



## GUIDANCE TO TRIBUNAL ADMINISTRATION AND PARTIES

No 01/2019

### DOCUMENTARY EVIDENCE

#### *Purpose of this Guidance*

1. The purpose of this guidance is to explain what is permissible in terms of documentary evidence and how the bundle of tribunal papers will be prepared and lodged with the Tribunal.

#### *Implementation date*

2. The date of implementation of this guidance is 30 September 2019.

#### *Word meanings*

3. In this guidance these words or abbreviations have the following meanings:

document	includes all or part of a document, or any other item on which information has been recorded or is stored; such as (but not limited to) a video clip, film, tape, audio file or secure electronic storage device
the bundle	the hardcopy version of the documents lodged by all parties, as prepared and collated by the respondent/responsible body
the Tribunal	the Additional Support Needs jurisdiction of the Health and Education Chamber of the First-tier Tribunal for Scotland
a tribunal	the three people who will consider a claim or reference and make a decision – one will be a legal member who is an experienced lawyer and the other two are ordinary (non-legal) members with specialist expertise in education, social work or health. A tribunal can also be made up of one legal member.
legal member	the legal member appointed in the reference/claim
parties	the appellant/claimant and respondent/responsible body
rule(s)	all rule references are from The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366)
CSP	co-ordinated support plan
SCTS	Scottish Courts and Tribunals Service - who provide administrative support to the Tribunal

## Documents which may be lodged

### *Relevance of documents*

4. Only documents which are directly relevant to an issue(s) in the reference or claim should be lodged by a party.
5. A document is directly relevant to an issue only where it is anticipated that:
  - a) a witness will refer to that document in his/her oral evidence or witness statement; and/or
  - b) a party will refer to that document during submissions.
6. A legal member may, either on their own initiative or on the written and reasoned application of any party, and after considering any representations from both parties, decide to exclude a document from a hearing bundle on account of its irrelevance<sup>1</sup>.

**Example 1:** *An appellant in a CSP reference is considering lodging a number of medical reports as evidence of the child's additional support needs. However, the existence and nature of those needs have been agreed by both parties. The documents are not relevant since the facts are not in dispute, the medical reports will not be referred to, and so should not be lodged.*

**Example 2:** *A respondent in a placing request reference is considering lodging all of the primary school reports for the child who is now aged 14. Reference will only be made to the reports from primary 7 onwards. The others are not relevant to the reference and so should not be lodged.*

### *Partial documents (more than 10 pages)*

7. Where a party is considering lodging a document which consists of more than 10 pages, careful thought must be given to whether only part of the document should be lodged.
8. Where a document is substantial in length, a legal member may ask for an explanation from the lodging party as to why the full version of the document has been lodged.

---

<sup>1</sup> rule 25 (references); rule 71 (claims)

**Example 3:** In a claim, the responsible body is considering lodging its 50 page Equality Act school policy. It is intended to refer to only three paragraphs from that Policy, on two pages. Only those pages in addition to the document cover and contents table needs to be lodged (unless other pages are required to give the relevant parts context and meaning). The whole document should not be lodged.

**Example 4:** In a CSP reference, the appellant is considering lodging the child's homework diary for the whole of the previous academic year. Direct reference will be made to only five entries to illustrate a particular point. Only the pages relating to those five entries should be lodged, and not the whole homework diary for the year.

9. Where a legal member is not satisfied with the explanation provided under paragraph 8, the legal member may direct that the document is removed from the bundle and replaced with a shorter version<sup>2</sup>.

### Lodging and distribution of documents

10. Parties must submit all written evidence to be relied on before the end of the case statement period<sup>3</sup>.

#### *Electronic lodging*

11. **Documents can only be lodged electronically where the the party uses a secure server recognised by the SCTS.**
12. All documents lodged electronically must be sent to the following e-mail address: [ASNTribunal@scotcourtribunals.gov.uk](mailto:ASNTribunal@scotcourtribunals.gov.uk)

#### *Naming and numbering the documents*

13. The pages of each document file must be numbered by the lodging party from 1 upwards. Each document file should also be given an appropriate electronic file name by the lodging party so that it can be easily identified. For example (see also Appendix A):

6 to 7	School report (1 June 2019)
--------	-----------------------------

<sup>2</sup> rule 25 (references); rule 71 (claims)

<sup>3</sup> rules 17(3) and 19(3) (references); rules 64(3) and 66(3) (claims)

### *The electronic folders*

14. The case officer will create an electronic folder for each party in the case. All documents lodged by each party will be stored in the relevant folder. In the event that a document(s) is not, on good cause shown, lodged electronically, the casework team shall, on receipt, scan the hardcopy and upload it into the electronic folder.
15. The legal member assigned to the case will receive, at the appropriate time, all electronic document files.

### *Late lodging of documents*

16. Where a party proposes to lodge a document after the end of the case statement period, the document should be sent to the case officer with an explanation of:
  - a) the reason(s) for the document being submitted late; and
  - b) an explanation of the importance of the document to the issue(s) in the case.
17. If no explanation is provided, the case officer will request one.
18. The case officer shall send the request and proposed document(s) to the other party, inviting comments within 7 days (or a shorter or longer period as a legal member may direct) on whether the document should be permitted to be lodged late.
19. After receiving any comments, the case officer shall send the proposed document, any explanation and response to a legal member. The legal member will decide if there is good cause to allow the document to be submitted late.<sup>4</sup>
20. If the legal member decides that good cause exists, the document will be added to the bundle. If not, the document will be excluded from the bundle and no reference may be made to it (unless good cause exists) by any witness.

## **Preparation of the Bundle by Respondent/Responsible Body**

### *Preparing the hard copy bundle*

21. Following the end of the respondent/responsible body's case statement period, the case officer shall send the two folders of electronic document files referred to in paragraph 14 above to the respondent/responsible body.
22. The respondent/responsible body shall prepare a hard copy bundle ('the bundle') within 7 days of receipt of the electronic document folders (or such shorter or longer period as a legal member may allow on good cause shown).

---

<sup>4</sup> rule 25 (references); rule 71 (claims)

*Duplication – one copy only*

23. The respondent/responsible body must include only one copy of each document in the bundle.
24. Where the same document has been lodged by both parties, the bundle shall only include the copy lodged by the respondent/responsible body.

**Example 5:** *In a CSP reference, both parties have lodged a copy of the current CSP. The appellant's copy should not be included in the bundle as the respondent's one is sufficient.*

25. When sending the copies of the bundle to the Tribunal, a list of the document number and title of all documents the respondent/responsible body has removed due to duplication should be prepared (see appendix B), and a copy of this list should be sent to the appellant/claimant. For example:

10 to 12	CSP dated 10 January 2019
----------	---------------------------

*Numbering and sections*

26. The respondent/responsible body shall number the pages sequentially.
27. The bundle must be set out in three sections: a 'T' section for tribunal papers; an 'A' or 'C' section for papers lodged by the appellant or claimant; and an 'R' or 'RB' section for papers lodged by the respondent or responsible body.
28. Bundle numbering should run in each of these sections so that the numbering in each section would begin as follows: 'T1'; 'A1'/'C1' and 'R1'/'RB1'.
29. The documents within each section should be arranged in the same numerical order as the electronic folder sent by the case officer (see paragraph 14).

*Inventory of documents*

30. The respondent/responsible body shall prepare an inventory of documents and place this at the front of each section of the bundle (T; A or C; R or RB), indexing the documents and page numbers (see appendix A).

*Five copies of the bundle*

31. Once the bundle has been prepared, the respondent/responsible body shall send five copies of the bundle to the case officer.
32. One copy shall be for the use of witnesses at the hearing and for retention by the Tribunal after the hearing is over, another shall be issued to the appellant/claimant. The remaining three will be sent to the tribunal members.

*Failure to comply with this guidance*

- 33. If the bundle is not prepared in the terms outlined in paragraphs 23 to 31, the case officer shall promptly return all copies of the bundle of the respondent/responsible body for the necessary amendments to be made.**

*Disagreement on bundle content*

34. In the event of any disagreement over the content of the bundle, a legal member will decide on the content of the final version.

**May Dunsmuir  
President  
July 2019**

## Appendix A

### Example of an Inventory of Documents

Case reference: HEC/AR/19/0000

\*Respondent/~~responsible body~~: Anywhere Secondary School

\*Appellant/~~claimant~~: Ms A

Child/young person:

### Inventory of Documents

(one for each section in the bundle)

**[\*~~T/A or C section/R/RB section~~]**

### A section

Document Page Number(s)	Document Name and Date
<i>1 to 5</i>	<i>Case statement (20 May 2019)</i>
<i>6 to 7</i>	<i>School report (1 June 2019)</i>
<i>8 to 9</i>	<i>Letter to Ms A from Headteacher, Mr G (20 April 2019)</i>
<i>10 to 12</i>	<i>DELETED CSP dated 10 January 2019</i>
<i>13 to 20</i>	<i>Educational Psychologist report (20 June 2019)</i>

\*delete as appropriate

## Appendix B

### Example of list of documents removed due to duplication

Case reference: HEC/AR/19/0000

\*Respondent/~~responsible~~ body: Anywhere Secondary School

\*Appellant/~~claimant~~: Ms A

Child/young person:

### Inventory of Documents

(one for each section in the bundle)

**[\*T/A or C section/R/RB section]**

### A section

### List of documents removed due to duplication

Document Page Number(s)	Document Name
10 to 12	CSP dated 10 January 2019

\*delete as appropriate.