previously attended a mainstream secondary school and stayed on to complete a one-year course in the 6th form. Thereafter successfully completed a Level 2 Diploma in Performing and Production Arts.</p> <p>Issues (i) <i>Special Educational Needs / Provision</i> Section B: description of sensory and physical difficulties and ability to undertake everyday tasks of independent living. Section F: not sufficiently specific (SMART) provision in particular in preparation for adulthood. Consequential changes to Section E (Outcomes) following upon their determination of the Part B and F issues (ii) <i>Health and Social Care</i> <i>Health Needs /Provision</i> Sleep disorder, diet imbalance, sensitivity to noise, restricted and repetitive behaviour, OCD behaviour, difficulties identifying emotions and anxiety and depression not properly identified and described, nor that the impact of them upon access to education sufficiently recognised. (b) <i>As regards his Social Care Needs/ Provision</i> Social Care Needs were understated, that (at the time of Appeal) the LA had failed to arrange a social care needs assessment care support to be specified in Section H Recommendations to amend Sections C D G H1 and H2 of the EHC plan. Issues that remained in dispute as regards both Educational Needs and Provision and the Recommendations sought with regard to Social Care and Health Needs and Provision were as set out in the latest working document.</p>	<p><b>Order</b> In Section B and Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document and It is <b>recommended</b> that LA amend the Education, Health and Care Plan as follows; In Section G to include a provision that any recommendations resulting from assessments pursuant to the GP's referrals are to be given due consideration for inclusion in the Plan In Section H 2. to include the provision of a key worker and to provide support to promote participation in a range of social and leisure activities</p>
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20.	NO	<b><i>Refusal to make a plan Health and Social care needs and provision</i></b>	<p><b>Background</b>  12 years and 2 months old and has a diagnosis of Autism, ADD and Dyslexia. High levels of anxiety and frustration, has needs associated with social communication and understanding and sensory difficulties. Attended a mainstream secondary school. Before this he had not been in school since the first few weeks of September 2017 due to his high levels of anxiety. The parties confirmed that there was no dispute as to the nature and extent of special educational needs. Dispute is the level, frequency and delivery of provision and whether this can and will be delivered from the resources of a mainstream school and whether an EHC plan is necessary.  At the start of the hearing the Tribunal panel identified for the parties that the issues for consideration in the appeal were:  a. The special educational provision required to meet special educational needs as identified during the EHC assessment and in any additional evidence  b. Whether it is necessary for special educational provision to be made in accordance with an EHC plan</p> <p><b>Health and Social Care Recommendations</b>  At registration, recommendations sought under the National Trial that:  health needs were fully described in any EHC plan ordered to be issued and that health provision was included that he requires Sensory Occupational Therapy involvement, support to manage his anxiety, help to improve his independence, CBT therapy and activities to promote self-confidence. Social care needs were fully described in any EHC plan ordered to be issued and social care provision is specified to enable him to access external organisations to improve confidence, self-esteem and integrate into the community eg rugby, Climb centre and other organisations.  At the hearing parents confirmed that since the original appeal was registered a Sensory Occupational Therapist has assessed. A report specified sensory needs and the provision required. Parents confirmed that this was no longer an outstanding issue for the Tribunal to decide and they were not asking for a Recommendation for SI assessment. Also, some support received from CAMHS but his case there has now closed. Parents no longer seeking a Recommendation be made on this issue or any others concerning Health.</p>	<p>It is necessary for the LA to issue an EHC plan to ensure adequate special educational provision.  <b>Social care needs and social care provision (Sections D and H1/H2)</b>  Request for direct payment to the family so that they can arrange support to attend a mainstream activity which would currently be a rugby club.</p> <p>Accepted by the LA, as a response to case management directions issued by the Tribunal when the appeal was registered, that child is a disabled child under social care legislation. This automatically makes child a child in need and therefore an assessment of care needs must be carried out under the Children Act 1989 s.17.</p> <p>We were very concerned to learn that the LA seemed to have a policy which would not support a disabled child to access mainstream activities.</p> <p>Social care support that parents are requesting is not excessive and is a provision that falls within the services that fall under the Chronically Sick and Disabled Persons Act 1970 section 2. It is our Recommendation that the LA put an arrangement in place for child to be supported as requested by parent. Provision of a direct payment will ensure that parents can employ someone whom they prefer. This will allow the flexibility in the arrangement should child no longer wish to attend a rugby club and goes to an alternative activity or if he no longer wants to be supported by a particular individual.</p> <p><b>Order</b>  The appeal is allowed.  It is ordered that:  LA issue an Education, Health and Care plan.</p> <p>It is recommended that;  1. LA make a direct payment to parents to allow child to be supported 6 hours per week to attend a mainstream leisure activity of his choice.</p>
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			Parents were still seeking a Recommendation that the LA provide funding through a direct payment to provide support to attend a Rugby Club once per week. This would need to be for a total of 6 hours per week to include travel to/ from practices and matches.	
21.	<b>NO</b>	<b><i>Refusal to make a plan</i></b>	<b>PtA</b>	
22.	<b>YP</b>	Section B Section F Section I. Section C Section G Section D Section H1/H2	<p>Capacity – At the start of the hearing, the Tribunal raised with the parties the issue of capacity. It was agreed by the Tribunal that YP lacked capacity to make decisions about the content of the EHC Plan and lacks capacity to bring these proceedings herself. Parent is an alternative person to conduct appeal proceedings in accordance with regulation 64 of the Special Educational Needs and Disability Regulations 2014 (the Regulations). Therefore, decisions in best interests as set out in s4 Mental Capacity Act 2005 and Chapter 5 of the Mental Capacity Act Code of Practice. The appeal is as a consequence in the name of alternative person.</p> <p>Background 16 years old and has a diagnosis of ADHD, mild learning difficulties, anxiety, daytime enuresis and also has difficulties with social skills. Difficulties are becoming increasingly apparent. Pupil at Community College, where she achieved one GCSE grade 1 in English Language</p> <p>Issues at the hearing One issue in Section F: The description of special educational needs in Section B and the specification of the special educational provision required to meet those needs in Section F. In particular whether a 3-day placement meets needs, or whether additional provision required on the two remaining days. b. Whether assistance needed with transport to College c. Whether there were other amendments which should be made to Section B and/or F</p> <p>NT issues Include reference to counselling for anxiety, her ongoing urinary incontinence and dental problems b. To include a transition plan for transfer from child to adult services to include the health care provision identified by the reports</p>	<p>We find the LA's volte face in its approach to this appeal between the provision of the position statement on 23 November 2018 and the hearing to be troubling. Having attended expecting to be hearing about a variety of alternative two-day placement options, but instead being met with an intransigent position that nothing beyond a three-day placement was on offer, despite all the previous indications to the contrary.</p> <p>Accepted LA's previous position statement that there was an acceptance within the LA that an additional two days was necessary. The 3-day provision at FE College is meeting needs on those days, but needs provision to take place across 5 days.</p> <p>We are not asked to reopen Section I as part of this appeal, but we are mindful of the provisions of s33 of the Children and Families Act 2014 and the right to a mainstream education, and we consider that there are a significant number of reasonable adjustments which could be made by the LA, but which have not yet been explored, to enable YP to continue to attend the mainstream college of her choice.</p> <p>Accordingly, we specify 5 day post-16 provision to include repetition and overlearning of core functional skills in maths and English in Section F of the EHC Plan.</p> <p>This is an exceptional case where YP has particular transport needs and therefore transport needs to be recorded in EHC Plan.</p> <p><b>Health care needs and health provision (Sections C and G)</b> Additions to these sections were agreed between the parties during the hearing and those agreements are reflected in the working document attached.</p> <p><b>Social care needs and social care provision (Sections D and H1/H2)</b> In respect of social care, we have deleted some narrative sections which were lifted from the Social Care report but which do not set out needs in Section D.</p> <p>We note that despite the directions of the Tribunal dated 4 September 2018, the LA has not considered whether or not YP is a Child in Need under the Chronically Sick and Disabled Persons Act and whether she can be considered a disabled child. We first of all conclude that YP is a Child in Need under s17 of the Children Act 1989. We reach this</p>

			<p>c. Social care services to identify any further social care provision required to meet needs and for that provision to be specified in the EHC Plan</p>	<p>conclusion because she has a diagnosis of ADHD which is a lifelong disabling condition and we accept that she has substantial needs over and above those of a typical child of the same age.</p> <p>We therefore recommend that the LA reclassify YP as a child in need and, although whilst we consider YP to be a Child in Need we do not make any recommendation that provision necessarily flow from this classification.</p> <p>We note that the provision sought is primarily education and training and therefore not social care provision, although we agree with the findings of the social care assessment that YP needs the support sessions provided by the youth worker. We do not find it appropriate to cease such intervention on the basis that the young person does not appear to be implementing the knowledge, particularly given that repetition and overlearning is exactly what is asked for. We therefore recommend that these sessions be reinstated and delivered at a pace and with a level of repetition and overlearning appropriate to learning style.</p> <p><b>Order :</b>The appeal is allowed</p> <p>It is ordered that LA amend the Education, Health and Care Plan as follows:</p> <p>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>It is recommended that LA carry out a child in need assessment and amend the Education, Health and Care Plan as follows; In Section C, G, D, H1 and H2 by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p>
23.	<b>NO</b>	<p>Section B</p> <p>Section F</p> <p>Section C</p> <p>Section D</p> <p>Section G</p> <p>Section H1/H2</p>	<p>13 years 5 months. Diagnosis of High Functioning Autism and Generalised Anxiety Disorder. Sensory processing and attention difficulties, and symptoms of OCD and ADHD, along with other special educational needs. Mental health needs are most concerning need at present. Out of full-time education for almost two years following the breakdown of placement at a mainstream secondary school. He was then placed in a residential special school, but unable to settle and remained largely in room, and was withdrawn after 6 weeks. Started a mixed state funded specialist media school for Years 10-13 (although chronologically in year 9, placed in Year 10). EHCP provides for a 1:1 TA. Although there was a positive start to term, recently unable to access lessons on a fulltime basis and has not attended school at all for the last two weeks</p>	<p>We conclude, particularly in the circumstances of this appeal, where the EHCP is already a very lengthy document, and the parties have now agreed that the necessary therapy provision should appear in Section F as educational provision, the health needs ought to be stated in Section C as a list without narrative. We recommend that Section C be amended to include only the list of agreed health conditions. We do not agree with the parental assertion that Section C should provide context to each health condition as this is contrary to the general purpose of the Section.</p> <p>We regard the alternative wording in the unresolved matters in Section G as semantic, rather than substantive. We do not consider it necessary to resolve such issues. We decline to recommend any alteration to the LA's proposed wording.</p>

			<p>Issues at the hearing Section B was entirely agreed. A few areas of disagreement in respect of section F by the conclusion of the hearing. These largely concerned where a particular sentence should appear within the document, or whether a particular paragraph should be divided into two separate paragraphs. The Tribunal declines to deal with such matters which are immaterial to the provision that will be made. The Tribunal limits its decision to matters of substance.</p> <p>Agreed that fulltime 1:1 support is provided but there is a dispute between the parties as to how the EHCP should record the duration of the support. The LA proposes that it to state, “<i>The 1:1 support will be reviewed annually to access [child’s] progress and to ensure he is able to work towards independence</i>”. Parents seek EHCP to record that the 1:1 support would continue until age 18, but following further discussions now propose that the wording to be “<i>The 1:1 support will be wholly funded by the LA for the life of this EHCP, without the need for the school to apply through the ENF process</i>”</p> <p>The Tribunal concludes that the following wording reflects the legal obligation of the LA and Orders this wording in place of the alternatives proposed by the parties:” <b>The 1:1 support will continue for the duration of this EHCP</b>”.</p>	<p>Parents wish Section D to include a sentence that reads “<i>Child has persistent mental health needs, which do not appear to be improving</i>”. In the context of the information within the health and education sections, we consider this sentence superfluous and do not recommend its inclusion.</p> <p>Parents wish the words in bold to be added to the following paragraph: “<b><i>The clinical psychologist from PALMS reported that child is leading an isolated life and has very little social interaction outside of the family. She also stated that parents are in urgent need of support and need some respite.</i></b>”</p> <p>Respite for parents may be desirable but goes beyond the scope of child’s social care needs. We decline to make recommendations in respect of these additions.</p> <p>Social care provision: parents wish the following provision: “<i>Child will be provided with a mentor for two hours per week to help him access leisurely pursuits and help improve his self-esteem and confidence.</i>”</p> <p>The LA wishes to provide a direct payment at an hourly rate for the mentor to be arranged directly by parents. We prefer the LA’s formulation of the provision.</p> <p><b>ORDER</b></p> <p>Sections B and Section F should be amended in accordance with the attached Appendix.</p> <p><b>RECOMENDATIONS</b></p> <p>Sections C, D, G and H should be amended in accordance with the attached Appendix.</p>
24.	<b>NO</b>	Section B, Section F Section I Section D Section H1/H2	<p><b>Background</b></p> <p>Six and a half-year-old with a diagnosis of Autistic Spectrum Disorder (“ASD”). Skills are significantly delayed in all areas of development, particularly in the areas of communication and learning to learn skills. Engages in behaviours that challenge and put self and others at risk of injury (and in fact has on a number of occasions bitten, scratched and pinched others). Recently started to become destructive of the fabric of family home and has started to lash out when frustrated. Sleeps badly and is often awake for long periods at night. Has been taking medication for insomnia for some years. Exhibits what is described as “pica” behaviour, putting inanimate objects and other things in mouth such as glue,</p>	<p>Progress had not been significant and ability to communicate had regressed between 2015 and 2018</p> <p>We concluded that ABA is required with a resulting programme, as proposed by his parents.</p> <p><b>The working document and our conclusions on the parts of it that were not agreed</b></p> <p><b>Section K</b></p> <p>All of the relevant reports need to be appended to EHC plan and referred to specifically in section K.</p> <p><b>Section B</b></p> <p>The words that should start section B are these: “[Child] a six and a half-year-old with a diagnosis of Autistic Spectrum Disorder. [Child’s] skills are significantly delayed in all areas of development, particularly in the areas of communication and learning</p>

		<p>dirt, and own faeces. Recently started smearing faeces on the walls of home.</p> <p>Two previous school placements ended because the setting could not meet complex needs: a special unit attached to a mainstream school for children with ASD. It followed an eclectic approach in the teaching of its pupils, applying elements of the SCERTS (Social Communication, Emotional Regulation and Transactional Support) model and TEACCH (Treatment and Education of Autistic and related Communication Handicapped Children) model. The second placement was an independent special school dedicated to meeting the needs of ASD children. It was inspected in the first half of 2018 by Ofsted and was graded an outstanding school. It also applied elements of SCERTS.</p> <p>LA's case in regard to the effectiveness of the two placements that it "disagrees that the SCERTS/TEACCH approaches have been ineffective".</p> <p>Not subsequently placed in a school because parents opposed to starting at another school and that placement breaking down.</p> <p>Issues for determination</p> <p>By the end of the hearing, the issues were "live" Whether [child] had in fact made any progress while he was a pupil at independent School. Whether [child] needs ABA as opposed to the LA's proposed model of provision. Class size?4 What occupational therapy ("OT") needs to be provided at school. Suitability of school of parental preference</p> <p>Costs of proposed placements</p> <p>Social care needs what provision is required to meet</p>	<p>to learn. Does not consistently use PECS or verbal language to get needs met and engages in behaviours that challenge and put self and others at risk of injury. Ongoing behavioural challenges both at night and during the day."</p> <p>"[Child] has made very slow progress in all areas over time."</p> <p><b>Section F</b></p> <p>"Also requires input from a wide range of professionals on a regular basis to address skill deficits across developmental areas. This should include input from Speech and Language Therapists, Occupational Therapists, and highly trained and experienced qualified teachers."</p> <p>"[child] needs small class sizes."</p> <p>"[child] needs daily opportunities to participate in activities using principles of ABA with a key adult."</p> <p><b>Section I</b></p> <p>We concluded for the reasons stated above that [child] should receive ABA and that he should do so at School. Therefore, the content of section I of EHC plan should be this:</p> <p>"[named} School, a non-maintained special school".</p> <p><b>Section D</b></p> <p>We concluded the following words should be in section D of EHC plan, and we therefore recommend their inclusion:</p> <p>"[Child] has a diagnosis of Autism Spectrum Disorder (ASD). .... presents with significant and severe communication difficulties and social interaction difficulties, significant attention and sensory difficulties and a history of motor mannerisms and repetitive behaviours. has difficulty sleeping. needs are complex and having a direct impact on the entirety of the family and its functioning. In the home setting, is constantly on the go. A very strong need for sensory input and behaviour is difficult to manage. [Child] frequently climbs onto the furniture, and in the garden moves between swinging, climbing and trampolining after a couple of minutes at each. Sometimes runs into the house, swings on the patio door, and runs out again. Requires constant supervision as shows limited awareness of danger or impulse control. Frequently pulls at his parents or attempts to bite them. Recently managed to open the front door and get out of the house.</p> <p>[Child] has significant sensory needs in the areas of movement (the vestibular system) and touch (the tactile and proprioceptive systems) and some auditory sensory processing difficulties. Has difficulty filtering information from the environment and can become overwhelmed by sensory stimulation and then can have difficulty calming down.</p>
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				<p>Has frequent meltdowns which are unpredictable, unmanageable and can last for up to an hour.</p> <p>[Child] presents as sensory seeking (making sounds, biting, continually moving, swinging, jumping). Also appears to avoid some sounds. Difficulty with sensory regulation is having a significant impact on ability to attend and engage in activities. Sensory difficulties can result in considerable difficulties regulating behaviour, so that excessive movement, reduction in verbal communication, refusal to cooperate with adult requests, and tantrums can result. These behaviours are also triggered when [Child] is not motivated to comply with adults' requests, or when required to transition from one activity or location to another.</p> <p>[Child] presents with behaviours including aggression, hyperactivity, irritability, features of anxiety and frequent temper tantrums. Is very hyperactive and it is difficult to monitor safety. Has no safety awareness.</p> <p>[Child] engages in behaviours that challenge which put self and others at risk of injury. Has ongoing behavioural challenges both at night and during the day.</p> <p>Sleep difficulties are severe and disruptive to self and the family and not responsive to first- and second-line interventions. Despite referral to the Evelina Sleep Clinic last year there is still no clear improvement."</p> <p><b>Section H generally</b></p> <p>We were hampered in our deliberations on the amount of care provision that [child] needs by the absence of a robust and relevant social care assessment of the needs of [Child], brother and parents. We therefore did the best we could to make recommendations for social care provision.</p> <p><b>Section H1</b></p> <p>Parents wanted support from a carer in the home or in the community for 3.5 hours per day during term time (from 3.30pm to 7pm) and 14 hours of such support at weekends. We accepted the latter as reasonable, and recommend that that is included in section H1. However, we thought that 3.5 hours per weekday was more than was reasonably required and (doing the best that we could on the evidence before us) concluded that an average of 2.5 hours per day of such support should be provided. We therefore recommend that parents are allocated 12.5 hours per week (i.e. for Monday to Friday) of support from a carer in the home or in the community during term times, to be used flexibly according to [child's] needs.</p> <p><b>Section H2</b></p> <p>As for section H2, we concluded that what was sought by parents was reasonable.</p>
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				<b>ORDER</b> 1. The appeal is allowed. 2. The education, health and care plan for child must be amended as described above. <b>RECOMMENDATIONS</b> It is recommended that sections D and H are amended as stated above.
25.	<b>YP</b>	<b>PtA</b>		
26.	<b>NO</b>	Section B Section F Section I Section D Section H1/H2	<b>Background</b> Autistic Spectrum Disorder (ASD). There were also concerns that child may have Dyspraxia and Dyslexia however, an assessment made on 2 October 2017 for Dyslexia did not find any associated needs at the time of the assessment. Currently on the pathway awaiting assessment for Attention Deficit Hyperactivity Disorder (ADHD). Accessed Speech and Language Therapy (SALT) from 2014 but has now been discharged from this service. However, there are still some concerns regarding his speech pronunciation. Often struggles making and maintaining friendships as does not understand turn taking and lacks empathy, which has led to child becoming isolated in school. A quiet child who prefers to play alongside others rather than with them. Extremely emotional and often does not understand social cues; because of this, needs support expressing self and supporting low self-esteem. <b>Issues</b> 1:1 support in before and after school clubs is requested by Parents and opposed by LA. The LA proposes that attendance at Fusions (CCC) provision, allowing him to socialise with children with similar problems who may be more understanding of his disability and to have supportive staff encouraging him to grow in his independence and confidence. The Parents wish to duplicate the needs set out in Section B into Section D. The LA does not agree to this proposal and has identified needs in Section B and for his social care needs they propose Fusions. The description of Special Educational Needs in Section B and the specification of the special educational provision required to meet those needs in Section F Whether there were other amendments indicated by the evidence before us which should be made to Section B and/or F	The appeal is dismissed. It is ordered that the LA amend the Education, Health and Care Plan of as follows: 1) In Section B, by replacing the existing wording in the EHC Plan with the LA's amendments set out in the attached final Working Document. 2) In Section F, by replacing the existing wording in the EHC Plan with the LA's amendments set out in the attached final Working Document. 3) In section F remove words ' <i>before and after school</i> ' <b>Recommendation</b> It is recommended that the LA amend the Education, Health and Care Plan as follows; 1) In Section D insert wording set out in bullet points on page 20 of the SB.

			<p><b>Health and Social Care Recommendations</b></p> <p>The parents requested the Tribunal make recommendations to amend Sections D and H1/H2 of the EHC Plan.</p> <p>At the start of the hearing it was identified that the outstanding issues to be considered in terms of Health and Social Care were 1:1 care at before and after school clubs.</p>	
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				<p>Social care needs: Parents did not request a recommendation but tribunal of its own volition noted that the description of needs was not up to date and made recommendations intended to update the section. Social care provision: parents sought a recommendation for 21 hours of respite care per week equating to three hours per day. "Although the distinction between provision for the child and provision for her parents is somewhat artificial, the tribunal's powers are to recommend social care provision for the child not for her parents. We recognise that the LA is entitled under established case law to take its finite resources into account...however once it has established that the child has a need for respite care, the LA is also required to take account of the personal circumstances of the family. We consider that risk of choking when eating and mouthing objects double incontinence, self-harming behaviours, delayed gross motor skills, delayed language, inability to concentrate are needs which a typically developing four year old child not have therefore it is not correct for the LA to view the assistance provided to her as childcare...the assistance is to meet the child's needs....the LA did not provide a clear rationale for its assessment that the family requires two hours of support in the evidence.</p> <p>Tribunal concluded that the LA should provide support under its more general duties under section 17 of the Children Act as it is part of safeguarding and promoting the welfare of the child. She needs to attend the appointments and it is very difficult for her family to take her there and to help her to remain calm when she is there. The child needs additional support.</p> <p>Recommendation for 15 hours per week of respite support in Section H1 which we consider will meet the child's needs in the weekday evenings and reflects the evidence of parents as to where they are unable to meet her needs. Further recommendation for 3 hours per week to be included in Section H2 to enable attendance at medical appointments.</p> <p>Did not recommend the provision requested by parents about access to weekend and holiday playschemes for children with complex needs. There was no evidence on such play schemes and no discussion of them in the social care assessments.</p> <p>We also considered whether the family might benefit from a family support worker. The outcome of Social Worker's January 2018 assessment was that the family was referred to a support worker, although this was expressed to be a time limited piece of work to enable mother to learn new parenting strategies. We consider that the support of a family worker would amount to practical assistance for the child in her home as it would be supporting her parents to meet her</p>
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				<p>needs. Therefore, we have included a recommendation for a family support worker in Section H1.</p> <p>The appeal is allowed.</p> <p>It is ordered that the LA amend the Education, Health and Care Plan as follows:</p> <p>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the final working document</p> <p>3) In Section I, by including the following wording:</p> <p>“From September 2019, a maintained special school placement.”</p> <p>It is recommended that the LA amend the Education, Health and Care Plan as follows;</p> <p>1) In Section C, Section G, Section D, Section H1 and Section H2, by replacing the existing wording in the EHC Plan with the amendments set out in the final working document</p>
3.	<b>No</b>	Section I Sections C, G D and H1/2	<p>Ten years old and was diagnosed with autism in December 2013, when aged five. Showed significant social anxiety and sensory processing differences.</p> <p>Until September 2018, on roll of maintained mainstream primary school with a resource provision for children who have an autistic spectrum disorder. Withdrawn in July 2018 and was electively home educated.</p> <p>For consideration at the hearing:</p> <p>It was established at the hearing that parent was not in fact seeking recommendations in respect of health or care although in the application, parent had ticked the boxes indicating disagreement with what the EHC Plan said about health and social care and subsequent directions had been made by the Tribunal.</p> <p>Child is a disabled child under the Chronically Sick and Disabled Persons’ Act 1970. A social care assessment was directed by the Tribunal for reasons set out.</p> <p>Although the EHC Plan was insubstantial, lacking in detail of the description of child’s special educational needs and lacked specificity in relation to provision to meet them, parent was not disputing Sections B and F.</p>	<p>Parent’s appeal was against the school to be named in Section I, seeking Special Academy to be named. This is an academy for children with severe learning difficulties. The costs of the provision were not included in the written evidence. Although the working document described a mainstream setting in Section I, the LA was naming Primary School, which child previously attended before being removed from school. They had proposed naming another mainstream Primary School, close to child’s home, but parent had objected to child attending that school. The issue in dispute was whether the LA’s named school and the school of parental preference were suitable.</p> <p>Order</p> <p>The appeal against Section I is dismissed.</p> <p>Section I shall be amended to describe ‘a mainstream primary school’</p> <p>The Tribunal also considered whether it was appropriate to make a recommendation in relation to Social Care.</p>
4.	<b>Yes</b>	Sections B, F and I; D and H1/2	During the hearing the parties reached agreement on all issues as recorded in a signed amended working document.	Parties applied for an order by consent confirming that the LA was to amend EHC Plan to reflect the agreed amended Plan annexed.
5.	<b>Yes</b>	Sections B, F and I	Diagnoses of autism spectrum disorder, learning difficulties, sensory processing difficulties, a clinical anxiety disorder and	Sections B, F and I were agreed as per the final Working Document

		Sections D and H1/2	<p>non-epileptic seizures(stress-related). Presents with irritability and verbal aggression, which can occasionally become physical and has attacked family members. The situation at home is extremely difficult and deemed to be beyond parental control. Very controlling and possessive of mother, barely speaks to father and brother is afraid of both YP and the rules which are imposed on the family, so he stays out of the way as much as possible. Family life is geared as much as possible towards managing moods and behaviour. Very vulnerable and has engaged in inappropriate use of social media and meeting with strangers. There has been police intervention on occasion. Needs to be kept safe as is likely to be drawn into inappropriate relationships unless under close supervision.</p> <p>Learning difficulties are moderate, but can present as more able and mature. Requires specialist support to develop daily living skills. Also needs to learn skills of co-operative co-living as unlikely to live independently. Difficulty forming relationships and can be manipulative and controlling. The experts all agree that requires close supervision and support.</p> <p><b>Issues</b></p> <p>The Representatives confirmed that the only issues remaining in dispute are whether a 36-week or 52-week residential placement is required. The LA have agreed to name College in Section I and Sections B and F are mostly agreed. Section D (Social Care Needs) and Section H (Social Care Provision) remain in dispute.</p> <p>The LA submit that a 36-week residential placement, with the holidays to be spent at home, topped up with short break provision is appropriate. Parents and YP request a 52-week residential placement, with the option to return home for short visits.</p>	<p>H2 should state that a 52-week programme of education and social activities required. The appeal is allowed.</p> <p>It is ordered that LA amend the Education, Health and Care Plan in accordance with the draft working document with further amendments directed to be incorporated into the Final Plan: 1) Throughout v.3 WD all references to 36 weeks placement should be removed and replaced with 52 weeks placement.</p> <p>2) Page 19 - remove as no longer required - <i>“Short break provision needs to be continued - change to social care when appropriate.”</i></p> <p>3) Page 33 - left column - retain <i>“High monitoring and restrictions, requires 24-hour supervision and support to keep safe.”</i> Remove <i>“would benefit from a term time placement away from home and be given the opportunity to come on holidays (Social care report). Retain “will need to live and study within the same environment with a suitable peer group.”</i> Remove <i>“moment by moment.”</i></p> <p>4) Page 33 - right column - Remove all reference to <i>“short breaks”, “school”</i> and <i>“parents”</i>.</p> <p>5) Page 34 - retain both paragraphs in bold, removing the reference to 36 weeks in the second paragraph.</p> <p>6) The List of Advice and Information used in this plan (pages 35-36) should be updated.</p> <p>It is recommended that the LA amend the Education, Health and Care Plan as follows:</p> <p>7) In Section D, by replacing the existing wording in the EHC Plan with the amendments set out.</p> <p>8) In Section H2, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</p> <p>9) The LA should carry out a Carer’s Assessment under the Care Act 2014, within 3 months of the date of this decision and carry out an assessment under <b>Section 17ZD</b> of the Children Act 1989 alongside a Carer’s Assessment under the Care Act 2014, within 3 months of the date of this decision.</p>
6.	No	Section B, F and I Section D and H1./2	<p>During the course of the proceedings the parties were able to reach an agreement in respect of this appeal, the Tribunal having considered the proposed agreement agrees to make a Consent Order, pursuant to Rule 29 of the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (as amended).</p>	<p><b>ORDER BY CONSENT</b></p> <p>The local authority is to amend EHC plan Sections B, F and I and replacing them with the corresponding Sections in the final agreed working document</p> <p>It is recommended that the local authority amend the EHC plan by deleting the contents of Sections D and H1/H2 and replacing them with the corresponding Sections in the final agreed working document</p>
7.	No	Sections B, F and I	<p>8 years old and has diagnoses of Autism Spectrum Disorder (ASD), Pathological Demand Avoidance (PDA) and Avoidant Restrictive Food Intake Disorder (ARFID). Special</p>	<p>The appeal is allowed in part.</p> <p>It is ordered that the LA amend the Education, Health and Care Plan as follows:</p>

		Sections C and G	<p>educational needs associated with these diagnoses include difficulties with social interaction, language and communication and flexibility of thought. Sensory modulation difficulties, which compromise executive function, working memory, attention and concentration and which are closely related to high levels of anxiety.</p> <p>Currently in Year 3 at a mainstream primary school. Since transitioning from Key Stage 1, has only been attending school in the morning, as has not coped with the demands placed by full-time attendance.</p> <p>At the hearing:</p> <p>Parents appeal requests amendments to Sections B and F of the EHC Plan as well as a request for recommendations to be made in relation to Sections C and G.</p> <p>School of parental preference was an independent school, as their preferred school to be named in Section I. However, they subsequently came to the view that independent was not a suitable placement and requested that the current primary school be named in Section I.</p> <p>The parties had been able to come to a certain measure of agreement on the working document and there were further agreements made during the hearing. However, there were still some matters to be decided in relation to Sections B and F. The Parties indicated at the start of the hearing that Sections C and G had been agreed.</p>	<p>In Section B and F, by replacing the existing wording in the EHC Plan with the agreed amendments subject to the following further amendments:</p> <p>.... replace them with the following:</p> <p>“Full-time 1:1 TA support to ensure successful integration and attendance at school. This will include support coming into school in the morning and to provide support at the end of the morning for transition into Club or similarly in the afternoon sessions in school. Full-time 1:1 TA support will be for a minimum of 30 hours per week and will be carried out by someone who is trained by the relevant professionals. This full-time equivalent role can be provided by more than one TA. The full-time 1:1 TA is to help articulate and regulate his emotions, to assist with processing tasks and retaining/recalling the task demands, to help to focus and to mediate between the demands of the task and child’s perception of his ability to complete it. In addition, the 1:1 full-time TA will address negative thinking about ability to complete activities and tasks. School staff will write a detailed Transition Plan setting out the procedure and timescales for transitioning to full time school attendance.”</p> <p>Page 25: delete the following wording: “In order to deliver consistently the requirements of the advice of OT and Educational Psychology professionals, Child will be provided with a full time 1:1 teaching assistant who is trained by the relevant professionals to deliver consistently all the recommendations and advice required to meet Child’s needs arising from his severe and complex presentation..”</p> <p>3) In Section I, by consent, retain the existing wording</p> <p>It is recommended that LA amend the Education, Health and Care Plan as follows:</p> <p>1) In Section C, by replacing the existing wording in the EHC Plan with the amendments set out in the agreed final working document.</p> <p>2) In Section G, by replacing the existing wording in the EHC Plan with the agreed amendments set out in the attached final working document, with the following additional amendment:</p> <p>Delete the wording: “Child can access FTB either by professional or parental referral.”</p> <p>Replace it with: “Child can fast track access to .... either by professional or parental referral.”</p>
8.	No		<b>Settled by consent order</b>	<p><b>Order</b></p> <p>The appeal is allowed to the extent agreed by the parties.</p>
9.	YP	Sections B, F and I	<p>19 years old. Diagnosed with Lebers Congenital Amaurosis (LCA) and is registered as severely sight impaired. Severe learning disability. Both receptive and expressive language are severely delayed. Does not use language but will</p>	<p><b>Order</b></p> <p>The appeal is allowed.</p> <p>It is ordered that the LA amend the Education, Health and Care Plan as follows:</p>



		<p>Sections C, G D and H1/2</p> <p>sometimes verbalise to show feelings. Also communicates through body language and facial expressions. Diagnosis of LCA has been disputed and the consensus is currently that it is more likely to be Joubert Syndrome (a genetic disorder causing underdevelopment of part of the brain and visual impairment). One of its main features is poorly controlled or unsteady movement (ataxia). Overpronated feet and walks with Piedro boots and insoles. Able to walk short distances with assistance but uses a wheelchair for longer distances. Doubly incontinent. Throughout school history, educated in specialist schools and lives in two homes: with mother and stepfather and is also very close to father and spends alternate weekends and some of the school holidays with him at his home. Attends respite care. Left school in July 2018 and since then has been attending two day centres over five days of the week, funded by personal budget. Issues to be decided in Sections B, F and I:</p> <ul style="list-style-type: none"> <li>• The description of special educational needs in Section B and the special educational provision to meet those needs in Section F in the light of the amendments requested by the parents and the counter proposals by the LA. In each case, we also considered whether there were other amendments indicated by the evidence before us which should be made to either Section of the EHC Plan.</li> <li>• Whether requires a waking day curriculum and therefore a residential educational placement to make the provision required to meet the special educational needs. If we concluded does not, we then had to consider whether the LA's proposed placement is suitable and could adequately make the special educational provision that is required. If we concluded it is, we then had to consider the comparative costs of the two placements.</li> </ul> <p>Requested the Tribunal make recommendations to amend both the social care and health sections of the EHC Plan. The recommendations sought were dependent on what the Tribunal was to decide in relation to whether requires a waking day curriculum. If the Tribunal was to decide this point in the LA's favour, then they wanted the social care provision to allow to live as independently as possible. Parent had expressed in her appeal that if the Tribunal was to decide that day college placement was appropriate, then she could no longer continue to meet care needs on a long-term basis, and she would be requesting support from Adult Social Care</p>	<p>1) In line with the agreements reached by the parties as set out in the working document subject to the following amendments to Sections B and F:</p> <ul style="list-style-type: none"> <li>• On page 15, delete the sentence "...is reluctant to engage in activities that do not interest [them]." Replace it with: "... Requires motivation to engage in activities that do not interest [them]"</li> <li>• On pages 24 and 25, move the following wording to Section B on page 22, under the heading "Special educational needs":        "..... is unable to take care of personal hygiene and appearance without support. Unable to independently wash, recognise which toiletries to use, how to shower or bathe, dress, maintain appearance such as having a shave or combing hair and staying clean due to his lack of understanding to co-ordinate personal hygiene tasks.        ..... is unable to dress himself appropriately because he does not understand how to dress for the weather e.g., he does not understand that he needs to wear a scarf, jacket and gloves on a very cold day.        ..... is unable to manage and maintain nutrition. He is able to finger feed himself and drink from an open cup. .... is unable to prepare any meal or take care of his dietary intake without support from others.        ..... is unable to manage his toilet needs. .... is doubly incontinent, requires support to manage his continence and ensure that his skin stays intact."</li> </ul> <p>On page 23, the disputed wording discussed in paragraph 21 above is to remain unamended.</p> <p>On page 24, the sentence "Severe learning disability with autistic features" is to be moved to Section B.</p> <p>On page 33, delete the sentence "Training to be provided by psychology services using techniques they deem appropriate (EP C336)." Replace it with: "Training to be provided by psychology services (or similar professionals with the necessary experience and expertise in applying and teaching behavioural learning techniques), using techniques they deem appropriate (EP C336)."</p> <p>On pages 34, 35 and 37, the disputed wording discussed in paragraphs 27, 29 and 31 above is to remain unamended.</p> <p>All references in Section F to a waking day curriculum are to remain unamended.</p> <p>On page 40, the wording "Behaviour management plan" and its associated outcome should be moved to Section F, under the heading "Social and emotional well-being and behaviour".</p> <p>Throughout Section F, the left-hand column which repeats .....’s special educational needs should be amended to mirror the changes made to Section B.</p>
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			to find a full-time residential placement. During the course of the hearing, it was agreed that areas of text be moved from Section D to Section B. There was a request for the Tribunal to decide whether the paragraph beginning “Able to behave calmly...” should move from Section G to Section F.	<p>2) In Section I, by replacing the existing wording in the EHC Plan with the following:  “A 37-week residential special Post 16 Institution placement.”  It is recommended that:</p> <p>1) LA is to carry out a social care assessment of YP’s transition to adult services within four weeks of the date of this decision.  2) LA is to provide a copy of the carer’s assessment report from December 2018 to parent within two weeks of the date of this decision.  3) In the light of that social care assessment report and the carer’s assessment report, Section H1 of EHC Plan should be updated and amended as agreed by the parties.</p>
10.	No	Sections B, F and I  Section H	<p>9 years old with multiple diagnoses which include a chromosomal abnormality Wp11:4, autistic spectrum disorder (ASD) and speech and language difficulties. It is agreed that there are notable sensory needs.</p> <p><b>Evidence</b>  Issues remain in section F of the Plan as highlighted in the WD. In addition, there was dispute as to whether there should be a recommendation for 2:1 carer assistance for outings in the community in section H1. There was dispute as to the school to be named in section I – current placement being proposed by the LA but said by AS not to be suitable, and B being proposed by AS but said by the LA to be too expensive albeit accepted as being suitable. Although there are some references in the papers to B not being approved under section 41 of CAFA, it was agreed in the hearing that it is approved</p>	<p>We first consider the principles to be applied to SALT provision. Communication skills are at the level of a much younger child. It is agreed that functional skills are the key target of interventions. There is no dispute that SALT input is required to train and support staff and to review C’s provision and devise programmes. Parental witness accepts that we cannot order assessments, still less provision which may or may not be the outcome of assessment yet to take place. It is our conclusion on both the written evidence and the oral evidence and also the experience of this tribunal, that the nature of C’s needs requires total communication and input throughout the day as opportunity and need arise, and that the SALT role is to provide advice and training to those with direct contact with him during the school day.</p> <p>Upon the basis of our conclusion it follows that we do not order any of the disputed parts on page 23/44, nor the first sentence on page 24/44 (albeit we note and approve that training by a SALT is required, and is already provided for on page 22/44).</p> <p>The principles of necessary OT provision: It is the evidence of [OT] but also agreed in general terms in the oral evidence that an OT should be involved in the multi disciplinary team involved in dealing with sensory issues and consequent challenging behaviour. Whether the OT is the lead or not does not appear of great importance to us, because the nature of an MDT is a collaborative group. We note the view that the OT would be the lead on some aspects but we do not feel it is necessary to spell out roles or hierarchy within the MDT. We note (and agree) that it is in effect agreed that there should be sensory integration therapy (SIT). ST told us that current placement have already commissioned such. It is our conclusion that sensory issues are a barrier, and probably the major barrier, to accessing education, and we do not consider that any witness or evidence indicated a contrary view. [witness 1] expressly advises direct OT. There is no contrary evidence. Witness readily accepted that her specialist area did not include sensory issues. We find the report of Witness 1 thorough,</p>

				<p>clear and well-reasoned and we find no reason to reject its overall analysis of required provision. We do not reject the evidence that [provider] advice has been useful, but it is not appropriate to refer to a specific provider in the Plan and we consider that [another witness] is correct to state that it is important that those involved in the MDT and development of sensory strategies should have accredited professional status. Applying our foregoing analysis, we order as follows.</p> <p>On page 28/44 the 4th paragraph shall commence "Occupational therapist to work as part of the multidisciplinary team ..(as before)".</p> <p>The final paragraph should include reference to SIT and read "Staff to be advised by an Occupational Therapist with sensory integration training on recognising...(as before)". Similarly the 1st paragraph on page 29 shall read "Occupational Therapist with sensory integration training to develop...(as before)". The 2nd paragraph on page 30/44 shall read "Advice and monitoring from a qualified Occupational Therapist to address...(as before)". The 3rd paragraph was agreed to be without the parent's suggested insertion. The final paragraph was agreed to read better "oversight by" not "oversight with".</p> <p>The final paragraph on page 31/44 shall be included but with revision to allow some flexibility to accord with the detail thought necessary by the therapist at the time – "Weekly direct Occupational Therapy incorporating a sensory integration approach where appropriate and with a sensory integration room available, flexibly delivered within a total of 45 minutes per week". The 1st paragraph on page 32/44 shall be included as suggested: the report of Witness 1 supports such and there is no contrary evidence. The final sentence of the 2nd paragraph shall be included as suggested: it requires quantification and there is no evidence other than that of Witness 1. The 3rd paragraph is also supported by Witness 1 and is objectively appropriate and shall be inserted save that there shall be added after "training" the words "of educational staff".</p> <p>We consider the final paragraph of page 32/44 and the 1st paragraph on page 33/44 together. We cannot order an obligation upon child's mother. It is self-evidently sensible to have good home-school liaison. It is similarly sensible and necessary to have an OT report to inform annual review. We order "The Occupational Therapist shall liaise closely with home and school and shall provide an annual report. A total of 6 hours per annum shall be allowed".</p> <p>The social workers agree that there should be 2:1 support in the community. We have no information as to why in such context the LA panel considering the issue ordered a further assessment and why such assessment might be different to the existing analysis of social workers. The hours suggested are modest and in our view reasonable.</p>
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				<p>We recommend that there should be community support of 7 hours 2:1 support per week in term time and 15 hours of 2:1 support per week in school holidays in addition to the support currently provided at home of 18 hours 1:1 in term time and 21 hours 1:1 in school holidays.</p> <p>We now consider the issue of placement. The first issue is whether current placement is a suitable school. We have considered the issue of progress. The LA and witness suggested that child had made progress. However, the limited data provided by current placement indicated that child has not made the minimal progress otherwise expected of a pupil with his complex needs across all areas of the curriculum. In some areas of the curriculum child has regressed. As an expert tribunal we were concerned at both the lack of detailed data and the LA's failure and (at least initially) a witness's failure to interpret what was available correctly. We were impressed by the evidence of [witness], who was clear and well-reasoned and did not make suggestions outside of his area of expertise. He explained the lack of progress (indeed a regression in age-related terms although he did not describe it as such). We also found it concerning that the LA and witness suggested that behaviour incidents had been less, rather than there being a similar number albeit less serious ones requiring physical intervention. Such concerns led us to doubt whether the full nature and impact of child's difficulties was understood. The use of a buggy/wheelchair for restraint of behaviour as opposed to being for child's physical safety because of mobility issues is a practice requiring explanation. As described being able to take child out without such restraints and school would not use such restraints, never mind use them routinely for any transitions. We do not consider that we received any satisfactory explanation from the LA or [witness] and it appears that such practice had become the "norm" for ease of management rather than there being continued attempts to address the sensory issues which gave rise to challenging or disruptive behaviour.</p> <p>We have already indicated the requirement for significant expert therapy input. It is not disputed that there are important sensory issues. In that context the physical environment and the experience of school staff are important. We refer to the "opinion" section of [witness]'s report. We heard no evidence to contradict such analysis and we accept it. Witness 1 gave a similar analysis in her report from her perspective as an OT. The undoubtedly caring nature of staff at current placement is not a substitute for an appropriate environment or the experience and skills required for child's very notable sensory needs. For the foregoing reasons we conclude that current placement is not a suitable placement. We agree with [witness] that current placement a</p>
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				<p>good school but not appropriate for child. It is not disputed that B is suitable. The issue of relative costs does not arise.</p> <p><b>Order</b></p> <p>The appeal is allowed. The EHC Plan shall be in the terms set out in preceding paragraphs.</p> <p>It is recommended that:</p> <p>We recommend that there should be community support of 7 hours 2:1 support per week in term time and 15 hours of 2:1 support per week in school holidays in addition to the support currently provided at home of 18 hours 1:1 in term time and 21 hours 1:1 in school holidays.</p>
11.	YP	<p>Sections B and F</p> <p>Section G</p>	<p>17 years old bringing the case with the help of parents. Has severe social anxiety resulting in selective mutism, depression, diabetes, spina bifida, neuropathic bowel and bladder with colostomy and urostomy and bilateral equinovarus deformity.</p> <p>Despite selective mutism, assessed by a doctor as having capacity to conduct litigation and Yp's views were obtained following Dr's capacity assessment. Also provided a written statement. Attended a Level 2 animal care course at ("the college"). Not currently at the college due to anxiety but wishes to return to the college to restart the Level 2 course.</p> <p>There were no outstanding issues to resolve in Section B and in Section F the only outstanding issue was what role a learning support assistant would play. During the course of the hearing it was identified that the EHCP should include transitional arrangements due to the length of time YP has been out of college.</p> <p>2. Section G – Health was also at issue and the role PA should play in assisting YP at college. (This issue was resolved during the hearing).</p>	<p>Parties managed to agree section B and most of section F.</p> <p>The only issue outstanding in Section F was the role of the learning assistant and what transition was required. It was already agreed before the hearing that YP required "access to trained learning support staff in order to facilitate learning and assessment in the classroom". The LA, following consultation suggested that Section F of the EHCP should state that; <i>"College will follow the proposed transition plan appendix to Section K"</i>.</p> <p>The proposed LA transition plan was devised in consultation with consultant psychiatrist and OT as; <i>"Access to Level 1 training course for the remaining 15 weeks of term, YP (with emotional support from mum sitting next to her will come into college for 1-2 half days in the first week, with the expectation that this will increase to 2-3 half days per week – during the half term from February 2019-April 2019. Following return from the Spring break YP (with emotional support from mum in the same room but gradually increasing distance from YP) will access college for 2-3 half days per week. During which YP will start to work with her LSA developing communication strategies. Following return from the May break (with emotional support from mum and with trials of mum outside the room) YP will continue this work at a pace to be led by YP but with the expected outcome that by June 2019 verbal or nonverbal methods of communication will have been successfully identified.</i></p> <p><i>Throughout this transition YP needs to work towards building her tolerance of time where she is able to remain in the classroom should she become distressed. Initially, YP will be expected to remain in the classroom, for up to 5 minutes when distressed, with prompting from mum to use her anxiety management skills. Thereafter should YP remain distressed she may withdraw from the classroom with support from mum and her LSA. The LSA can then support mum and YP to reinforce the anxiety management strategies with a view to YP returning to the classroom within 10 minutes"</i>.</p>

				<p>Parents did not agree with putting in timescales as they pointed out that it can take YP years to get to know someone and mother did not believe that YP should remain in a classroom if distressed. However, both did agree with the principle of graded exposure to build resilience. Whilst tribunal noted parents' objections to this wording, the draft transition plan was based on consultant psychiatrist and OT's advice. Dr is an expert consultant psychiatrist in the area of child and adolescent mental health and has assessed and worked with YP. OT is also an expert and has also worked with YP, she is a mental health specialist and occupational therapist for CAMHS. Dr explained that the principles of graded exposure, which she set out in the draft transition plan, were the only known method to deal with YP's anxiety. We accepted her professional expert opinion. She also explained that there needs to be timings attached and the approach cannot be open ended although it can be reviewed depending on progress. This was her professional expert opinion which she is qualified to give as an expert specialising in children and adolescent mental health. Based on this we also found that a timescale should be provided. Dr explained that mother would still provide emotional support, but this approach will enable YP to build up resilience. Furthermore, we accepted that YP needs to be able to tolerate some communication (even if only in writing) to be able to access the Level 2 course in September 2019, based on [Mr B]'s evidence. He has knowledge of the course and how it needs to be assessed and taught and we accepted that YP needs to be able to engage in some level of communication (even if just in writing) to access the Level 2 course.</p> <p>YP made it clear that she wants her mother around for emotional support and personal care and this transitional plan does not remove her mother from personal care or from providing emotional support, but rather (based on Dr's evidence) is intended to give YP the chance to go out and do things more independently. This is what YP wants for the future. We also noted that YP stated her mother would not help her with work (just personal care and emotional support), and she does not feel she needs learning support. However, we found that she does need learning support (although she is bright and able to learn), it is more difficult for her to learn, to access the curriculum and to be assessed due to her selective mutism. If she had no learning difficulties, she would not require an EHCP. Her mother cannot provide the learning support as she is untrained and this is not what YP wants, but we accepted [Mr B]'s evidence that she does need to be supported by a learning support assistant due to her selective mutism. YP was concerned that a stranger would try to make her talk, but we found the transitional arrangements set out by the LA were designed to allow YP</p>
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				<p>to gain familiarity with the learning support assistant and the proposed wording allowed for communication to be in other formats such as writing.</p> <p>The tribunal accepted the LA's proposed amendment to Section F that "College will follow the proposed transition plan appended to Section K".</p> <p>During the hearing, the parties agreed YP's health needs in section G should state as follows; "Mum to provide personal care support to YP within College". There was no need for the Tribunal to make any recommendations around health as these were now all agreed.</p> <p><b>Order</b></p> <ol style="list-style-type: none"> <li>1. The appeal is allowed in part.</li> <li>2. The LA shall amend the EHCP to incorporate the amendment set out by the Tribunal above in respect of Sections F and the amendments already agreed by the parties to B and F using the working document process (as set out in working document 2).</li> </ol>
12.	<b>No</b>	Sections BG, F and I Sections D and H1/2	At the hearing, the parties applied for an order by consent on the basis of full agreement as recorded in the working document annexed.	<p><b>Conclusion</b></p> <p>The Tribunal observes that the parties' agreement has followed consideration during the period of the appeal and at the hearing which has afforded discussion between the parties and the opportunity to reflect on the specification now agreed. From the information submitted by the parties within the appeal bundle and noting the agreement reached the Tribunal concludes it appropriate to order amendment of the Plan in the terms they have agreed under Paragraph 29(1) Tribunal Procedure (First-Tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008.</p> <p><b>Order by consent</b></p> <p>LA is to amend Sections B, F and I of child's EHC Plan and to include the recommendations set out in Sections D and H in accordance with the draft Plan annexed.</p>
13.			<b>Consent order</b>	
14.	<b>YP by parent as alternative persons</b>	Sections B, F and I  Sections C and G	18 years old and has a diagnosis of Infantile Refsum Disease, which is a rare inherited metabolic disorder causing failure of the chemical processes within cells. It is a life-limiting condition which impacts upon physical and learning needs. YPs cognition and learning disabilities are exacerbated by auditory and visual impairments, and also physical condition which can cause pain and discomfort, restrict mobility and hand skills and affect general health. YP attended a mainstream maintained secondary school until 16, supported in that setting by a teaching assistant and a specialist communication partner (intervenor). From July	<p><b>Decision and Reasons re Waking Day Curriculum</b></p> <p>We have been asked to determine whether or not YP requires a waking day curriculum – i.e. educational provision which extends outside of normal curriculum hours. Our starting point is to consider what special educational provision is required, including any social care provision which is to be treated as special educational provision by operation of s21(5) of the Children and Families Act 2014. It is not disputed by the parties that YP requires intervention delivered by two skilled intervenors (one behind her for on-body signing and one in front to interpret her communicative responses) at all times and in all settings. The question for the Tribunal is whether or not this is</p>

		<p>2016, YP had a 3 day placement at an independent specialist college, together with a bespoke 2 day community package undertaken from home. On turning 18, it has been agreed between the parties that suitable accommodation local to the family home will be sourced for YP.</p> <p>The appeal concerns amendments parents wish to make to Sections B and F of the EHC plan. Section I was not at issue in this appeal. The outstanding issues identified at the start of the hearing which the Tribunal needed to decide included; a. Whether or not YP requires a waking-day curriculum; b. If so, whether any such waking day curriculum should extend to 52 weeks of the year; c. The nature and extent of physiotherapy provision; d. Whether that physiotherapy provision is educational or health provision and therefore whether it should be included in Section F or Section G of the EHC Plan; e. The nature and extent of the role of the MSI Teacher and Intervenor Mentor in overseeing and delivering provision.</p> <p><b>Health and Social Care Recommendations</b></p> <p>The parties had resolved all matters in respect of social care. In respect of Health the Tribunal was requested to make a recommendation that if the physiotherapy provision is not to be included in Section F of the EHC Plan, it should instead be included in Section G, and the delivery of that provision should be by a qualified physiotherapist.</p>	<p>educational provision or social care provision. We found the evidence of [witness 1] compelling in this respect, in that she had devised a specialised curriculum and was overseeing its delivery through a team of intervenors whose training she was also overseeing. We were also persuaded by the evidence of [witness 2] that there has been a clear distinction between term time curriculum activities and holidays where an absence of curriculum based, structured activities was noticeable. The LA do not appear to dispute that the MSI curriculum delivery is educational provision, and we agree. We note that the manner in which YP's interventions are provided does not alter outside normal college hours, she continues to require two intervenors. The LA through [witness 3] appear to accept this as the role of an intervenor will not change from one part of the day to another.</p> <p>The next question which we considered was whether any of the necessary special educational provision was outside of school/college hours? We note that it is not sufficient to say that social care provision to help a young person to generalise skills learnt at college out of college time becomes special educational provision. Generalising skills is not of itself enough, the question is whether the social care provision falls on the "education and training" side of the line or the "support" side of the line. In this case we found it difficult to establish the existence of a line. Indeed, both [witness 3 and 4] accepted that the two were intertwined and difficult to separate because it appeared to be generally accepted by all of the witnesses that YP was learning throughout her day. The fundamental issue for the LA appearing to be who should be footing the bill for her support. We found the evidence of [Witness 2] compelling, that it is apparent when YP does not receive structured support under an MSI curriculum then her anxieties increase, and negative behaviours manifest themselves. We consider this to be an important way for the Tribunal to take account of YP's views. It is clear from this that structured and continuous educational support accords with YP's views and wishes, which whilst not determinative are important for the Tribunal to take into account.</p> <p>On the basis of the above, we consider special educational provision outside normal college hours to be necessary, indeed we consider it essential, both for YP's continued learning - about which we accept [witness 1]'s evidence of her continuing ability to make progress and to develop further her engagement with activities and communication with the people around her- but we also consider it to be necessary for her social and emotional wellbeing as evidenced by [witness 2]. We see no evidence from the Local Authority that it can provide this level of support for continued learning and emotional wellbeing solely through social care outside of college hours, and we conclude that whilst</p>
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				<p>consistency and continuity are important elements for YP, these are not what lies at the heart of her need for a waking day curriculum. We accept the evidence of [5 witnesses and parents] that YP needs a 52 week waking day curriculum because it is only through this means that she is able to make sense of her environment, and that the nature of her condition means that there is not, and nor can there be, any 'downtime' where she is not learning. We conclude that to limit YP's access to an MSI curriculum to college hours, or term time only would be a significant deprivation of her ability to engage with and interpret the world around her, and we conclude that a 52 week waking day curriculum is necessary provision to meet her special educational needs.</p> <p><b>Transport</b></p> <p>[LA witness] stated that the LA's offer is of a £6000 one off payment, as opposed to the taxi arrangement which is in place at present. The LA accepted that if a waking day curriculum was decided upon by the Tribunal then it would follow that a more flexible transport arrangement would be necessary to enable delivery of the waking day curriculum. Having made this decision, the Tribunal therefore makes the consequential amendments to the EHC Plan in respect of transport as conceded by the LA.</p> <p><b>Physiotherapy</b></p> <p>[LA witness] gave evidence that the delivery of physiotherapy is currently provided through intervenors who are trained by the college's physiotherapist. [LA witness] accepted that the physiotherapist states that provision is required beyond term time, but she states that in her view it does not need to be provided by a qualified physiotherapist. [parent] gave oral evidence that the physio had attempted to train intervenors to deliver a programme which he had devised, but this was detrimental to YP, as the time spent training others compromised the time spent on direct intervention. [parent] stated that from her experience and understanding of what is effective for YP, there is a need for training to be provided to intervenors to deliver stretches, but a different programme to be delivered directly by a physiotherapist as YP changes very rapidly and presents physically very differently from one day to the next. She stated that by training intervenors this was ultimately ineffective as they do not have the experience or expertise to react and adapt provision and to deliver actual physiotherapy. Properly delivered physiotherapy is essential and integral to YP's wellbeing. Registered Learning Disability Nurse gave evidence that it is accepted that YP needs physiotherapy and support but only 'broad brush' until the LA have a full report as they need more advice whether they need a trained physiotherapist or whether provision can be delivered by</p>
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				<p>those trained by a physiotherapist. Correspondence from LA Clinical Lead Physiotherapist dated 8 February 2019 states that she will be assessing further but needs to get to know her better before writing any advice or guidance as she is complex and to write a report before carrying out full assessment would mean the report was incomplete and based upon assumptions. She states <i>'There are several Physiotherapy reports regarding [YP] written by other organisations, one is written by the physiotherapist from College who knows YP well. There is also a report written by EB. This is a private company, but EB has worked with children and adults with Learning Disabilities for several years and is highly skilled.'</i></p> <p>The report of Physiotherapist and Occupational Therapist recommends 4 blocks per year of up to 45 hours per block of intensive targeted multidisciplinary therapy interventions that provide for occupational engagement, plus 60 hours per year of Thera suit method sessions; weekly therapeutic horse riding; weekly hydrotherapy, therapist attendance at reviews and specialist equipment to support the programme.</p> <p>The Tribunal considered two issues in relation to physiotherapy. Firstly, what provision was necessary for YP and secondly whether that provision was educational in nature and therefore should be included in Section F, or whether it was health related and should be in Section G. The Tribunal was not presented with any contrary evidence by the LA to counter the evidence put forward.. The Tribunal notes that the LA Physiotherapist accepts the qualifications and experience of [witness 1] and we consider that the LA has had sufficient time to obtain its own reports. In the absence of any other information and based upon our own knowledge and expertise as an expert Tribunal we consider the recommendations to be reasonable. We were persuaded that physiotherapy for YP is educational, as her means of communication is through on-body signing with the assistance of an intervenor. This communication, and therefore her ability to learn and express her understanding is compromised if her physical condition is not maintained to the highest degree which her condition will allow. We note that her physiotherapy needs are stated in Section B and we conclude that the corresponding physiotherapy provision should be included in Section F. We make consequential amendments in Section F to reflect the proposed parental wording in respect of physiotherapy which we find to be reasonable and necessary. We have removed additional reference to Thera Suit provision as this is already included within the physiotherapy provision in the paragraph above, and we agree with the LA that based upon the evidence of the parents and the professionals, YP's needs can vary considerably and therefore</p>
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				<p>enabling the necessary provision to be adapted by the professional working with YP seems to us to be more appropriate. Accordingly, this proposed parental amendment is deleted.</p> <p><b>Other items not previously agreed in the Working Document</b></p> <p>The Tribunal was informed by the LA that it did not oppose the inclusion of wording in Section F in respect of assistive technology provision, but that it preferred a broader and less prescriptive approach. The report by MSI Lead Outreach Practitioner suggests that YP showed the capabilities to use Eye Gaze technology as one of her methods of communication. We have considered the proposed wording in the Working Document and we find the wording to be appropriate. Whilst we accept that it can be necessary to leave flexibility to accommodate a young person's changing needs, we also consider it necessary to attempt to specify and quantify provision in so far as is possible, and we consider that the proposed working document does so, and we adopt it accordingly.</p> <p>We find the remainder of the proposed parental amendments to be well supported through the professional reports, particularly of [witness 1], and we find no opposing evidence to refute them. We find the LA's case to be based on assertion, rather than experience of working with YP or young people with multi-sensory impairment. We therefore prefer [witness 1]'s evidence, find it to be reasonable and necessary and adopt the proposed amendments into the working document.</p> <p>The Tribunal heard from the parents that swimming is important for YP. The LA position was unclear, as they appear to have agreed to swimming on page 30 of the working document and then left 'weekly' as an unagreed amendment on page 31. We take this to have been left unagreed in error, but in any event the Tribunal find that YP needs swimming, to preserve her physical mobility and capacity to communicate and learn as much as possible. Accordingly, we approve the parental amendments in respect of swimming.</p> <p>Whilst the Tribunal does not have direct jurisdiction over Section E – Outcomes, the Tribunal can make changes to outcomes if these are as a direct consequence of changes to provision in Section F. In this case we accept that the proposed outcomes need to be altered but we find the outcomes as proposed by the parents to be aspirations rather than outcomes and therefore we direct the LA to revisit YP's outcomes in the light of the changes to the rest of her EHC Plan</p> <p><b>Health care needs and health provision (Sections C and G)</b></p> <p>The Tribunal was asked by the LA to consider whether physiotherapy should be included under health rather than education, but no additional evidence was presented. As set out above we conclude that a significant part of the physiotherapy provision for YP is educational in</p>
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				<p>nature and therefore should be included in Sections B and F not C and G. We have left the physiotherapy provision which we consider to be purely health related in that section. Accordingly, we make no recommendations for health care needs and health provision.</p> <p><b>Social care needs and social care provision (Sections D and H1/H2)</b> The Tribunal was asked by the LA to consider whether YP's needs could be met through a combination of special educational provision and social care. For the reasons set out above we do not find any evidence to support that this is the case, and accordingly we do not make any recommendations in respect of social care needs and social care provision, having concluded that a 24 hour, 52 week waking day curriculum is the educational provision which YP requires.</p> <p><b>Order</b> The appeal is allowed.</p> <ol style="list-style-type: none"> <li>1. It is ordered that the LA amend the Education, Health and Care Plan to replace the existing wording in the EHC Plan with the amendments set out in the attached final working document.</li> <li>2. The LA is to redraft the Outcomes as a consequence of the amendments to the EHC Plan referred to above.</li> <li>3. No recommendations are made in respect of Health or Social Care.</li> </ol>
15.	No	<p>Section B, F and I</p> <p>Sections C, D, G and H</p>	<p>The parties had discussed the contents of a working document ('WD') over the period of the appeal, and on the day of the hearing. They resolved almost all of the issues which had been in dispute. Following the hearing, a further version of the WD was received by the Tribunal. There remained two matters in Section F for the Tribunal's determination, together with that of child's placement. All issues relating to health and social care had been resolved by the time of the hearing, except for wording to go into Section C (with related changes to Section B), which was dependent on receipt of a letter from the consultant paediatrician. The LA having indicated that it would accept the consultant's advice, it was agreed by the Tribunal at the hearing that the finalisation of the WD (and this Decision) could await the consultant's letter. The version of the WD presented to the Tribunal following the hearing contains agreed amendments consequential upon the consultant's letter</p>	<p>There are two issues which remain in dispute in Section F. The first is whether 1:1 support should be specified. This is proposed by parents in three places in the WD, and said in her submissions that 'the parents would not settle for less, at least at the beginning'. The Tribunal is puzzled by this insistence, although the concern that the child would simply 'switch off' may indicate that there is a misunderstanding. 1:1 support is relevant where pupils with SEN need support in mainstream schools. From the Tribunal's own experience, it is not normally necessary in the very different setting of a special school. There, classes are small, and staff to pupil ratios high, and it is accepted that pupils will be helped to progress at their own pace. 1:1 support may indeed be provided by classroom staff for particular tasks, or at times when the pupil needs intensive attention, but that level of <i>dedicated</i> support has not been recommended by any professional in specialist provision. The Tribunal would not therefore be justified in ordering it in this case.</p> <p>The other matter apparently in dispute is wording relating to home/school liaison. This was not argued out, and the Tribunal is unclear why there is disagreement. A suitable form of wording will be ordered.</p> <p>The placement is the principal matter in dispute between the parties. Section 39(4) of the Act provides that an LA (and the Tribunal standing</p>

				<p>in its shoes) shall secure that the school requested by the parents shall be named in an EHCP, unless:</p> <p><i>(a) the school is unsuitable for the age, ability, aptitude or SEN, or</i></p> <p><i>(b) the attendance of the child would be incompatible with:</i></p> <p><i>i. ....</i></p> <p><i>ii. the efficient use of resources.</i></p> <p>The parents have made a request for Y, a small independent special school for pupils aged 11 -16. The LA opposes that request on the basis that to place the child there would not be compatible with the efficient use of resources. The LA also has concerns about the suitability for her SEN. The LA proposes a placement at a named maintained special school. Turning to the question of which of the settings can meet child's needs and make appropriate provision, the Tribunal considers LA placement first. The evidence was that this is an outstanding provision which has considerable experience in meeting the needs of its pupils, including those – such as the child - who have not been able to cope in mainstream education. Head was clear that her school can meet child's particular needs through a differentiated curriculum provided by its high staff to student ratio. It is agreed that child has severe learning difficulties; the pupils in the class into which she would go are cognitively at the same level, i.e Y2 level or below. The Tribunal gives greater weight to Head's evidence on this than the reported view of the head teacher last summer on a parental visit, no doubt without assessments in front of her.</p> <p>The X mainstream special school's close connection with LDCAMHS is significant in this case, as is regular OT support for the teaching staff. The EHC P requires that a sensory programme be integrated into her daily routine, and also that the teaching staff deliver therapy as recommended by LDCAMHS after Child has been assessed.</p> <p>On the evidence, Y school cannot offer either the close connection with LDCAMHS, nor (so far as OT is concerned) anything more than is available to all pupils on the NHS, so delivery by Y of both those elements of the EHCP may not be effective. It is important to note that the agreed WD does not provide for equine therapy; it features in the WD as an option which the LDCAMHS assessment may recommend. The Tribunal has other concerns about whether Y school is suitable for child's SEN. There are no other pupils there with severe learning difficulties, and Child would be placed with KS2 pupils. Furthermore, in its 2017 inspection, Ofsted criticised the lack of an adequate framework to assess consistently pupils' starting points or progress, and the quality of teaching. If Child is to make significant strides in the years of education remaining, needs as rigorous an academic regime</p>
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				<p>as is possible with the level of difficulties. School Y would not appear to be suitable to provide this.</p> <p>None of this implies any lack of respect for the school's use of horses in the education of its pupils and others, nor for the parents' conviction that Child would benefit from that. At present, however, there is no professional recommendation in that regard, and it therefore fails the test that the EHCP should set out only the provision which is <i>necessary</i>. It is not enough that the provision is 'nice to have'. For the Tribunal to order equine therapy, or other horse-related educational provision, would therefore constitute over-provision at the public expense and would be unlawful. It may well be that equine therapy is in due course recommended by LDCAMHS, and at that point further consideration should be given to whether it should be specified as educational, health or social care provision.</p> <p>Where the Tribunal decides that only one placement is suitable it is not necessary to go on to consider the comparative costs of the proposed placements. School X will be ordered.</p> <p><b>ORDER</b></p> <p>The LA is ordered to amend the EHCP by:-</p> <ol style="list-style-type: none"> <li>Making the amendments which have been agreed between the parties since the start of these proceedings, to Sections B,C,D,F,G and H;</li> <li>Excluding provision for 1:1 support wherever it is proposed in Section F;</li> <li>Inserting the following bullet point in paragraph 9 of Section F: '<i>a system of daily home/school communication will be set up with the class teacher</i>';</li> <li>Naming X, a maintained special school, in Section I.</li> </ol>
16.	No	Section I	<p>Y11 with 'well above average' literacy skills, and 'good' cognitive skills</p> <p>Prior to the hearing, the LA had raised in writing with the Tribunal, the contents of other sections of the EHCP which were not subject to appeal. Parent had expressed herself unwilling to seek permission to amend her grounds of appeal to encompass other sections of the EHCP, and repeated this at the hearing. However, the LA had prepared a working document ('WD'), showing a number of changes not only to education issues, but also health and social care matters. No application had been made to include this case within the National Trial. The contents of the EHCP were not discussed at the hearing due to lack of time, only half a day having been allowed. Following the hearing, a further version of the WD (v5) was received by the Tribunal. It did not show any</p>	<p>There are no issues which arise in relation to the LA's proposed changes to Section B (Educational Needs) and they do not appear to be in dispute. The same is true of Section C (Health Needs). In Section D (Social Care Needs), the only entry is not in respect of needs, but (wrongly) provision, and the LA has not proposed any amendments. Arguably it should have done so, as there is Social Care Provision which should appear in Section H and such provision should match needs identified in Section D.</p> <p>In Section F (Educational Provision), the LA has made a creditable attempt to tighten up the drafting. No difficulties appear to arise under Cognition and Learning provision, except that a provision which should clearly be Social Care under Section H – assessment for adult social care, with a suggestion of short breaks – is to be found in E2. Under SEMH there appears a provision which should probably be Health under Section G, (where it also appears), namely support from CAMHS</p>

			<p>amendments proposed by parent, but it also appeared that for the most part the LA's amendments were not in dispute. The Tribunal has considered the LA's proposed changes and will deal with those later in this Decision.</p> <p>Placement was the only issue on which parent appealed. Child has not been attending the school where he is on the roll – College since 11 June 2018. He is in Y11. Instead he has been attending for three days per week at a Project which offers outdoor activities in a farming environment. Project is alternative provision. His mother – with child's agreement - has requested a placement at an independent special day school for pupils with autistic spectrum disorders ('ASD'), aged between 8 and 19. The LA has shifted its position on placement twice during these proceedings</p>	<p>workers etc. Unlike certain other listed provision, this is not also allocated to 'Educational Setting'. Furthermore, and still under SEMH there is provision for Child to have activities outside college hours etc. There are a number of difficulties with this; first there appears to be no entry in Section B, for which this is a match, so is there a corresponding special educational need ('SEN') for this? Secondly, the LA brought no relevant evidence (and neither did parent) which might have helped the Tribunal (assuming it had the power to do so) determine whether this is educational or social care. Thirdly, it is unlawful to impose a duty on parents to make provision under an EHCP as proposed here.</p> <p>'Sensory and/or Physical' heading, there are two areas listed which appear more appropriate for Social Care in Section H, namely future accommodation and experiencing more time away from home. There is also mention of transition to adult health services, which would fit better under Section G. Section H at present contains no social care provision, which is surprising in view of the number of times Social Care is listed in Section F as- at the least – sharing responsibility for provision, and the Section would also benefit from review in the light of the Tribunal's comments above.</p> <p>Parent did not appeal against the contents of any Section other than I, and (whether on advice from SENDIASS or not is not known to the Tribunal) declined the opportunity to extend her grounds of appeal to the other Sections. This has deprived the Tribunal of the opportunity to resolve with any finality the matters set out in the preceding paragraphs. The Tribunal doubts that in those circumstances, it has the power to give effect to the changes which appear to have been agreed in the WD, or to make changes consequent upon the comments which it has made in the foregoing paragraphs. In relation to Sections C,D,G and H, it would only have the power to make recommendations rather than orders in any event, although the parties can of course agree changes. The most the Tribunal can do in all the circumstances is to commend its comments to the parties and invite them to discuss what can be agreed, with a view to inserting those agreed changes into the EHCP.</p> <p>Placement: Section 39(4) of the Act provides that LA (and the Tribunal standing in its shoes) shall secure that the school requested by the parents shall be named in an EHCP, unless:</p> <p><i>(a) the school is unsuitable for the age, ability, aptitude or SEN, or (b) the attendance of the child would be incompatible with: i. .... ii. the efficient use of resources.</i></p> <p>Parent has made a request for an independent special school placement. Child, who is of an age at which their views carry</p>
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				<p>considerable weight, supports that request. The LA opposes it on the basis that to place there would not be compatible with the efficient use of resources. The LA – ultimately - did not question the suitability but proposes maintained special school and then College later this year. Not accessing academic learning; not taking GCSEs this year. Of particular concern is that, no doubt due to [previous placement]’s lack of recognition of his SEN, which have only relatively recently been set out in an EHCP, has not attended school for nine months. Before that, spent time out of class being taught by teaching assistants. If to make a go of getting qualifications and progressing to adult independence, needs to make a fresh start in a placement which can make provision for learning in small groups and for emotional and mental health. It is not in dispute that parental preference is a suitable placement, and the Tribunal has no reason to take a different view. It offers a placement through to age 19, with scope to take GCSEs and accreditations at some point within that time period. Can that be matched by LA’s proposed placement, followed later this year by the College? The Tribunal has a number of concerns about this, which is only the LA’s latest proposal. While acknowledging that [LA witness] gave the best evidence he could in the circumstances, and without knowing Child, the Tribunal did not obtain a clear idea about what he would be doing. LA preference would, as [witness] said, need time to get to know Child. Unfortunately, there is no time; it is too late in the Tribunal’s view to start in a placement which may take the few months until due to transfer to the College, to make appropriate provision. LA preference cannot be a suitable placement in those circumstances. The Tribunal has also taken into account that there is no evidence on which it could conclude that Child is prepared to attend. Furthermore, the lack of detail provided by the College as to provision for Child, together with its statement that it is not clear if it would be able to meet Child’s SEMH, does not inspire confidence that it will be suitable to meet his SEN. Without the need for further analysis, the Tribunal has concluded that the LA’s latest proposal lacks credibility. This is perhaps unsurprising, as the LA shows signs of not having got to grips with the considerable needs over recent years. To have offered a placement only shortly before the hearing (itself delayed) and without consulting [parent] falls well short of good practice. In circumstances where the Tribunal has decided that only one placement is suitable to meet needs, it is not necessary to go on to consider the comparative costs of the proposed placements. Parental preference will be ordered.</p> <p>ORDER</p>
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				<p>Council is ordered to amend EHCP by naming Parental Preference School, an independent day special school, as the placement in Section I.</p> <p>Because of the comments made in this Decision, the Tribunal Office is directed to send a copy of it to the LA's Director of Children's Services.</p>
	No			<p>At the hearing, the parties reached an agreement and submitted a request for a consent order to be issued in the appeal by the Tribunal.</p> <p><b>It is ordered:</b></p> <p>By order made pursuant to rule 29(1) of the Tribunal Procedure Rules 2008 the appeal shall be concluded on request from the parties.</p>
18.		<p>Section B, F and I</p> <p>Sections C, G D and H1/2</p>	<p>8 years old and has a diagnosis of autism, severe learning difficulties, microcephaly and speech and language difficulties. The parties agree significant difficulties with learning, behaviour, speech, language and communication, social interaction, attention and concentration, sensory processing, independence and self-help skills. Behaviour is extremely challenging and difficult to manage, particularly at home. Experiences sleep difficulties. Currently attends X Maintained Special School, since September 2014. Currently in year 4.</p> <p>Section B: a. Whether a happy member of the class. b. Whether a description of "meltdowns" is required. c. Whether it is necessary to detail behaviour at home in order to inform educational staff.</p> <p>Section F: The description of the provision required to meet needs as set out in Section B. Specifically, it is requested that Section F includes the following: a. A specialist residential setting offering a waking day curriculum on a 52-week basis at an ASD specific school; b. A bespoke package of provision to meet needs relating to: i. cognition and learning, ii. communication and interaction, iii. Social, emotional and mental health, iv. Sensory and/or physical needs</p> <p><b>Section I – the placement:</b> Whether the parents' proposed school placement, an independent residential school and the LA's maintained special are both suitable and can meet Child's needs and make the special educational provision required.</p>	<p><b>Section B:</b> The Tribunal finds that there is no evidence that Child is a happy member of the class. The indications are that child constantly asks to go home, self-isolates from other children and suffers sensory issues to the extent that take themselves outside multiple times a day and walks for anything up to 20 minutes in order to self-regulate. The tribunal also finds that it is necessary to include a description of the "meltdowns" and behaviour that Child displays at home in order to inform the staff at school. This is because such incidents may well occur in the transfer to a new school and the school should be prepared to deal with such issues if they arise. The descriptions set out in the parental amendments at Section B are supported by the evidence of the teacher and others who referred to continuing meltdowns and by the evidence of the parents.</p> <p><b>Section F:</b> The tribunal finds that a waking day curriculum is required as provision to meet Child's needs. This is because the tribunal prefers the evidence of Educational Psychologist to that provided by the LA. The LA adduced no evidence of a similar discipline to contradict that provided. Furthermore, her evidence was consistent between her written and oral evidence, was not contradicted by any documentation in the bundle, and was supported by the evidence of teacher and the parents. We also accept the undisputed evidence of the parents that the respite carers, the LA ASD specialist, and CAMHS witness had all indicated their view that a waking day curriculum is required, and this supports the professional opinion of EP. The LA acknowledged that it had no competing evidence on this point. In any event, the LA was unable to explain how Child would access education in such a way that the objectives could be met without a waking day curriculum. The evidence is that in the environment of a special school within an ASD specific class Child has not made progress particularly with regard to communication and self-regulation. Even if one allows for the fact that the P-levels in 2016 were incorrectly calculated, there is no evidence</p>

		<p>If both placements are suitable, whether the LA can prove that an exception arises under the Children and Families Act 2014 s. 39(4) and that naming independent school would be incompatible with the efficient use of resources?</p> <p>What are the comparative costs of the two placements? If there is a costs discrepancy, are there any balancing advantages to be considered which would nevertheless justify a placement at school of parental preference?</p> <p><b>Health and Social Care Recommendations</b></p> <p>The parents requested the Tribunal make recommendations to amend Sections C, D, G, H1/H2 of the EHC Plan. By the date of the hearing the following issues remained:</p> <p><b>Health:</b> Parents request the following recommendation is made in respect of health needs in Section C:</p> <ul style="list-style-type: none"> <li>a) To reflect the underlying cause of child's condition and its rarity;</li> <li>b) To reflect the experience of late autistic regression due to this underlying condition;</li> <li>c) To reflect that the behavioural difficulties are part of this underlying disorder;</li> <li>d) To specify that the behavioural difficulties have led to the introduction of anti-psychotic medication</li> </ul> <p>The parents requested recommendation of health provision in Section G:</p> <ul style="list-style-type: none"> <li>a) A description of provision including support and medication required to meet health needs;</li> </ul> <p><b>Issues for determination concerning social care:</b></p> <p>Parents submit that the description of social care needs in Section D is deficient because it needs to update child's presentation in the home and community. The parents seek the following recommendation:</p> <ul style="list-style-type: none"> <li>a. Further description of child's presentation at home;</li> <li>b. Reference to obsessive behaviours;</li> <li>c. Reference to limiting the amount of time sister in the family home;</li> <li>d. Reference to inability to generalise skills and strategies into other contexts;</li> </ul> <p>The parents request the following recommendations for social care provisions in Section H1 and H2:</p> <ul style="list-style-type: none"> <li>e. 52-week residential care</li> </ul>	<p>that they were miscalculated in 2015 and there is little or no difference between attainment levels in 2015 and now.</p> <p>Access to education is significantly obstructed by sensory needs. Leaves the building regularly during the day in order to pace up and down. Such interruptions will inevitably reduce access to education. No explanation is given by the LA as to how that missed education would be provided. By contrast, the witnesses for the parents argue that it could be provided through a waking day curriculum where strategies and programmes to enable Child to communicate and to manage sensory needs are continued consistently across the waking day. Communication and sensory needs are the main barriers to learning. That is something upon which both the parties agree and which is confirmed by the evidence.</p> <p>The LA implied in its arguments and evidence that there had been improvement in school presentation because meltdowns were less regular, less severe and of shorter duration. The implication is that the school has found ways of addressing child's communication and sensory needs and thus the behaviour has moderated. That is not however the conclusion that we draw. The evidence from the parents (undisputed by the local authority) is that behaviour at home has got worse over the same timescale. It was acknowledged by the witnesses at the hearing that "meltdowns" at home are often the result of the inability of the child to manage the environment at school. Furthermore, child has not made progress in developing a means of communicating the reasons for distress, nor have sensory problems been addressed. Continues to manage (but not resolve them) them by pacing. At school does this by leaving the building several times a day, and at home he insists on going to Sainsbury's to do the same several times a day and evening.</p> <p>The LA asserts that information will be provided to therapists who can advise on strategies. It is suggested that it is sufficient for staff to discuss presentation with speech and language therapists, occupational therapists and educational psychologists, rather than that child is observed first-hand and assessed by such specialists. No evidence was provided by such specialists to support such an argument. The tribunal prefers the evidence of [parents professional witnesses] on this issue. This is because the approach put forward by the LA is the approach that has been available at current placement since 2014, but it has not addressed communication and sensory needs, nor has child made progress (as detailed above). The evidence of [parents professional witnesses] is cogent and there is no argument being put forward to dispute that their approach would work. We therefore also conclude that the therapeutic input from speech and</p>
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			<p>f. At least 1:1 support at all times to keep child and carers safe.</p>	<p>language, occupational therapy and psychology working intensively and directly with school and residential staff contained within the amendments proposed by the parents to section F are also required and the working document has been amended accordingly.</p> <p><b>Educational placement (Section I)</b></p> <p>The LA does not seek to argue that current placement can provide a waking day curriculum as it does not believe that child needs a waking day curriculum and instead argues that the needs described by professionals were care needs. As such the LA argues that the provision in the residential part of school of parental preference could be replicated in a foster care placement. The tribunal does not agree. This is because the evidence from the social care witness specifically stated that no placement had yet been identified, that the LA would not support a placement which included carers trained to provide restraint, and it had not anticipated providing Makaton-trained carers. There was no evidence that this type of proposal would provide a waking day curriculum and even from the point of view of a care placement, the tribunal could not accept any assurances from [LA witness] once it became apparent that these would rely upon risk assessments and specifications that she had not seen. Furthermore, the need for continuity of staff and the provision to promote communication and to address child's sensory needs have not been addressed by the LA. They have also not identified how the therapeutic input required would be provided in a foster home. The LA acknowledged that it did not have information from health to show that the additional therapeutic input would be available.</p> <p>There are other reasons why the tribunal was not satisfied that current placement could meet needs, but since it is clear that the LA cannot provide a waking day curriculum at even in conjunction with a foster placement, it is not necessary to provide further detail. The LA does not dispute that school of parental preference can meet needs as identified in the working document as amended. The tribunal also agrees. It does so based on the outstanding OFSTED, the prospectus and the written and oral evidence indicating that the school and [witness] believed that the school can meet needs. [witness]'s evidence was clear and consistent between the written and oral evidence and supported by other evidence.</p> <p>The tribunal therefore names school of parental preference in section I. The placement will be identified as a residential placement on a 52-week basis because child requires a waking day curriculum. We had no evidence other than on the basis of a 52-week placement, and the LA did not seek to argue for any other approach.</p> <p><b>Health care needs and health provision (Sections C and G)</b></p>
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				<p>No evidence was submitted separately by health, nor did any witness attend to give oral evidence. The only evidence available to the tribunal to deal with the remaining issues in sections C and G are those set out in the bundle. The amendments in sections C and G refer only to the reports of the consultant paediatric neurologist and a Child and Adolescent Psychiatrist. No evidence or any submissions were provided to contradict this evidence.</p> <p>The majority of the amendments are taken verbatim from those reports and provide a description of his diagnosis and the effect of that diagnosis. For that reason, the tribunal recommends that the amendments identified in bold type in sections C and G are made to the working document. We include within this the amendment relating to medication in section G. We appreciate that this is not from any report but the contents are as described in the documentation we have seen and there is no evidence to contradict it.</p> <p>We have also added a reference to the advice that child presentation may get worse, as we believe that this is an important factor to be considered when planning input and considering outcomes.</p> <p><b>Social care needs and social care provision (Sections D and H1/H2)</b></p> <p>We read with care the evidence submitted by the LA with regard to social care and noted how this only took into account his care needs and was predicated on supporting him in the home setting. [witness] did of course attend on behalf of the LA, but she had not met child, had not visited the home, and did not give any evidence on these issues. There does not appear to be any benefit in including the LA amendment relating to the propensity to have meltdowns at home rather than at school. The agreed text makes it clear that the meltdowns are especially in the home and community settings. It is however worthwhile providing a description of examples of the obsessional and repetitive behaviours and routines in order to inform residential staff within School. Similarly, it is worth highlighting the effect of circumstances which interfere with the ability to carry out these behaviours. We are not convinced that it is necessary for details of the safety plan at home to be provided, since child will be in a specialist residential unit which will carry out its own risk assessment and risk planning. We have made amendments to the working document to reflect these decisions and recommend that those amendments are made to section D.</p> <p>In relation to the provision in section H we recommend that the wording provided by the parents in relation to residential care be adopted for the reasons identified above.</p>
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				<p>The parties ask us also to decide on the wording in the final paragraph of section H. Parties are effectively saying the same thing in different ways, although the parents are asking for the inclusion of the word “residential”. We heard evidence that child had been in respite care and that the respite carers had concluded that child needed to be in residential care. That is the only evidence we have regarding presentation in a residential placement. In the circumstances, we do not think it is appropriate to amend the document to include the word “residential” because we have no evidence as to what his behaviour would be like in the residential accommodation at School. We do however recommend that the amendments in italics by the local authority are used in addition to the agreed text because it is the most concise way of providing the required information.</p> <p>The working document included a dispute over the need for 1:1. We have included the need for continuing 1:1 because will require constant supervision, due to the risks arising from sensory needs. This is apparent from the evidence of [witnesses] as detailed above.</p> <p>For these reasons, the tribunal allows the appeal in relation to sections B, F and I and directs the LA to issue the EHCP in the form of the amended working document annexed to this order. The tribunal also makes the recommendations identified above.</p> <p><b>Order</b></p> <p>The appeal is allowed.</p> <p>It is ordered that County Council amend the Education, Health and Care Plan as follows:</p> <ol style="list-style-type: none"> <li>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>3) In Section I, by replacing the existing wording with the following: “A 52-week per year residential placement in an independent special school. [name of school]”</li> </ol> <p>It is recommended that the LA amend the Education, Health and Care Plan of child as follows;</p> <ol style="list-style-type: none"> <li>1) In Section C, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>2) In Section G, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>3) In Section D, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> <li>4) In Section H1, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</li> </ol>
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				5) In Section H2, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document
19.	No	Section G	<p>Child is 10 years old. Diagnosed with autism just before entered school. The next year, diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Lives at home with parents and younger sister. Has an amended EHC Plan issued on 6 March 2017. An annual review of the Plan was held on 2 February 2018 following which parents asked the LA to amend the Plan. The review was concluded on 21 June 2018 when the LA decided to maintain the EHC Plan in its current form. Child attends a non-maintained special school for pupils with speech, language and communication needs. The agreed parts of Part B of the plan highlight that has average to low average cognitive ability but is working below age related expectations in English and Maths. Has a spiky cognitive profile and can display high levels of anxiety, particularly with regard to reading. Motivated by own interests which can appear obsessive. Has attention and listening difficulties linked to diagnosis of ADHD and even in a low stimulus environment will need a high level of support, reassurance and encouragement to maintain concentration and focus. This is exacerbated if the child finds a task challenging, leading to fidgety and sensory seeking behaviour.</p> <p>Parents appealed against the LA's refusal to amend the plan on the grounds that a range of amendments were required to Parts B and F of the Plan. There was some helpful compromise in relation to these amendments and by the time of the hearing the issues had been limited in the working document which are in summary:</p> <ul style="list-style-type: none"> <li>a. the severity of dysregulation,</li> <li>b. the inclusion of statements from the report of [a doctor] concerning diagnosis, and the impact of the various symptoms on access to education.</li> <li>c. the nature and extent of the therapeutic interventions required.</li> </ul>	<p>AS TO PART B</p> <p>The words 'severe and extreme' are otiose because full descriptions of functioning are given later in Part B which offer an account of the functioning which more accurately describes needs.</p> <p>In the following paragraphs there is both parentally preferred and LA preferred wording. We found that both forms of words reflected the evidence before us and should be included, but it was important to preface the LA form of words with the words "School reports that..."</p> <p>We found no reason not to accept the evidence of [witness] which is essentially uncontested. The professional opinions to the extent that they are relevant to Parts B and F are accepted. There are some small exceptions to this as explained below This leads us to conclude that the LA's preferred wording immediately under the heading "Social, emotional and mental health difficulties" need not be included because they are subsumed in the parentally preferred wording which is for the most part accepted. The word which we do not accept is "complex".</p> <p>There is no indication that the autism is more complex than any other person's. The difficulties arising may be complex but that is dealt with elsewhere. The wording should therefore be included as preferred by the parents with the exception of the word "complex" up to the words "complex profile". The words that follow concern provision and have no place in Part B. They should not be included. The issues raised are dealt with elsewhere in the Plan.</p> <p>As to the paragraph beginning with the words "... seems to experience obsessions...", we found that the LA's preferred wording reflected school advice and should be included. It is also valuable to add, as recorded in [witness]'s report from his discussions with Child, that Child finds the obsessions upsetting, and they do get in the way of day-to-day life. The parentally preferred wording should therefore be incorporated after the words "in discussion." as follows: "Nevertheless they remain a barrier to leading a normal day to day life. ... can get upset about the obsessions and seems helpless to do anything about them". The parentally preferred wording beginning "Given the invasiveness..." should not be included as it concerns provision, which is dealt with elsewhere.</p> <p>We found that it is appropriate to reflect the relative strength identified by school in terms of the ability to work independently – this is evidenced in the school report. This wording should be incorporated. We found that his difficulties with transition between home and school are well-evidenced by parents and so we decided that the parentally preferred wording in this regard should be incorporated.</p>

				<p>Whilst we accept [witness]s evidence that there is a demand avoidance element to the behaviour when stressed, and this is particularly evident at home when child appears to release the pent up anxieties of the day, it is not appropriate to give this a label (“EDA/PDA”) as this suggests that these behaviours might signal a discrete disorder, which is not what is being said. [witness] is clear in saying that this is part of the autism. The parentally preferred wording in this regard should therefore be accepted but without the initials in brackets. The words “in particular” are not contentious and do reflect the view of [witness] so can be included.</p> <p>The paragraph that follows, beginning: “... has suffered...” should not be included because it references provision and school type, which is dealt with elsewhere. The requirement to address the anxiety as an educational need should not be stated here as it is implicit in the text of Part B and the provision that focuses on that need in Part F.</p> <p>AS TO PART F</p> <p>As above, it is implicit and explicit in the Plan that management of anxieties is key to removing barriers to educational and developmental progress. The wording at Objective 1 in Part F that is preferred by the parents reflects a need for child to be viewed holistically and this reflects the evidence of [witness]. Any demand avoidance/work avoidance and unwanted behaviours are likely to be closely linked to anxieties and obsessions and an integrated package appears to be an appropriate means to address them. Behaviours cannot be appropriately addressed without analysis and it is again appropriate to involve a psychologist in this. The parentally preferred wording at Objective 4, however, refers to the same provision. It is not necessary to refer to provision with the specific objective of reducing the medication. This provision does not appear to relate specifically to development of social skills. Medication is required in order to manage anxiety. Addressing the anxiety is key. Reduction in medication will be a happy consequence of reduction in anxiety managed through the provision in the Plan, and a quite proper medical, if not educational, objective. This wording is not required and should not be included. The provision of modified CBT relates specifically to better management of the environment and circumstances and is geared specifically at reduction of the anxiety. We accept [witness]’s evidence in this regard. This wording should therefore be included. There should be no wording requiring the involvement of another psychiatrist. Liaison by the treating psychiatrist is already provided for elsewhere in the Plan. The involvement of two professionals of the same discipline is both unnecessary and unhelpful.</p> <p>AS TO PART G (Recommendations)</p>
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				<p>The provision referred to is well evidenced in the report of [witness] and is uncontested by any other similarly qualified professional. It is therefore recommended that it be included.</p> <p><b>Order</b></p> <p>The appeal is allowed in part.</p> <p>The LA shall amend the EHC Plan adopting all of the wording agreed using Version 8 of the Working Document, with additional amendments ordered and recommended, as set out in the conclusions above.</p>
20.	No		<p>14 years old with a diagnosis of Treacher Collins syndrome which has led to narrow airways and ear canals. Needs a tracheostomy to breathe and hearing aids. Additionally, suffers chronic pain syndrome in feet which affects mobility. Attended a mainstream secondary school but moved to alternative provision in 2017 where received trigger tuition. Since these proceedings commenced the LA has named alternative provision in Section I.</p> <p>This appeal has been included in the National Trial for the Tribunal to consider making recommendations in respect of Health and Social Care.</p> <p>At the hearing, there were no outstanding Social Care issues so the only outstanding issue for the Panel to consider is whether recommendations should be made about the number of and training of staff required to deal with any tracheostomy management issue or emergency suffered by him in school</p>	<p>Paper hearing</p> <p>We were pleased that the LA and Parents had maintained discussions about the issues and had reached agreement on the contents of Sections B and F and that the LA have confirmed a maintained special SEMH school, as the placement in Part I.</p> <p>The original EHCP accepted by way of educational need that "Child is reliant on the tracheostomy to breathe which must be patent at all times" and made special educational provision for: "A member of staff, fully trained in the management of a tracheostomy and emergency replacement, will monitor the Child at all times in order to observe and recognise any problems with breathing/tracheostomy tube so they can respond instantly to suction and prepare for and carry out an emergency tracheostomy tube change. This requires a nominated /dedicated person as the response has to be immediate.</p> <p>An additional member of staff who is fully trained and competent in the management of a tracheostomy and emergency replacement will be available to support the member of staff in the event of an emergency. These members of staff will be provided by the school in line with the DfE document 'Supporting pupils at school with medical conditions' (December 2015)". And this has been repeated as an agreed item in version 2 of the Working Document.</p> <p>The LA argued that that provision would be met upon the naming of the parents' preference and highlighted that only health provision which educates or trains will be treated as special educational provision and we agreed with that contention. Placement has now been named in Section I and we found this to be clear provision to enable him to access both education and independence. We noted that prior to this amendment to Section I [parent] had to be present throughout the school day with the child to react in the event that an emergency tracheostomy change could take place. Understandably at the age of 14, the child seeks independence from parent and the ability to form relationships with peers which will have been difficult to undertake with parent as shadow and we were very pleased to see that the child had been able to access a visit to the United States of America more independently without having to be accompanied by</p>



				<p>parent. We noted the small class sizes at the School which will enable much closer monitoring of the tracheostomy needs than would have been possible in a mainstream school and reflects the views expressed by the School's headmistress.</p> <p>We then went on to consider whether the health needs required additional provision over and above the provision outlined in Paragraph 4 above. We found that the health needs were clearly encapsulated in the description in the Bundle which has been repeated verbatim as an agreed need at version 2 of the Working Document. Parent sought an amendment to the EHCP to ensure that Children's Health Care Training included induction training for new staff as well as initial training for existing staff to manage the tracheostomy care. Whilst we could not find specific evidence to support the inclusion of induction training, we found that this has to be necessary for new staff as the child will be likely to remain at school for some years during which time it would be reasonable to expect a turnover of staff. The LA had sought to qualify such training by specifying "when required" whereas parent sought such training to be "if requested by school or parent on a termly basis". We would anticipate that the health needs will be reviewed at least annually (definitely at the 3 Annual Review but a review would be extremely likely in the event of a deterioration or change in health) We were impressed by the wording contained in the e-mail from Ms K and accordingly we recommend that this paragraph should read</p> <p>"Carrying out initial training of staff and induction training for new staff in school to manage Tracheostomy care and the provision of refresher training in the event that his needs change or there are staff changes or other unforeseen events occur" and to ensure parents are kept informed added "with information of such training being communicated to parents".</p> <p>Parent went on to argue that three members of staff in school should be fully trained in the management of a tracheostomy and emergency placement. In fact the provision we have recommended for the Children's Health Care Training to provide training of staff and induction training for new staff above allows for this. Accordingly we recommend the deletion of "Three members of staff in school will be fully trained in the management of a tracheostomy and emergency placement" as two people have already been provided for in Section F who are fully trained and competent in such management, the School is a specialist school in complex health needs provision and the continuing training recommendation will ensure that in fact trained tracheostomy cover will always be available in the event of an emergency and can be called upon by the member of staff who is there to monitor the child at all times.</p>
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				<p>Parent's final proposed amendment to the Working Document reiterated what is already stated in Section F above but adapted to cover the request for three trained staff members to deal with tracheostomy management and emergencies. As this is both a special educational need and a health need for the avoidance of doubt we recommend preceding parent's proposed amendment with "As stated at page 14 above" and recommend the adoption of the wording in Section F i.e. "A member of staff, fully trained in the management of a tracheostomy and emergency replacement, will monitor [the child] at all times in order to observe and recognise any problems with breathing /tracheostomy tube so they can respond instantly to suction and prepare for and carry out an emergency tracheostomy tube change. This requires a nominated/dedicated person as the response has to be immediate.</p> <p>An additional member of staff who is fully trained and competent in the management of a tracheostomy and emergency replacement will be available to support the member of staff in the event of an emergency".</p> <p><b>Order</b></p> <p>Recommendations to the LA and the Clinical Commissioning Group as above.</p>
21.	No	Sections B, F and I	The appeal registered on 21st August 2018 was against Sections B, F and I of the EHC plan and in the course of the proceedings the Tribunal was informed that Sections B & F had been agreed. The issue remaining for consideration by the Tribunal was whether the parental request that the Local Authority name the maintained school as the placement to be named in Section I of the EHC plan would be incompatible with the efficient education of others.	
22.	No	Sections B, F and I  Section C and G	Child is 10 years 3 months, a Year 5 pupil, with a genetic mutation which has caused hypochondroplasia (short limbs and stature) and macrocephaly (large head). Special Educational Needs ("SEN") with some long-term memory difficulties, delayed visual and verbal recall, slow processing speed and poor executive functioning along with a short attention span. Experiences sensory processing difficulties. Diagnosis of Autism Spectrum Disorder ("ASD"), intellectual ability is in the average range. Despite the parties attempts to narrow the issues prior to the hearing, there remained a substantial number of unresolved issues regarding the wording of Section B and Section F, both in terms of substance and detail. During the course of the hearing, the	We found that the EHCP as issued contained a lot of unnecessary verbiage which made little sense, was historical and overtaken by new information or provided no useful information. In places we considered that the additional agreed narrative in Section B was excessively long, repetitious and confusing. We have taken the opportunity of deleting wording or making amendments to both the original wording and agreed amendments so that the narrative reflects our opinion of the evidence and also importantly reflects the balance that needs to be maintained between including sufficient information regarding his SEN accurately, and enabling the reader to use the EHCP in a practical manner, taking account that detailed reports from the experts will be appended to the EHCP should additional detail be necessary. Much of the parental additional wording was unnecessary in our opinion as it either did not reflect the weight of evidence or was inappropriate to be

		<p>parties were able to come to agreement regarding many of these matters. The remaining issues of substance are:</p> <p>a) Whether Section B should state that the child has difficulties with regulation including self-regulation and emotional regulation?</p> <p>b) Whether Section B should state that the child has Sensory Processing Disorder (“SPD”)?</p> <p>c) Whether Section B should state that the child has Developmental Co-ordination Disorder (“DCD”) and/or dyspraxia?</p> <p>d) Whether he has Social Communication Needs requiring the provision of a weekly social communication group?</p> <p>e) Whether the child has a sleep disorder?</p> <p>f) What alterations should be made to the narrative of Section B to include the parental proposed additional wording?</p> <p>g) Should the Tribunal make recommendations in respect of Section C and Section G and if so, what are those recommendations? In particular, does the child have a Neurodevelopmental disorder which should be set out in Section C and should the Tribunal recommend specific health provision.</p> <p>The papers include many detailed reports regarding the difficulties that it is unnecessary to make specific reference to due to the length of time that has elapsed since they were prepared and/or in light of the agreements that the parties have reached. We restrict our discussion to the evidence that we needed to consider in order to reach our decision on the remaining disputed matters.</p>	<p>within Section B due to the level of detail. Section B and F of EHCP relate to educational need and provision, and this Tribunal is bound to base its conclusions on the evidence of educational need, rather than parental observations at home.</p> <p>We also deleted various sentences from Section B which were provision rather than a description of need, even though the parties had agreed the wording.</p> <p>We recognise and acknowledge that there is a genetic condition which has resulted in hypochondroplasia and macrocephaly, which affect the child physically and has resulted in numerous operations, and that parents have sought explanations as to whether the condition explains the reasons for difficulties that have been encountered in learning. We acknowledge that the parents have obtained private diagnoses which they consider fully explains the reasons for the academic and social difficulties. These include a diagnosis of ASD, which the LA have now accepted, and SPD and DCD which they do not accept. We also recognise, as is not uncommon, the child’s presentation and behaviour at home differs from that at school.</p> <p>We acknowledge that the parents did not call witnesses due to the cost involved and as they considered the experts’ reports obtained speak for themselves. However, the Tribunal found that the inability to test the evidence by questioning these experts limited the weight that could be attached, particularly in light of the limited scope of the assessments conducted (they did not observe him at school or consult with school staff) and the lack of any follow up with the experts since their opinions were provided despite the challenges to their opinions by experts called by the LA.</p> <p>When this appeal was adjourned in November 2018, the Tribunal explicitly ordered that the parents should set out the amendments it sought in Sections B and F. Whilst they did so in respect of section B, they did not propose specific amendments to Section F. Their position was that as they were not educational experts, they were unable to propose specific provision. Whilst we sympathise with this position, it is not for the Tribunal to speculate or order additional reports or assessments. Although the private reports did propose certain provision, it was largely of a general nature and the reports were written without any school observations having been conducted, and no attempt was made to transpose those recommendations into the working document. Only two identified alterations to Section F were proposed by the parents and challenged by the LA, and the Tribunal limited its decision to those matters.</p> <p>Despite the length of the hearing and the amount of written and oral evidence available, there are only a limited number of matters of</p>
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				<p>substance remaining, and these largely related to Section B which was the focus of most of the discussion during the hearing. We deal with each in turn.</p> <p><i>Whether Section B should state that the child has difficulties with regulation including self-regulation and emotional regulation?</i> We accept that the parents have consistently reported that the child experiences self-regulation difficulties at home. We note and agree with the opinion of [a witness] that difficulties with emotional regulation is not a diagnosis per se but would be classed as symptoms. Regulation difficulties are referred to by [four other witnesses]. Whilst we take their reports into account, we concluded that the weight to be accorded to these reports should reflect the limitations of their assessments undertaken. We were concerned that the assessments did not include any observations at school or discussions with school staff. We also were concerned that the reports were written over 15 months ago, and the experts have not been asked to update their opinions or comment on evidence produced by the LA. We found the views expressed by [a witness] in particular lacked coherence. She appears to have reached a conclusion that the child finds it hard to regulate emotions based largely on a response to a request to indicate differences between feeling sad and angry. We would have welcomed the opportunity to have questioned her on the evidential basis of her conclusions. We prefer and accept the evidence of [another witness] which is current and based on daily observation of the child at school that regulation difficulties with distractibility, organisation skills and attention were mild and easily managed quality first teaching and not a concern. This accords with the opinion of [a witness] who did observe him at school. Accordingly, we conclude that there is no persuasive evidence to support <i>difficulties with regulation including self-regulation and emotional regulation</i> being listed in the summary as a special educational need. These views are consistent with the observations of [two other witnesses]. We have included within the narrative in Section B that parents report emotional outbursts at home. This is sufficient to inform the reader of his difficulties in emotional and self-regulation.</p> <p><i>Whether Section B should state that he has Sensory Processing Disorder (“SPD”)?</i> We are satisfied that, despite [a witness] diagnosing SPD, the sensory processing issues are appropriately described as “difficulties”. That is because we prefer the evidence of [two witnesses] that the child has some limited sensory processing difficulties which do not require any OT provision to remediate. These views are consistent with the observations of [two other witnesses]. We agree with [a witness] that OT provision should always relate directly to clearly stated functional outcomes and that any remediation must have a</p>
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				<p>direct functional outcome that can be observed. In reaching this decision, we found the weight that we could give to [a witness]'s views were limited by the fact that he had not observed the child at school or discussed the child with school staff, his report was written over 15 months ago, and he had not been asked to update his opinion or comment on [another witness]'s report. Unlike [the witness], he did not attend the hearing and so the Tribunal was not able to question him about his opinion.</p> <p><i>Whether Section B should state that he has Developmental Co-ordination Disorder ("DCD") and/or dyspraxia?</i> We are satisfied that despite [the witness]'s diagnosis of DCD, the child cannot have such a diagnosis as it is a diagnosis of exclusion, and the hypochondroplasia explains the coordination difficulties. Indeed, [the witness] says this in terms in her report. This view is confirmed by [another witness]. Although dyspraxia is strictly a different condition, [the witness] also considers that a diagnosis of dyspraxia is not appropriate for the same reason and we accept this evidence.</p> <p><i>Whether the child has Social Communication Needs requiring the provision of a Social communication group?</i> This is an issue for Section B and F. [two witnesses]'s diagnosis was based on ADOS-2. As the scores met the threshold for an ASD diagnosis, a recommendation for a weekly social communications group at school to address emotions, anger, awareness of himself, behaviour, friendships and non-verbal communications was made in the report. However, they did not observe the child in school or discuss whether the child experiences such difficulties within school with staff. [A witness]'s evidence is that the child does not experience such difficulties at school and relates well with friends. This is consistent with the opinion of [another witness]. There is insufficient evidence, in our opinion, of a need for a weekly social communication group at school to remediate difficulties which have not been observed at school. We would have liked to have had [a witness]'s comments on [another witness]'s evidence either in writing or orally, and in the absence of any such response, we are unable to accept her recommendation.</p> <p><i>Whether the child has a Sleep disorder?</i> The most recent evidence is that the child does not suffer from sleep apnoea or any specific sleep disorder. A Consultant Physician at the Respiratory and Sleep Centre, letter of 29/11/2008 states that the child had previously been found to have mild sleep apnoea and parents report great difficulty in getting the child to sleep, and is prone to waking up at about 1 a.m. The school does not report tiredness at school. Further sleep investigations are planned, and the findings can be reflected in any amendments to the</p>
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				<p>EHCP at the next annual review, but it is not appropriate to record anything regarding sleep in the summary of Section B or C at this time. <i>What alterations should be made to the narrative of Section B to include the parental proposed additional wording?</i> We have made various amendments to the narrative in Section B to reflect our view of the evidence and the level of detail that is needed to provide the reader with a clear understanding of the SEN.</p> <p><i>Should the Tribunal make recommendations in respect of Section C and Section G and if so, what are those recommendations? In particular, does the child have a Neurodevelopmental disorder which should be set out in Section C?</i> The purpose of Section C is to set out the health care needs that have been identified in relation to the SEN. It should, in our opinion, comprise a list of these conditions, and not go into detail as to how such conditions manifest themselves or impact on the SEN.</p> <p>The LA's proposed amendments appearing in Working Document version 7, with minor amendments, were ultimately accepted by the parents in closing submissions. In particular, it was accepted that it was unnecessary to state that the child had a neurodevelopmental disorder as an additional discrete condition. We recommend amendments to Section C as set out in the appendix. We have no recommendations to propose to Section G. We are satisfied that the child's conditions have been extensively investigated by health care professionals in the appropriate fields and the child has received all necessary and appropriate follow up appointments, and this will continue without any need for this tribunal to intervene.</p> <p><b>ORDER</b></p> <p>Section B and Section F should be amended as set out in the appendix.</p> <p><b>RECOMMENDATIONS</b></p> <p>Section C should be amended as set out in the appendix</p>
23.	No	<p>Sections B and F</p> <p>Section C and G</p>	<p>Child is 8 years old and has a diagnosis of Spastic Quadriplegic 2 Cerebral Palsy with dystonia – Gross Motor Function Classification Scale (GMFCS) Level 4 with fluctuating muscle tone, subluxed hips on both sides and has speech and language difficulties communicating with gestures, facial expressions and eye gaze. Currently attends a local authority maintained special school for pupils aged 2-19 whose special educational needs arise from their physical disability or a complex health need. A transfer review to transfer the Statement of Special Educational Needs to an EHC Plan was held on 6 December 2017, reassessment took</p>	<p><b>Special educational needs and special educational provision (Sections B and F)</b></p> <p>The Tribunal heard from an Occupational therapist who has been providing input for the child at home. She accepted that there was no suggestion that the child needs to receive sensory integration therapy but stated that in her professional opinion the occupational therapist delivering the provision should have a minimum of level 1 sensory integration training because the person devising the programme needs to have this level of neurological training and understanding of tactile defensiveness and desensitisation in order for the programme to be effective and to make progress. The OT gave examples of the reluctance to engage in mark making or messy play which she</p>

		<p>place in early 2018 and a draft EHC Plan was produced in March 2018.</p> <p><b>Issues</b></p> <p>The parties had been able to come to a significant measure of agreement on the working document and there were further agreements made during the hearing. However, there were still some matters to be decided in relation to Sections B and F.</p> <p><b>Special Educational Needs</b></p> <p>The appeal concerned amendments parents wish to make to Sections B and F of the EHC plan, however by the time the Tribunal came to deliberate the only outstanding issues identified which the Tribunal needed to decide were:</p> <ul style="list-style-type: none"> <li>a. The level of qualification of the Occupational Therapist working with the child.</li> <li>b. Whether the agreed physiotherapy provision is properly included in Section F or Section G of the EHC Plan</li> </ul> <p><b>Health and Social Care Recommendations</b></p> <p>The parents requested the Tribunal make recommendations to amend Section G to remove the physiotherapy provision from this section, and for it to be included in Section F. This was the only outstanding issue under the National Trial</p>	<p>identified as barriers to making progress with significant areas of education.</p> <p>The Tribunal also heard from another Occupational therapist who confirmed that she had not worked with or assessed the child, does not carry out interventions and has not developed the intervention plan contained within the bundle. She confirmed that the intervention plan within the bundle reflects the service provision and is a plan for the school but does not represent what would be specifically implemented for the child. She accepted that any such plan might involve elements of sensory integration or many other elements. She expressed concern that requiring a post graduate qualification in sensory integration would potentially limit those who could work unnecessarily, although there were therapists within the LA who have this training. She stated that neurological training was standard in any event as part of becoming a fully qualified occupational therapist.</p> <p>The Tribunal accepted the evidence of the first OT that neurological understanding and an appreciation of sensory processing was important for whoever devised a programme for the child, and we were persuaded by her knowledge, understanding based upon her direct work with the child. However, we also agree with the second OT that to specify a post graduate qualification in a discipline for which it is accepted that the child does not require provision could potentially unnecessarily limit the pool of people available to work with the child. We therefore propose that the working document be amended so that the provision is 'provided by an Occupational Therapist (Band 6 minimum) with the appropriate skills and experience to deliver this provision and who has received neurological training and has expertise in sensory processing.'</p> <p>As regards physiotherapy provision, the nature and extent of the provision is agreed between the professionals, the question for the Tribunal was whether or not it was educational provision which should be included in Section F or Health provision which should be included in Section G.</p> <p>The Tribunal heard from a Physiotherapist who stated that in her professional view the provision specified in the EHC Plan was physical training to develop postural skills to enable the child to access education. She stated that by helping to practice and develop skills to enable the child to sit better she would be better able to access other aspects of education, such as learning better postural control to allow better sitting within specialist seating to access tasks more easily. She also gave evidence that if sitting is uncomfortable for the child the ability to concentrate would be reduced and that conversely better sitting posture would improve the ability to concentrate.</p>
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				<p>Another Physiotherapist gave evidence that she agreed that the Physiotherapy provision would assist with sitting comfort, and also agreed that the programme was designed to support the development of functional skills such as sitting control and prone lying. She stated that the functional skills work could not take place without the Botox therapy as the two work hand in hand and they have to work together, however just because the blocks of therapy assist in accessing education this does not in itself make it educational provision. The blocks of therapy provision rely upon her having had Botox and therefore in the view of the second OT, they are medical and not educational.</p> <p>The Tribunal were referred by the LA to the case of <i>East Sussex CC v KS [2018] AACR 3</i>, and in particular to paragraph 89 which states <i>‘Even if medical and nursing support is...’essential for [L] to be educated’</i>, <i>that does not of itself make it special educational provision...</i>’ The Tribunal does not disagree with this principle, but finds that in this case the correct starting point for the Tribunal is not to consider whether or not the physiotherapy is essential for the child to be educated, but to consider CFA 2014 s21(5) which operates to ensure that aspects of what were previously regarded as Special Educational Provision which would otherwise also now fall within the definition of Social Care Provision or Health Care Provision within an EHC Plan remain treated as SEP (rather than SCP or HCP).</p> <p>Therefore, the principle we have in mind when considering this issue is that “Health care provision or social care provision which educates or trains a child or young person is to be treated as special educational provision (instead of health care provision or social care provision).” We were persuaded by the evidence from both physiotherapists that the health care provision, in this case the agreed physiotherapy programme, is provision to train the child in improved posture. We agree with the second physiotherapist that this training is interlinked with medical procedures, but this does not alter the fact that it is training. It is agreed that this medical support is essential for the child, and it is agreed between the physiotherapists that this support is essential for the child to be educated, and we accept the evidence that it will assist to access further elements of education. We agree with the decision of <i>East Sussex CC v KS</i> that this does not of itself make the physiotherapy programme educational provision, however what makes it educational provision in the view of the Tribunal is that it is of itself a programme of training. We also note that the physical needs are expressed in Section B and this programme of physiotherapy corresponds to the agreed needs, for this reason and the reasons set</p>
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				<p>out above we conclude that the provision should be specified in Section F of the EHC Plan.</p> <p><b>Health care needs and health provision (Sections C and G)</b></p> <p>For the reasons set out above, physiotherapy provision is to be included in Section F of her EHC Plan and therefore it follows that the provision should be removed from Section G and we make a recommendation to this effect.</p> <p><b>Order</b></p> <p>The appeal is allowed in part</p> <p>It is ordered that County Council amend the Education, Health and Care Plan as follows:</p> <p>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p> <p>It is recommended that County Council amend the Education, Health and Care Plan as follows;</p> <p>1) In Section G, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p>
24.	No	<p>Sections B, F and I</p> <p>Section H</p>	<p>Child is six years old with diagnoses of Autism Spectrum Disorder (ASD) and Global Developmental Delay. Currently in year 2 and attends a maintained special school. Also undertaking an ABA programme at home with mother, under the supervision of Ms W.</p> <p>At an annual review meeting, the parents asked the LA to name in Section I of his EHC Plan an independent school approved under section 41 of the Children and Families Act. The LA refused on 4 July 2018 to amend the EHC Plan. The parents appealed to the tribunal in respect of Sections B, F, H and I.</p> <p><b>Issues</b></p> <p>The parties worked together so that by the time we came to deliberate, there were no outstanding issues in Section B. In Section F, the outstanding issues broadly related to whether the child required:</p> <ul style="list-style-type: none"> <li>a. an autism specific setting;</li> <li>b. full time one to one support;</li> <li>c. an approach underpinned by Applied Behaviour Analysis (ABA) principles</li> <li>d. the opportunity to have more than 26 sessions of occupational therapy.</li> </ul> <p>So far as Section I was concerned, the key issue was whether LA preference was a suitable school for him. It was</p>	<p>It is ordered that the LA amend the Education Health and Care Plan of him in Sections B and F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached working document</p> <p>It is recommended that County Council amend the Education, Health and Care Plan of him in Section H, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document</p>

			<p>not disputed that school of parental preference was significantly more expensive than LA preference. It was not clear that he had been offered a place at the school of parental preference. Both parties agreed that, should the Tribunal find that LA preference was not appropriate, it would be necessary to adjourn in order to obtain further evidence on the impact on the efficient education of others if he were to attend the school of parental preference. Concerns were also raised about the suitability of school of parental preference, although this issue had not previously been raised by the LA.</p> <p>By the time of the hearing, the LA had conducted a social care assessment and agreed changes to the package of social care provided. The parents were content with the changes and sought no further amendments to Section H.</p>	
25.	No	Section B, F and I Sections C, G, D and H1/2	<p>Child is 14 years old and has a diagnosis of severe receptive and expressive language disorder. Likes football and plays Sunday league football with a local team. Can be anxious and does not like being different from peers. Attended a mainstream primary school, and at secondary transfer attended a mainstream secondary school, where many primary school friends were attending. Unfortunately, felt bullied at the school and left. Out of school until November 2018 when parents placed child at Independent day and boarding school for pupils aged between 11 and 19. Initially founded as a 6th form tutorial college it has expanded acquiring further properties and is based on a two acre site. School have indicated in written responses to specific questions from the LA that they are unable to make all the provisions set out in his EHCP</p> <p>The LA have named a mainstream secondary school for pupils aged 11 to 18; there are about 1,500 on roll. It has a speech and language resource provision. The following issues were identified for consideration at the hearing: The speech and language provisions Anxiety</p> <p><b>Health and Social Care Recommendations</b></p> <p>The parents had originally indicated that they were seeking amendments to Sections C, D, G, H1/H2 of his EHC Plan. On the day they did not pursue this. With regard to the provisions of social care, parent told us she had wanted to know what provisions would be available, however she was not now</p>	<p>The appeal is allowed.</p> <p>It is ordered that the LA amend the Education, Health and Care Plan as follows:</p> <ol style="list-style-type: none"> <li>1) In Section B, by replacing the existing wording in the EHC Plan with the handwritten amendments set out in the attached final working document</li> <li>2) In Section F, by replacing the existing wording in the EHC Plan with the handwritten amendments set out in the attached final working document</li> <li>3) In Section I, by replacing the existing wording with the following: "A mainstream school placement. Placement of parental preference, provided parents meet all transport costs to and from the college for the duration of the placement, and in default LA's preference.</li> </ol> <p>It is not recommended that the LA amend sections C, G, D, H1 or H2 the Education, Health and Care plan.</p>

			seeking a recommendation. In relation to medical needs we have added a reference about his anxiety.	
26.	No	Sections B and F  Sections C, G, D and H1/2	<p>Child is 8 years old, attending a mainstream primary school in accordance with the wishes of parents. A complex pupil with diagnoses of Autistic Spectrum Disorder and Associated Language Disorder. These diagnoses were made by Evelina London at St Thomas' Hospital. Has undergone assessment for Attention Deficit Hyperactivity Disorder. Presented with many of the signs associated with such a diagnosis and prescribed medication for ADHD but the medical report falls short of making an actual diagnosis.</p> <p>There was very helpful discussion between the parties and the witnesses which led to a great deal of agreement as to what should be included in the plan both in terms of the description of needs and the provision required to meet them in terms of educational, health and social care needs. Those agreements are set out in the Annex attached to this decision.</p> <p><b>Special Educational Needs</b></p> <p>The only remaining issues for the tribunal to decide was the quantification of Speech and Language Therapy.</p> <p>The parents requested the Tribunal make recommendations to amend the health care provision to include CBT.</p>	<p><b>Special educational needs and special educational provision</b></p> <p>The tribunal is satisfied that the SALT provision set out by the LA is sufficient to meet needs. We accepted [a witness]'s evidence that this was an appropriate amount of provision given that it was part of a whole package of support and that the speech and language needs had to be seen and addressed in the context of the complex profile of ASD, attention difficulties and issues with motivation. The speech and language programmes devised by the therapist would not cease during the terms when the child was not receiving direct therapy. They would continue to be delivered by the HLTA. The focus would be to try to ensure that the skills learnt in direct therapy sessions which would be observed by the HLTA are carried over into the classroom and everyday situations. We noted that the recommendation from the specialist clinic was for ongoing speech and language therapy which is consistent with the LA provision that is going to be made available to him. The provision of SALT was clearly special educational provision and would only appear in section F of the plan.</p> <p><b>Health care needs and health provision (Sections C and G)</b></p> <p>Parents sought a recommendation for CBT. We were not satisfied by the clinical evidence before us that such a recommendation was appropriate. There was no clinical recommendation for CBT. We agreed with the LA that the appropriate way forward was a recommendation for a CAMHS referral.</p> <p><b>Social care needs and social care provision (Sections D and H1/H2)</b></p> <p>There was agreement that a recommendation for a Child in Need Assessment would be appropriate to address his social isolation.</p> <p><b>Order</b></p> <p>The appeal is allowed in part.</p> <p>It is ordered that the County Council amend the Education, Health and Care Plan of as follows:</p> <ol style="list-style-type: none"> <li>1) In Section B, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</li> <li>2) In Section F, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</li> </ol> <p>It is recommended that the County Council amend the Education, Health and Care Plan as follows;</p> <ol style="list-style-type: none"> <li>1) In Section C, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</li> <li>2) In Section G, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</li> </ol>

				<p>3) In Section D, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</p> <p>4) In Section H1, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</p> <p>5) In Section H2, by replacing the existing wording in the EHC Plan with the amendments set out in the attached final working document.</p>
27.	No	<p>Sections B, F and I</p> <p>Sections D and H1/2</p>	<p>Child is 11 years 5 months with a diagnosis of Autistic Spectrum Disorder ("ASD"), Attention Deficit Hyperactivity Disorder ("ADHD"), and expressive and receptive language disorder; fine and gross motor skill difficulties; moderate learning difficulties with most of the abilities assessed as falling into the very low range. Suffers from anxiety and is emotionally vulnerable. Also has a number of medical problems including hypermobility, asthma, and nocturnal enuresis. Currently a Year 6 pupil at LA preference which is named in his EHCP. The LA has now agreed to name parent's choice from the commencement of Year 7 in September 2019 but contend that LA preference can meet SEN for the remainder of this academic year. Parent considers that LA preference is unable to meet SEN and wishes the EHCP to be amended to name parental preference so that he can transition immediately. Parent also seeks amendments to Section B and Section F of the EHCP. Prior to and during the hearing, the parties reached agreement regarding most of the disputed wording in these sections.</p>	<p>We order the amendments that have been agreed by the parties to Section B and Section F.</p> <p>We order the SAL therapy provision recommended by [a witness]. The LA did not present any evidence from a SAL therapist to counter her opinion and we accept it. We do observe however that [the witness]'s recommendations were made at a time when the child had been struggling in a mainstream setting without any SAL therapy input. It may be appropriate to revisit the nature of SAL provision once the child has settled into the new school.</p> <p>We accept the evidence of [a witness], supported by [the first witness]'s evidence from a SAL perspective, that the child requires to be taught in small classes with a high level of individual attention using specialist teaching and therapy staff with expertise in teaching children with this SEN profile. This would seem to also be also to be the conclusion reached by the LA, as it has now agreed to name the school from September 2019. It is therefore surprising that the LA maintained that the needs were being met at the current placement. [Witness]'s opinion was that his needs could only be met for the remainder of Year 6 at current placement if additional TA support was provided, but [another witness] was clear that the current placement have no experience with providing 1:1 support of this intensity, (other than for pupils within the resource centre) and that there were practical difficulties in recruiting and training a TA for this short term role. We agree with [the witness]'s concerns as to the current placement's ability to make such a provision and in any event, consider that additional provision of a dedicated TA would not address the other aspects of the required provision, namely small class numbers, and specialist teaching and therapy staff. We find that the current placement is unable to make the provision that is required to meet the child's needs. It is not the LA's case that the next placement is unable to meet needs before Year 7 or that any of the exceptions to the requirement to name the parental choice of school applies. We note that [representative] indicated, having taken instructions, that in light of the evidence presented, the LA had "no objection" to the next placement being named but that LA wished the Tribunal to make a decision rather than concede.</p>

				<p>We find that the agreed next placement can make all the provision that we are ordering in Section F and should be named in Section I.</p> <p><b>DISCUSSION AND DECISION OF THE MATTERS IN DISPUTE REGARDING SOCIAL CARE PROVISION</b></p> <p>The Special Educational Needs and Disability Regulations 2015 provide that the EHCP should specify social care needs which relate to the child or young person's special educational needs, and social care provision reasonably required by the learning difficulties and disabilities which result in the child or young person having special educational needs. It is not therefore a general description of the social care needs of the child/young person that should appear in the EHCP only those linked to their special educational needs or disability.</p> <p>The LA's position within its supplementary response dated 5 March 2019 is stated to be that the Social Care Lifespan Pathway team within the LA has considered a request from [parent] for an assessment but that the child did not meet the service Eligibility criteria. No reasons were stated, and we have not been provided with any documentation other than the criteria itself. [LA rep] conceded that the child is a disabled child. She was unable to provide the Tribunal with any details of the Team's reasons for reaching the conclusion, or whether it had all relevant information, including the recent ASD diagnosis available. She indicated that her instructions are that the LA's [first response team] is the team that would decide what, if any, social care needs the child has, and arrange for the appropriate provision.</p> <p>We conclude, that it is necessary for the social care needs to be reconsidered and determined. We recommend that the LA's Social Care [first response team] consider and reach a further decision on what social care needs the child has by undertaking an assessment of needs as soon as possible and ideally within 4 weeks, and that the outcome of this assessment be communicated to [the parent] within 7 days of completion. We recommend that the social care needs determined by the assessment insofar as they relate to SEN be recorded in Section D and the provision proposed in the assessment report insofar as it relates to SEN be recorded in Section H.</p> <p><b>ORDER</b></p> <p>Sections B and Section F should be amended in accordance with the attached Appendix.</p> <p>Section I be amended to named agreed Academy provision.</p> <p><b>RECOMENDATIONS</b></p> <p>Sections D and H should be amended in accordance with the recommendations set out in paragraph 27 above.</p>
28.	No	Refusal to issue a plan	The issue before the tribunal was whether child needs an EHCP following statutory assessment. It was clear that the	<p>All parties accepted that the child has special educational needs, this was not at issue. For the reasons set out below, we found that it is</p>

		<p>LA accepted the child has special needs, but the LA contend that special needs can be met from school resources. The issues for the Tribunal to decide are; a. What special education provision is the child receiving?</p> <p>b. What progress has been made with the special educational provision?</p> <p>c. Does the child require additional special educational provision- if so what?</p> <p>d. Can the special educational provision required reasonably be provided from within the resources normally available to mainstream schools or is it necessary to make the provision in accordance with an EHC Plan?</p> <p>The appeal is registered under The Special Educational Needs and Disability (First-tier Tribunal Recommendation Power) Regulations 2017. Parent requests that the Tribunal make recommendations in relation to Section C (health care needs), Section G (health care provision), Section D (social care needs) and Section H1/H2 (social care provision). If the Tribunal decide that the child needs an EHCP for educational reasons, parent wants the LA to undertake a full assessment of social care needs in relation to behaviour and include any social care recommendations. Further, undertake a healthcare assessment and to fully describe his complex emotional and behavioural mental health issues and describe needs and include any recommendations for provision.</p> <p><b>Background</b></p> <p>Child has refused to attend Academy since February 2018, a mainstream school. Nearly 14 and in Year 9.</p> <p>The LA assessed but refused to issue an EHCP as it believes needs can be met from the resources available to a mainstream school. Has autism and ADHD, Tourette's and sensory processing difficulties and is also very overweight. On a Child Protection Plan from April 2018 until November 2018. Currently home schooled (mother deregistered from school in September 2018).</p>	<p>necessary for special educational provision to be made in accordance with an EHCP.</p> <p>Whilst at school (over a year ago), appeared to make progress academically, however has now been out of school for a year and nobody appeared clear what additional provision is required or whether this provision could reasonably be provided from the resources normally available to a mainstream school.</p> <p>We found that the child's mental health needs are significant, based on [witness]'s evidence and the fact that the child had been under CAMHS since age 8 and remains under CAMHS. We found that the mental health difficulties cannot be met from within the resources normally available to a mainstream school. The child has not been seen by the Child &amp; Adolescent Psychiatrist since April 2018 as one left and did not get the 6-8-week follow up appointment. No recent health assessment was available when the LA assessed for an EHCP. We accepted [parent]'s evidence which was very credible and based on her knowledge that the mental health has changed since the child was last at school. [Witness] talked about possible 1:1 support, but it was not clear what the child would get if he returned to a mainstream school or whether such support could be provided from school resources.</p> <p>We note the LA's SEN Support Plan incorporates educational psychologist's advice that the child requires a carefully structured multi-agency programme to facilitate regular school attendance. Even [witness] was unsure in her evidence what the school would need to do and what resources it would need to reintegrate child into school or even how the child would present in terms of behaviours, as those described had not been seen previously. She expressed concerns about whether additional resources would be required to deal with possible behaviours. [witness] explained she would have to buy in behaviour support which could lead to more resources being required. [Witness] also talked about TA support but it was unclear what additional resources were needed or whether these could be met from school resources, [witness] "hoped they could be met" from the resources. She did not know what classes the child would attend, but concluded the child as likely to need more support as has been out of school.</p> <p>In summing up [witness] submitted that a lot of agencies were involved, and the LA's main concern was how to re-engage back into education (as the child will not change over-night). This seems to indicate the requirement of an EHCP. We found there have been lots of agencies involved, the child remains off school and it was not clear how the child will be re-engaged, furthermore there was no strategy to re-engage and the LA did not appear to know what resources would be needed to</p>
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29.	Yes	Sections B, F and I	YP is academically able with Asperger's Syndrome. Also suffers from Anxiety, for which prescribed Fluoxetine. By the	<b>The changes which need to be made to the working document</b>

		Sections D and H1/2	<p>time of the hearing on 4 February 2019, the parties had agreed that YP would be educated at College. The parties came before us with a working document which was otherwise the subject of much disagreement. Most of the disagreement concerned the content of section F.</p> <p>The parties agreed that YP needed an EHC plan because of social, emotional and mental health. The working document started section B in this way with these agreed words: "YP is a physically healthy young person who has difficulties relating to social, emotional and mental health. YP experiences acute anxiety that can create a significant barrier to accessing and attending education. Diagnosed with Autistic Spectrum Condition, Asperger Syndrome January 2014."</p>	<p>The words "these become very debilitating" are not required, nor are the words "however since August 2018". We saw no need for the addition of the words "(BHS stages 1-4)" in the middle of page 9. The second sentence at the top of page 12 should be in this form: "YP requires considerable emotional and practical support, and a strong working partnership between YP, parents and College and related staff to enable YP to cope with sitting external exams and completing assessment portfolios."</p> <p>Section F under that box should be in these terms (and these terms only, i.e. replacing in its entirety what is currently on pages 12-15): "YP will require a bespoke programme of at least 16 hours per week during term time, aimed at helping to achieve the qualifications required to gain paid employment in the chosen career of being a horse-riding instructor. YP will require 1-1 tuition at all times when undergoing that bespoke programme from a key adult who both trains and is able to understand and cater for the emotional difficulties. YP will need clear instructions and a clear plan and timetable (including for examination preparation), so that YP can know exactly what will need to be done, why and when.</p> <p>The bespoke programme will include -  weekly work-based training at a centre which is known to YP, in order to enable YP to gain practical experience; and  relevant work experience, organised in consultation with YP."</p> <p>The first bullet point in section F on page 21 should be replaced by a bullet point in these terms:  "YP needs 630 hours per year of the time of a personal assistant or key adult who will give social care which educates or trains in the form of independence and social skills training. That personal assistant or key adult will encourage YP to engage in 'Brave behaviour' and use strategies such as going for a walk or listening to music. In time, the YP and personal assistant or key adult will be able to work together to draw up a CALM plan. This would identify known triggers, current responses, including managing social and peer relationships. The plan would then help YP to identify new strategies YP can employ to reduce safety seeking and avoidance behaviours."</p> <p><b>ORDER</b></p> <ol style="list-style-type: none"> <li>1. The appeal is allowed.</li> <li>2. Sections B and F of her education, health and care plan must be amended as stated above</li> </ol>
30.	Yes	Sections B, F and I	<p>The parties had discussed the contents of a working document ('WD') over the period of the appeal, and on the day of the hearing. They resolved almost all of the issues</p>	<p><b>THE OUTSTANDING ISSUES IN SECTIONS B, C AND F, WITH THE TRIBUNAL'S CONCLUSIONS</b></p>



		<p>Sections C, D, G and H</p> <p>which had been in dispute in relation to health and social care. It was clear that the parties might be able to assist the Tribunal by agreeing further amendments in relation to Sections B and F, but there was no time to do this on the day of the hearing. Accordingly, the Tribunal directed that a further version of the WD be sent to the Tribunal after the hearing with written submissions.</p> <p>YP has a diagnosis of Autistic Spectrum Disorder ('ASD'), made in 2010. Also been diagnosed with Attention Deficit Hyperactivity Disorder ('ADHD') and Pathological Demand Avoidance Syndrome ('PDA'). An OT report in 2010 identified physical difficulties under the umbrella of Developmental Coordination Disorder.</p> <p>In evidence to the Tribunal, YP spoke articulately about wish to attend special college as a residential student. There would be opportunities to develop skills and do practical lessons, with everything on one site, and so no transitions to other sites. Could work on independence, preparing for adulthood, as well as having access to leisure activities with peers and making new friends. Had no friends in the locality, and did not go out alone. At college 'would mix with people like me'. Agreed that would find daily travel – and the transition from home to college - very difficult.</p> <p>Asked about non-attendance at current placement, said that had been suffering stress and anxiety because the hearing was approaching. In the previous five weeks, had only attended to see the educational psychologist and to have music therapy every other week.</p> <p>The Tribunal asked the reason for not having a shower and YP said was not sure. Mother explained that YP doesn't like to use sponges, scourers and loofahs, or being wet and cold afterwards. She said that current placement offered special soaps and shampoos and the novelty of that worked for a while. Father said that they 'bribe a lot' to encourage washing and that care worker had persuaded YP to have the most recent shower by drawing up a 'contract' that YP had to sign, with the incentive to see a film at the cinema.</p>	<p>Issue A. Under <i>Social, Emotional and Mental Health</i> in Section B, the LA seeks to remove the text: <i>'The residential placement provides YP with the opportunity to work on life skills such as cooking, independence, emotional self-regulation and self- management which is contributing to preparing for the next stage in life, thus increasing YP's chances of making a positive transition into adulthood'</i>. The LA submits that this text, which describes what residential provision has done in the past, does not illuminate what the SEN are now. The Tribunal accepts that this text is not suitable for Section B; broadly speaking it does not describe needs, but how the past placement has benefitted. It will be omitted.</p> <p>Issue B. The LA proposed that the following paragraph should include the additional text in italics: "YP said that he loses control and becomes upset about changes and about uncertainty <i>highlighting times he has lashed out at his family and damaged property</i>. He reports that he is not overly sensitive and does not get upset easily, <i>but</i> he does feel that he almost always does the wrong thing or does things he later feels bad about when he is upset. He <i>has</i> expressed that he cannot understand his emotions leading up to this point and this causes him to become confused and frustrated. <i>However, he doesn't feel he loses control whilst at school.</i>" The LA case is that the additional text provides the full account or sense of what he is reported to have said. The Tribunal does not however consider it necessary to accede to his request to expand in this section of the WD on his relationships at home, which in the Tribunal's view, do not constitute a SEN.</p> <p>Issue C. It is proposed on behalf of YP to include: <i>'He is sensitive to sensory stimulation and can find it difficult to manage his anxieties in his busy family household'</i>. The LA does not dispute that he is sensitive to sensory stimulation but submits that there is no evidence that his sensitivity to sensory stimulation is a barrier to his learning in his educational setting. The Tribunal accepts that submission, and will order text which takes account of that.</p> <p>Issue D. It is proposed on behalf of YP to include: <i>'He needs encouragement and prompting to have a shower and wash thoroughly. He has visual charts to use, but does not always do so.'</i> The issue of his personal hygiene is a core one, and it will be dealt with separately below.</p> <p>Issue E. It is proposed on behalf of YP to include: <i>'He needs support whilst out: he likes to have the reassurance of staff members and will not move far away from them'</i>. The evidence from him, his family and [witness] was that he does not like to leave the house alone, at least without his dog. He has recorded, with the help of [another witness], that he feels safer being inside his home. This issue was not referred</p>
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				<p>to by [two other witnesses]. Nor indeed was it referred to in the [preferred placement] assessment, which recorded that he seemed at ease while out in the community. In the light of these and other points, [rep] suggests an alternative formulation: <i>'he reports that he feels safer being inside his home and he can be very reluctant to leave his home environment. Encouraging activities in the community can be difficult'</i>. The Tribunal agrees this helpful alternative, and will make the appropriate order, noting that section F specifies provision to support him to identify and understand his emotions, especially anxiety (and anger) and to learn strategies to calm himself, which he can then use in real life situations.</p> <p>Issue F. Still in Section B, under a new proposed sub-heading <i>'Physical and Sensory'</i>, it is proposed on behalf of him, to include: <i>'He has significant co-ordination difficulties and presents with difficulties in the following areas: Postural stability, visual motor integration, bilateral skills, motor planning, sensory processing and fine motor skills'</i>. [rep] submits on behalf of the LA that this paragraph is out of date. [witness] confirmed at the Tribunal hearing that that these matters do not present as current concerns. He noted that he is skilled at art and he did not think he has a significant issue with his motor skills. Current placement has an onsite OT and if, when [current placement] looked at progress, there had been ongoing difficulties which were barriers to learning, these would have been referred to the OT. Furthermore, he has now developed sensory strategies, for example he has headphones and puts on music. The Tribunal accepts these submissions, and notes that this phraseology has been taken from his earlier Statement of SEN. If there is no current evidence which supports this suggested need, the inclusion of this text could not therefore be justified in the present EHCP.</p> <p>Issue G. It had been proposed on his behalf that a reference should be made in Section C, to an EEG which he had had. It was in fact unclear whether this was being pursued. It was explained by his mother at the hearing that this was an issue that arose some years ago and there has been no recent reported cause for concern. In any event, the Tribunal has in mind that Regulation 12(c) of the SEND Regulations 2014 provides that section C should describe health needs which relate to the young person's SEN, and not health needs generally. The Tribunal will therefore not make a recommendation for inclusion of this matter in Section C.</p> <p>Issue H. Moving on to Section F, the LA seeks to remove: <i>'Support to develop a good sleep routine so that he can engage positively in learning opportunities. He should be encouraged/taught efficient ways to ensure he thoroughly cleans himself and shampoos his hair when</i></p>
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				<p><i>showering or bathing’, and the linked paragraph: ‘Support from residential staff to establish better routines during 3 overnight stays per week i.e. Monday Tuesday and Thursday with some flexibility to accommodate health appointments, illness and term time changes’.</i> This issue will be covered together with that of residential provision below.</p> <p>Issue 1. The LA also seeks to remove: <i>‘Support to develop a step by step prompt with him which enables him to achieve a good hair washing regime’, and the linked paragraph: ‘Support to develop a step by step prompt with him which enables him to achieve an efficient shower/bathing routine both in school and also at home.’</i> This issue will also be dealt with below.</p> <p><b>SUBMISSIONS ON RESIDENTIAL PROVISION</b></p> <p>[rep] submitted that his case for residential provision appears to be based on four arguments:</p> <ul style="list-style-type: none"> <li>a) He would struggle with the daily journey from home to [preferred placement];</li> <li>b) He needs support with washing and personal hygiene;</li> <li>c. He needs opportunities for social interaction outside of the normal College day;</li> <li>d. He has a continuing SEN in the area of sleep routines.</li> </ul> <p>In relation to the daily journey, [rep] recalled the evidence of [witness], that when he came in to [current placement] they did not see him coming in emotionally dysregulated. [rep] argued that the journeys from his home to [current placement] and from his home to [preferred placement] are comparable and therefore, as he has shown that he can now cope with the daily journey from home to [current placement], he can also cope with the daily journey from home to [preferred placement]. In relation to personal hygiene, [rep] indicated that it is not disputed by the LA that currently he does not wash thoroughly or regularly; the LA does dispute whether the text proposed on behalf of him properly describes SEN in this area. It may be undesirable that he does not wash, shower or keep good hygiene regularly – but the weight of the evidence suggests that this is his choice. In particular, although he has an historic diagnosis of PDA this does not feature in section B or C of the EHCP, nor has it been indicated in any of the recent information from CAMHS. Furthermore, she submitted, [witness] was ‘very vague’ as to what staff within the [preferred placement] residential setting would provide by way of special educational provision (‘SEP’) in this regard. He did not reasonably require role models in the field of personal hygiene in a residential educational provision, although it was an agreed outcome that he will establish</p>
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				<p>personal routines in personal hygiene which enable him to engage positively in learning.[rep] invited the Tribunal to adopt [witness]'s approach - the need for him to be educated in a context where there is a strong focus on preparation for adulthood and there are high aspirations in relation to achievement, employment, independence and inclusion in the community. Engagement in such a setting should motivate him to use the life skills he has already acquired. Thus, argued [rep], even if the Tribunal accepts that he has a specific SEN in this area which calls for SEP to be made for him, this would not require residential provision.</p> <p>Turning to opportunities for social interaction outside of the normal college day, [rep] submitted that there was no evidence from any educational professional that he reasonably requires residential provision in order to develop his skills in this area. It was acknowledged that social interaction is an area of need for him, and the parties had agreed provision in section F, which, the LA submits, is that which is reasonably required to meet this area of need. Moreover, said [rep], it may be hoped that, as he develops his social interaction skills, he will be able to make friendships outside college. It does not however follow that he reasonably requires SEP to make those friendships outside college.</p> <p>The fourth argument advanced on behalf of him for residential provision is sleep routines. She submitted that there is no evidence that he has an on-going SEN in this area calling for SEP, and in any case, there is no SEN identified in section B. The agreed text in section C states that his ADHD leads to difficulty sleeping and then concentrating during times when concentration is needed for learning; he requires medication to assist him to manage these symptoms, but (she submitted) there is no evidence that these symptoms are not managed with medication and that SEP is called for. There is an agreed outcome that him will establish a sleep routine that enables him to engage positively in learning, but section F describes a focus on supporting him to make his own decisions so that he can become independent; this should include making his own decisions around his sleep.</p> <p>No submissions were made on behalf of him, but following the hearing, [witness] took the opportunity to send to the Tribunal a written note of his views on placement. These largely repeated what he had told the Tribunal in oral evidence.</p> <p><b>TRIBUNAL'S CONCLUSIONS ON RESIDENTIAL PROVISION</b></p> <p>The central issue remaining for the Tribunal's determination is whether he needs a residential placement at [preferred placement]. In order to</p>
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				<p>resolve that question, the Tribunal will also reach determinations on Issues D, H and I, as set out above.</p> <p>He, supported by his parents, has requested a residential placement at [preferred placement]. The LA says that he does not require a residential placement. It has moved from proposing a part-residential provision at [current placement] to proposing a day placement at [preferred placement], because, (it says), as a consequence of the breakdown of his placement at [previous school] - which was a residential provision - and this appeal, new information and advice has been gathered. In particular the LA has obtained an updated report from [a witness], and all of the evidence has been reviewed, leading to its conclusion that residential provision is not reasonably required. In other words, a residential placement would be 'over-provision'; it would not be compatible with the efficient use of resources.</p> <p>The Tribunal accepts submission that there were effectively four bases for his wish to attend [preferred placement] on a residential basis. These may be given the following headings: The journey/transitions; Personal hygiene; Opportunities for social interaction; Sleep routines. He did of course have other reasons for wishing to attend [preferred placement] as a student, including its craft lessons and the opportunity to learn practical skills, but those are not germane to the decision to the Tribunal has to make, because the LA has agreed that he should be funded to attend as a day student.</p> <p>He gave evidence that he found transitions difficult – specifically that he would find doing the journey to/from [preferred placement] twice a day, five days per week, a struggle. He said that he would stop engaging. It is difficult to gauge the significance of this difficulty. On the one hand, [a witness] gave evidence that he had not seemed stressed out on arrival at [current placement] after the journey, though it was perhaps unclear whether he was referring to KS4, when he boarded for three nights per week, or post-16, when he was taken back into KS4 when the placement at [previous school] broke down.</p> <p>On the other hand, his Form Tutor at current placement was clear: in his view, a factor contributing to him refusing to attend school after 9th November 2018, was making the transition between home and school. He described this as a pattern of behaviour seen previously, both at [previous placement] and in KS4 'where he would often refuse to attend school on the days after he went home'. [Form tutor's evidence was written, and there was no opportunity to ask him questions. Although [the witness]'s evidence was oral, [Form tutor]'s apparently contradictory evidence was not put to him.</p> <p>However, it is possible credibly to reconcile these two accounts as both describing him at different periods. Form Tutor has been his Form</p>
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