

## DECISION

**Appeal No:** 09-02662  
**Appeal By:** Mr & Mrs H  
**Against Decision of:** The Kent County Council  
**Concerning:** A (born 3 June 2004)  
**Hearing Date:** 27 April 2010  
**Tribunal Panel:** Mr S Bowden (Tribunal Judge)  
Ms S Ernstoff  
Mr H Zagzoule

### Appeal

Mr and Mrs H appeal pursuant to section 326 Education Act 1996 against Parts 2, 3 and 4 of a statement of special educational needs issued by the Kent County Council (the LA) dated 1 September 2009.

### Attendances

At the hearing of this appeal Mr and Mrs H were represented by their solicitor, Mr Silas. Evidence was given by Mr U, Educational Psychologist, Ms G from HH School and Ms K from PEACH (Parents for the Early Intervention of Autism in Children).

The LA was represented by Mr Rawlings, counsel. Evidence was given by Ms F, Head Teacher at B Primary School (BPS), Ms D, a speech and language therapist within West Kent NHS, and Ms B from the LA's specialist teacher service.

### Preliminary matters.

Whilst it was possible to conclude the oral evidence on 27 April, time ran out before we were able to receive the parties' submissions on the evidence. It was therefore agreed that both parties would put their submissions to us in writing and that the panel would then reconvene to consider the evidence and those submissions, and thereafter issue this decision. We are grateful to both parties for the timely and comprehensive submissions made to us on the points in issue, identified at the outset of the hearing.

For the avoidance of doubt any references in this decision to a "term" are to one of the six terms into which this LA divides the academic year.

### The Issues

1. This appeal was formally against Parts 2, 3 and 4 of the statement issued by the LA on 1 September 2009. However, both parties had collaborated upon the preparation of a working document and by 27 April there was substantial agreement as to Part 2, the description of A's special educational needs. The only issue between the parties in that part was an additional sentence that Mr

Silas invited us to insert to the effect that A has been undertaking an Applied Behavioural Analysis (ABA) programme at HH.

2. The issues that remained between the parties related to certain elements of the provision required to meet A's special educational needs, to be set out in sufficient detail in Part 3 of the statement, and the placement at which that provision would be made.
3. At the start of the hearing we agreed with the parties that the matters to be discussed and determined were these:-
  - a. The amount of individual learning support that A requires during the course of the school day and whether it needs to be delivered by ABA trained assistants.
  - b. The amount and model of delivery of speech and language therapy.
  - c. The amount and model of delivery of occupational therapy.
  - d. The adequacy of the placements proposed to us by the parties.
  - e. In the event that we concluded that both placements are able to make adequate provision for A, whether there is a cost differential which should displace the presumption in favour of parental preference provided by Section 9 Education Act 1996.

#### **The evidence and the parties' submissions**

4. A has a diagnosis of high functioning autism. He is not yet 6 years of age. The diagnosis was confirmed in October 2007 by Dr S, Consultant Community Paediatrician. In her report dated 30 October 2007 she stated this:

'He (A) therefore fulfils the criteria for a higher functioning autistic spectrum disorder, or Asperger's syndrome. This simply reflects a personality or cognitive style and he has a good prognosis given his normal IQ and good expressive language levels. With appropriate support, he should be able to function in mainstream school. At present he needs a lot of individual instruction and direction to keep him on task with an adult agenda, rather than following his own agenda and he would benefit from additional support for this at school.'

5. Subsequently, Mr and Mrs H sought a second opinion on the diagnosis and prognosis and an assessment of their son's general development. That was undertaken by Dr W, Consultant Developmental Paediatrician, and her colleagues. Her report dated 20 February 2008 was in the papers provided to us. She confirmed the diagnosis of high functioning autism and his need for support both for his autism and his speech and language. She noted that A 'has good non verbal ability and has developed functionally useful language before the age of 5 years. These are the two most important prognostic factors in autism. His

memory is an area of strength, he has excellent visual skills and is visually interested, aiding his learning.'

6. In her recommendations Dr W concluded that a mainstream education is appropriate 'but he currently has a high level of need because of his autism, speech and language and self direction. This is acknowledged by his current teacher.' She noted that A's parents had put him on an ABA home based programme, with links to the teacher and classroom and she considered that was entirely appropriate. She advised that A would probably require ongoing support throughout his childhood and into his student/young adult life.
7. Dr G is a Consultant Clinical Psychologist. She also assessed A in February 2008 and subsequently reported upon that assessment. She conducted standardised testing and concluded that A is of at least average intelligence. She confirmed the diagnosis of high functioning autism and that 'he has the two most positive predictors of outcome, namely useful speech and normal intelligence.'
8. Dr B is a Consultant Developmental Paediatrician. She also took part in the second opinion process and assessed A on the 2 July 2008. In her report she confirmed the diagnosis and gave this opinion:-

'The implications of autism for A are that he is going to learn best from rules and routines with visual and language reminders of what he is focusing on and thinking about. For new learning he is likely to require working with an adult but an aim should be gradual independent working and here the TEACCH principles will be a particular help.'

9. There is agreement between the parties that A is appropriately placed within a mainstream primary education setting. A first attended HH, an independent mainstream preparatory school, in the nursery class in September 2007. He is currently in Year 1. Mr and Mrs H wish him to remain there for the foreseeable future.
10. Having received the diagnosis of high functioning autism Mr and Mrs H conducted their own research and in January 2008 began an ABA programme with him at home and at school. At that time he was attending HH nursery for 5 mornings a week and was supported by an ABA trained learning support assistant on 3 of them. Mrs H supported him at nursery 1 morning each week and provided ABA tuition at home during the afternoons.
11. In September 2008 A moved into the HH reception class for 5 mornings a week, increasing by 1 afternoon a week for each term so that by the end of reception he was there for 3 full days and 2 mornings a week. During that time he was supported at all times by one or two learning support assistants, funded privately by Mr and Mrs H and trained in the ABA approach. Since the beginning of Year 1 in September 2009 A has been attending HH on a full time basis, supported at all times by one of the two ABA trained learning support assistants.

12. In November 2008 Mr and Mrs H requested that their son be statutorily assessed. Initially the LA refused that request but subsequently it reversed that decision.
13. Mr U is an educational psychologist who was instructed by Mr and Mrs H to assess A. He did so at HH on 23 April 2009 and subsequently prepared a report of that assessment, dated 18 May 2009. Mr U also gave evidence to us at the hearing. He has extensive experience in assessing and addressing the needs of children on the autistic spectrum. In his report Mr U rehearsed the diagnosis that had already been obtained and noted his own observations and the results of the standardised testing that he undertook. He noted that at that time A was attending HH on a part time basis and said 'this allows Mrs H to provide some ABA input for him at home in the afternoon. Mrs H characterised the programme as not being a more typical intensive ABA intervention for 40 hours per week but one that is being used to develop A's ability to attend to adult lead learning tasks.'
14. In the conclusion to his report Mr U noted that A presented with the profile of a child with at least average cognitive ability but that like many children with autism he demonstrated a pattern of significant strengths and weaknesses. In the recommendations to his report Mr U advised that that the current ABA programme needed to be reviewed, with a view to increasing the number of hours of 1:1 therapy; that HH is 'at this time a suitable setting for integration as long as there is an acknowledgement that the main autism specific provision is through his ABA programme.'; that A needs the oversight and input of a speech and language therapist with autism experience; and that his poor concentration and focus was likely to be affected by sensory seeking behaviours, a common feature of children with autism and that assessment and advice from a paediatric occupational therapist with training in sensory integration approaches would assist.'
15. Mr U concluded by noting that Mr and Mrs H had expressed concern about A's ability to cope in a larger mainstream classroom setting. He noted 'as I have not observed A in such a setting, I cannot offer an objective opinion. However based upon my experience there is little doubt children like A struggle to cope with the demands of a larger class group, due to the difficulties with controlling environmental factors such as background noise and high stimulus levels.'
16. Presently A is supported at HH, for 35 hours a week, the school day there, by two ABA trained learning support assistants. Mrs G described for us how A's school day progresses. She says that it can be unpredictable. He is however making really good progress. She attributes that to the joint effort between his ABA 'shadows' and the school's own efforts to support him in the classroom. She told us that his shadows are 'not on top of him' but that they give him individual space, and allow him to do what the class is doing. Whenever they see that A needs intervention they will quietly do so and will engage him with the lesson. She told us that A immediately notices if there are changes in routine and will persistently ask questions about it until he is satisfied with the answer. She described him as comfortable at school but that he needed to be informed of, and well prepared for, change. When he had been so informed he was able to accept it. Social integration and interaction is very challenging for A. Miss G said that

he enjoys the calmness of the school but can now accept visitors and is learning to accept that the classroom may occasionally be noisier than he would otherwise wish.

17. A is in a class of 14 children at HH. 3 of them have special educational needs but none of the children have statements. None of the others has a diagnosis of an autistic spectrum disorder. A can be anxious, occasionally a little bit loud but his support workers will put strategies in place, for example talking to him quietly or giving him something to hold or offering him a reward. Their response will change from situation to situation.
18. Mrs G told us that she has spent 12 years in SEN settings. She acknowledged that there are many different and varied approaches to addressing the needs of children on the autistic spectrum. She has not herself been trained in ABA. There is no discrete ABA time provided for A in the curriculum. She described herself as 'not interested in labels' but that fundamentally there is a need for support and a consistency of approach and that in A's case he is making very good progress in some areas – reading is particularly good. She told us that he is making progress in line with some of his peers in some areas of the curriculum. He has 'a great deal of potential and with the right strategies in place he will make good progress long term.' Mrs G could not say how long he would be likely to require one to one support. At the moment however he presents as needing it.
19. By the time of the hearing Mr and Mrs H had discontinued their initial contention that A's educational needs extended to a continuation of the ABA programme beyond the school day and during the school holidays. Their position now is that A requires the ABA trained support that he is currently receiving at HH and that during the holidays there is a continuing need for the ABA programme to be monitored by the case manager from PEACH.
20. Ms K is from PEACH. Within the appeal bundle were a number of nursery and school observation reports undertaken by the case manager. At the hearing Ms K emphasised that the function of the 'shadows' was to keep A on task, and to anticipate and address a situation which might otherwise result in some disruptive behaviour. A can have a short attention span. He will do things to receive a reward token that he then exchanges for a 're-enforcer' for example the opportunity to read from a magazine or run around the playground for a while after which he can then appear to be much more focused upon the classroom activities. Ms K told us that there was a difference between the support provided by ABA trained LSAs and the 'normal' classroom assistant, who would be assisting the teacher in running the classroom and would not have the same focus upon and knowledge of the individual child.
21. Mr U had visited HH on the day prior to the hearing. He said that he had seen, 'a boy more engaged in learning by the adult attention he receives.' He said that compared to his previous observation, when he had commented upon the ABA programme being delivered at that time, he had seen a change in A's use of language in particular. He is using language to communicate and to comment. There is 'more interaction going on.' A will ask for help if he needs it. Mr U said that that is a 'really positive thing for a child on the autistic spectrum.' A presents

with fairly high levels of sensory need. He was clearly able to access the curriculum although there is some differentiation in the way the work is presented to him rather than in terms of the content of that work. He is dependent upon the one to one support he is receiving. Mr U confirmed that A has not been receiving a conventional programme of ABA, from the start. There has however been a lot of improvement since last year but he still needs to engage with learning and it still doesn't come naturally to him.

22. In terms of A's need for an ABA supported learning support programme, therefore, it is Mr and Mrs H's case, supported by Mrs G, Mr U, and Ms K, that notwithstanding the fact that A has not been undertaking a typical ABA programme, since the start, it is apparent that with the benefit of the programme he has been receiving, he has made significant progress. They say that it will be wholly inappropriate now to reduce or vary that level and type of support.
23. The LA agrees that A requires 1:1 support in a mainstream primary setting. It does not agree, however, that there is anything particularly different about the type of support that A has been receiving, and is currently receiving, when compared to what is capable of being provided to him by an appropriately trained and adequately resourced teaching assistant within one of its own mainstream primary settings. The LA argues that A's presentation and progress within a mainstream learning environment is good. It says that there is no particular magic about the ABA programme. What is in fact in place is a mainstream teaching curriculum directed and lead by the class teacher, with focused adult support for A. At the moment the learning support assistants are ABA trained, but that is not an essential part of the support that A needs to meet his acknowledged needs.
24. Mrs B is a specialist teacher within the LA. Her specialism is in communication/interaction and cognition/learning. She described to us the training and support that is provided to the LSA's schools. She is currently working in BPS with a child on the autistic spectrum, gathering information and working towards a statement. She goes into the school on a frequent basis. She told us that the LA advocates the use of elements of the TEACCH programme, as appropriate, to provide a structured and predictable learning environment. She has not met A but in the light of her knowledge of the school, her experience with supporting mainstream provision within the LA, and on the basis of the evidence concerning A's needs with which she has become familiar, she told us that she is satisfied that A's needs could be very well met within the classroom at BPS
25. Mrs F is Head Teacher at BPS, where the LA proposes that A should attend as from September 2010. Mrs F has been at the school since 1998 and is a specialist in early years provision. She told us that there are 92 children at the school and the number is now increasing. There had been difficulties in the recent past but they had now been resolved and matters were improving considerably. There is a reception class of 21 children, a Year 1 class with 11 and a Year 2 class with 16. The Year 1 and Year 2 pupils are taught together in a class, therefore, of 27. There is one full time teacher, one full time teaching

assistant and a part time teaching assistant who comes into the class during mornings to provide support for an individual pupil.

26. Mrs F reminded us of the favourable findings of the full OFSTED report in 2008 and of the assessment of the Mathematics curriculum that was carried out by OFSTED in November 2009. The school SENCO has attended an ASD awareness course and a range of strategies is applied within the school. Elements of the TEACCH approach are adopted. Mrs F told us that the school is heavily committed to the inclusion of all of its pupils. Whilst there is currently no pupil with a statement, there are two pupils diagnosed last term as being on the autistic spectrum. Ms B comes into school at least once a week.
27. Mrs F told us that because of increasing numbers she was not yet able to say how the classes would be arranged as from the start of the autumn term this year. There may be a mixed Year 1/2 class but there may also be a need to split the reception year. That may result in there being a mixed Year 2/3 class in the autumn term. She hoped to have a separate year 2 group, but was not able to tell us precisely how things would work out.
28. Mrs F told us that at BPS A would be supported by an extremely good and experienced teaching assistant, presently supporting another child within the school, just diagnosed as being on the autistic spectrum, with whom she has been achieving considerable success. She described herself and her staff as being 'experts in the field of treating every child as an individual'.
29. Mrs F thought that next year the maximum Year 2 class size would be 25. She said that the classroom is well resourced. The teaching assistant will take groups of children on perhaps a 1:6 basis, for additional support. The school's objective is to allow children to become independent learners. She told us that there are no loud noises and no disruptive behaviour within the school. Their expectation of A's academic progress will be very high. She thought that the school would use the same strategies as those that were being employed at HH. She had heard nothing during the course of the day, nor read anything in the evidence provided to us, which caused her to believe that the school would not be able to cope entirely adequately with A's needs.
30. Mr Rawlings confirmed that the LA was proposing that A should attend BPS as from September. Ms B and Ms F acknowledged that a careful process of preparation for any such transition would be required but we received no meaningful evidence as to how and by whom that would be achieved.
31. Turning to the issue of speech and language therapy, there is no issue between the parties that A has a need for support. The difference between them is how much of that support there should be, how it should be delivered and by whom.
32. Ms J is a speech and language therapist instructed by Mr and Mrs H to review the history and to advise them upon the extent of their son's needs and on the provision necessary to address them. Ms J saw A at HH on 15 June 2009 and her report of that assessment was available to us. She conducted standardised testing and observed A within the classroom. She concluded that A 'is a boy with

a complex range of language, processing and social communication needs. It is evident from reports that he is experiencing significant difficulties in accessing learning opportunities as well as areas of his social interaction.' 'A's current difficulties are significant and may well be long term. He needs specific intervention and specialist support in order to make progress.' She then set out the areas of A's special educational needs that related to language and communication and recommended a number of strategies to address them, in particular direct speech and language therapy intervention by way of a term (which means 2 terms within this LA) of weekly intervention within a small group of no more than 4 or individually for a minimum of 30 minutes, delivered by the therapist who would then require an extra 15 minutes to liaise with staff. Ms J recommended that following that term of weekly intervention the therapist would review A's progress which might then result in a reduction to fortnightly sessions.

33. Ms D is a speech and language therapist within the West Kent NHS. A has been known to the speech and language therapy department there since April 2008. In June 2009 Ms D summarised the situation in this way:-

'A has significant social communication difficulties. Despite age appropriate understanding and use of spoken language on formal tests of language ability, communication frequently breaks down. This has a severe impact on A's ability to access the curriculum and develop peer friendships. In order for communication to succeed A needs high levels of visual support and adult prompts.'

She then made a number of recommendations including that there should be a learning environment providing for small group teaching, and providing staff with relevant and specialist knowledge of the identified speech language and communication needs. A speech language and communication intervention plan would be reviewed and updated on a two termly basis – i.e. about 3 times a year. The therapy provision itself would be reviewed annually.

34. Ms D attended the hearing. She told us that she had met A on 5 or 6 occasions, most recently in March. In her view there were currently a lot of good strategies in place at HH which were working well. A is a distractible child who has his own agenda. It will take skilled teaching staff to understand that. She was satisfied, from within her own knowledge, that such staff are available at BPS. She is working there at the moment with a group run by the teaching assistant. Ms D said that recently A has become more focused upon what the class is doing. Previously he would be focused on something around and about him. A's biggest area of learning difficulty is around social communication. She noted how much more integrated A is now in the classroom. He is able to ask for help, something that he wouldn't do last summer. He still has problems with peer interaction but is still a very young child, only now approaching 6 years of age. She thought that it was impossible to say at the moment how his motivation to engage with his peers will increase as he matures.

35. Ms D did not accept that the level of direct intervention and support that Ms J recommended in her report was either necessary or desirable. In her opinion having the work done directly by the therapist would add nothing to the success

of the programme. The originally SLT intervention package had been reviewed, according to whether A was at HH or BPS, and was made available to us in the appeal documents.

36. As to occupational therapy provision, again there is no issue between the parties that it is necessary. A had been referred for an occupational therapy assessment in June 2008 and within the appeal papers was a school visit report prepared by Ms S, Paediatric Occupational Therapist, relating to that assessment. She reported on her observations and made various recommendations as to appropriate strategies to be adopted. She concluded by saying that A would be discharged from the occupational therapy service but could be re-referred if additional issues arose.
37. The working document prepared by the parties for the purposes of this appeal identifies the limited difference between them as to OT. Mr and Mrs H propose weekly one to one sessions reviewed on a half termly (ie termly within this LA) basis. The LA proposes a 6 week programme, then to be reviewed, during which the occupational therapist will visit the school, observe A in the classroom and advise upon the programmes to be delivered to him within the school.
38. Mr and Mrs H described for us a typical day in A's life. He is a good eater, but occasionally messy. He can dress himself but there is a motivational issue there for him. If he wants to he will, if he doesn't he won't. He is good in the car and going to school. He is said to love going to school. He has no true friends at the moment but is a little boy who wants to socialise but hasn't the skills to do so. There used to be an ABA programme undertaken at home after school, but he got very tired and they have discontinued that. There is occupational therapy equipment in the basement and they will play with that. He gets on with his sister very well. She is a real strength for him. They play together imaginatively. He loves story time. He is fascinated by trains. Mrs H told us that she has to be aware at all times of what A is doing. He has no weekend or sporting activities. They did try him at a football club last term but he would wander off unless someone was with him all of the time. It is extremely difficult to keep him on task. Mrs H told us that in the long term she believed that A has the potential to become a fully functioning member of society but in the short term she just wants him to have a happy childhood where he is comfortable and can thrive.
39. At the hearing, and in the submissions made subsequently by the parties, there was considerable discussion about the relative placement costs, should we conclude that both schools would make adequate provision. In respect of both placements, speech and language therapy and occupational therapy would be provided from within the NHS and to that extent the cost in each – other than some extra time being proposed were A to attend BPS – would be similar. The difference between the two placements according to Mr Rawlings comes to £13,359.36 if we accepted the parents' case in full. Mr Silas acknowledges some additional cost at HH but says that it is no more than £2000 - £3500 and is in any event not so great as to override the preference clearly expressed by Mr and Mrs H that A should be educated at HH. For the purposes of this decision we do not find it necessary to go further into the debate between the parties on the issue of marginal placement cost.

## **Tribunals conclusions and reasons**

40. There was a lot of written and oral evidence given to us on 27 April but in reality there is a substantial measure of agreement and the issues which we have to determine in this appeal are relatively uncomplicated.
41. A is approaching 6 years of age. He has received a very early diagnosis of high functioning autism. He is of at least average cognitive ability. It is common ground between the parties that he has made good progress, particularly in the last year, commented upon by his parents, Mr U and by Ms D. He has become more confident. His use of language has become more proficient. He is, of course, getting older and more familiar with social situations.
42. We were struck by Mr and Mrs H's description of A at home. It seemed to us to confirm the potential for good progress that had been identified by others in the various reports. A engages in imaginative play by himself and with his sister. He asks questions at school and is prepared to negotiate his own position within the classroom to his best advantage. He receives support from his ABA trained assistants but they stand back and the curriculum is delivered within the classroom by the classroom teacher. His use of language is good although there is some obvious difficulty in his social use of language and understanding of social concepts. However we have to remind ourselves that he is not yet 6 years of age and does have a confirmed diagnosis of high functioning autism. The parties are agreed that that defines his primary special educational need.
43. A's needs are variously described in Part 2 as 'significant' and 'severe' in terms of their impact. He is described as 'noise sensitive and will withdraw in noisier, busy environments.' He has 'almost no sense of danger and will wander off without thinking of the consequences.' He is a 'vulnerable pupil with complex needs who is dependent upon a high level of individual support and guidance in all aspects of school life.' He is 'wholly reliant upon adult support in the classroom setting' and in a group situation 'keeping A engaged is challenging.' 'Without one to one support A will regularly move away from activity and at times move out of the classroom. ...even with one to one input A struggles.'
44. All of that is agreed by the parties. As to the single sentence that is not agreed we are minded to agree with Mr Rawlings' contention that it is not an accurate description of the programme that A is following at HH and we do not consider that in any event it adds anything to the statement. Part 2 sets out the foundation upon which the parties have agreed that we should proceed to construct our conclusions as to the provision necessary to meet those needs, to be described in Part 3. In turn that will lead on to the consideration of which placement is capable of making that provision.
45. Substantial agreement was also reached between the parties in respect of Part 3. The working document provided to us for the hearing clearly identified it. As initially presented to us, under the heading 'Facilities' the working document stated 'Small class sizes and a structured learning environment is more conducive to A's needs as a child with autism.' At the start of the hearing Mr

Rawlings and Mr Silas told us that they had agreed that that sentence should be shortened and should just read 'Small class sizes and a structured learning environment.' It goes on 'A requires a learning environment with minimal visual and auditory distractions to reduce his difficulties in sensory information and enhance his attention and concentration, including in a one to one or small group setting as appropriate.'

46. In his written submissions, Mr Rawlings invites us to take the view that there was little evidence that A requires small classes. That may be so, although it is implicit in Mr U's evidence and is a significant element of the parents' case to us. However, that is precisely the description that both parties have agreed as one element of necessary provision.
47. There is no doubt that at HH, A is in a small class environment, appropriately supported, and within which he is making apparent progress, academically and in terms of his acquisition of social skills.
48. If A were attending BPS today, he would be in a class of 27 Year 1/2 pupils. Whilst there are small group opportunities, the class is structured as a single class with a single teacher and a full time teaching assistant. Even with his own learning support, on a full time basis, A would be a member of a class of 27, which on any view could not be described as a 'small class'. Mrs F could not tell us what the class structure would be likely to be at the start of the autumn term 2010 because that is still under consideration. She thought that the maximum class size would be 25. There was a possibility that there would be a combined year 2/3 class although that was by no means certain. She hoped that there would be a discrete year group but could not say more than that. We think it is more likely than not that A would not find himself in a 'small class' at BPS in September.
49. The parties have agreed not only upon the appropriate description of a A's special educational needs but also upon elements of the provision necessary to meet them. There is nothing in the evidence provided to us that would suggest that those descriptions or that provision is inappropriate or is contradicted by the evidence. We endorse the parties' agreement in those respects.
50. Both BPS and HH are mainstream primary schools. Despite the criticisms made during the appeal of BPS in terms of the difficulties that it previously experienced and the mobility of its pupil population, we find nothing to persuade us that it is anything other than a perfectly good mainstream primary school, adequately resourced and having the benefit of access to the LA's specialist teaching service where required. It has a relatively high proportion of children with identified special educational needs, albeit none with a statement, and very little experience of children on the autistic spectrum. However, the latter would probably have been true of HH at the time when A first went there. Today the reserve of knowledge and experience at HH in dealing with children on the autistic spectrum is predominantly vested in the ABA trained teaching assistants that support A at the school. HH does not profess to any degree of specialist knowledge or experience in addressing the needs of autistic pupils. What it knows, it has acquired by a process of osmosis during the time of A's attendance

there. What HH does have, however, are small classes and, as far as A is concerned at least, familiarity, predictability and consistency. It is acknowledged by the LA to be an adequate educational setting for this child.

51. It seems to us that on the parties' analysis of the provision necessary to address A's needs, BPS will probably not meet a significant part of it, i.e. small classes. That may or may not be the case elsewhere within the LA's primary provision but no evidence was given to us about that.
52. Additionally, it is beyond dispute that A does not respond well to change, a common feature of autism, and has to be substantially prepared for it. The present uncertainty as to what will be happening at BPS in the autumn term 2010 would not bode well for a successful transition process and introduction into a new school. We were not told when that uncertainty would be resolved.
53. It was suggested to us by the LA that, irrespective of our decision on Part 4, A would probably be staying at HH anyway. That may or may not be right but it is not relevant to our decision. It may also explain the lack of evidence as to what thought has been given to the detailed and highly sensitive transition process that would have to take place between now and September were A to be moving from HH to BPS. A is a child who requires as predictable and consistent an environment as possible to effect successful change. On the balance of the evidence we are not persuaded that it would presently be achieved by a move to BPS.
54. However, we are similarly not persuaded that A's learning support has to be provided by a person or persons trained in the use of ABA programme techniques. It is not in dispute that the programme that A has actually been following since the beginning of 2008 is not a 'typical' ABA programme. Mr U urged us to the view that there is no 'one size fits all' model of such a programme but in our view what is described to us in the papers and was discussed during the course of the hearing falls very far short of the intensive 1:1 model that would normally be recognised as an ABA programme. That appears also to have been Mr U's view in April last year. Nonetheless, A has demonstrated progress since then.
55. It seems to us that what is actually being delivered to A at HH, in the terms in which it was described to us, is no more than should be capable of being provided to him by a competent and adequately trained learning support assistant within a mainstream primary setting. There is no issue between the parties – it is contained within the working document – that staff working with A should have training specifically related to teaching children with a diagnosis of autistic spectrum disorder and that staff will require skill and experience in working with pupils with social communication difficulties. We are satisfied that that is an adequate and appropriate description of the type of support that A requires. That he needs support is not in issue. We find that that support does not need to be delivered specifically by ABA trained assistants.
56. As to the continuing oversight by PEACH, that is inextricably linked with the ABA programme. We have no doubt that A and his parents have found it a valuable

source of advice and support. However, it is no longer the parents' case that the programme should continue after school and through the holidays. Consistent with our finding as to the need for ABA trained support in school, we do not find that PEACH oversight throughout the year is necessary educational provision.

57. Turning then to therapeutic provision, as to occupational therapy there is little difference between the parties. On the limited evidence provided to us we do not find that A has a demonstrated need for the level of direct intervention proposed by his parents. The OT package was expanded for the purposes of the appeal from visits by the OT three times a year to six times, ie termly, but is otherwise as was originally set out in the appeal papers. We are satisfied that the model and amount of provision proposed to be provided by the LA, in the event that A remains at HH, should be adequate and is appropriate.
58. As to speech therapy we have carefully considered the report prepared by Ms J and have noted above her conclusions and recommendations. We have weighed that against the evidence given to us by Ms D, who has seen A on a number of occasions, over a relatively long period, and who has observed significant changes in his social use of language, as have others. In our view the evidence does not substantiate a need for weekly and directly delivered speech and language therapy. We prefer Ms D's evidence on that issue. Shortly before the hearing we were provided with a 'Speech and Language Intervention Package' devised by Ms D. It varies according to whether A is at BPS or HH but we find that the model and level of provision proposed by the LA, in either of the establishments proposed to us, would be adequate and appropriate.
59. In summary, therefore, we accept and endorse the parties' agreement as to Part 2 but make no other amendments to it.
60. We conclude that BPS would probably not make adequate provision to address A's special educational needs in the terms in which the parties have agreed those needs and the provision to be made for them. We are satisfied that HH is able to make that provision and is an appropriate placement for A.
61. We do not find that A's learning support needs to be delivered by ABA trained personnel. It does need to be full time so that at HH that comprises 35 hours of support each week. The BPS school day is a little shorter but the LA was itself proposing very nearly full-time support there and we consider that the evidence and the parties' agreed description of need in Part 2 supports the need for full-time support at HH.
62. We do not accept that there is an educational need for continued assessment of A's progress by the ABA case manager.
63. We find that speech and language therapy and occupational therapy can be provided to A at HH through the services of the NHS. The appropriate model and level of provision is that proposed to us by the LA and identified within the updated 'intervention packages' provided to us for the purposes of this appeal by the LA.

64. The issue of comparative placement costs does not arise.

**Order**

A's statement of special educational needs dated 1 September 2009 shall be amended into the form of the document appended to this decision.

Dated:20 May 2010



Tribunal Judge: Mr Stephen Bowden