



Tribunal Forum

05 May 2017

5 Atlantic Quay, Glasgow

Each year the Tribunal hosts a forum which provides the opportunity to meet the President, the Secretary and members of the Secretariat, and to discuss topical matters in relation to the Tribunal.

The most recent Forum was held on Friday 5 May 2017 in Glasgow, and was attended by representatives of 25 organisations.

The President delivered a presentation including an update on the implementation of the First-tier Tribunal for Scotland Health and Education Chamber which will house the current Additional Support Needs Tribunals for Scotland, and eventually the NHS Appeal Panel, the NHS Tribunal for Scotland and Education Appeal Committees.

The President also discussed preparing for a tribunal – the pre-hearing, joint minutes of agreed facts and the child's views.

The Forum heard from the Tribunal Training Chair, Derek Auchie, on the Education (Scotland) Act 2016 – capacity, the adverse impact on wellbeing and references to the Tribunal; and from the Tribunal Secretary, Hazel McKay, who gave insight into the projects currently undergoing and how the administration are preparing for the legislative changes coming into force later this year.

The Forum heard from Hannah Frodsham from the Tribunals and Administrative Justice Policy team at the Scottish Government about Scottish Tribunal reform.

Below is a flavour of some of the questions and topics discussed at the event.



The First-tier Tribunal for Scotland Health and Education Chamber

i. Maintaining the ASNTS specialism

The Tribunal will maintain its specialism and will continue the work that they do after transfer into the First-tier Tribunal for Scotland Health and Education Chamber. The membership are specialist in their own areas; solicitors who have experience working in private, public and local authority sectors, members with a range of education backgrounds and backgrounds in physiotherapy, social work, speech and language therapy, psychiatry and pharmaceutical. The solicitors come together with the members to create the expert tribunal.

The Tribunal is building on its skills to become even more child focused, with projects focussing on pre-hearing information, access to justice and at the hearing itself. Although the tribunal hearing is not like a court, the tribunal is a formal judicial legal process with the flexibility to explore different ways in which we can hear evidence.

ii. Education Appeals Committees and NHS Appeals Tribunals

The President introduced the other jurisdictions that are coming into the Chamber:

Education Appeal Committees (EAC)

The EAC's currently operate within each of the 32 education authorities. The President hopes to achieve consistency in the EAC processes once they transfer to the Health and Education Chamber.

NHS Appeals

The President explained that the two NHS tribunals will transfer in 2019.

iii. Scottish Tribunal reform



The intention of Scottish Tribunal reform is to achieve consistency for those who use tribunals. The Tribunal administration will maintain its expert staff.

The First-tier Tribunal for Scotland will become the tribunal at “first instance”, with appeals being made to the Upper Tribunal. The new Chamber structure started in December 2016 and will continue until around 2022. The NHS tribunals will transfer into the Health and Education Chamber in 2019 and the Education Appeals Committees in 2020.

The main changes users will see is to the review and appeals procedures, which are now more streamlined. A new process will be introduced of seeking permission from the First tier Tribunal to appeal to the Upper Tribunal. The aim is to make the review and appeal processes more efficient. The draft rules of procedure will shortly be issued for consultation and Forum attendees were invited to consider these carefully.

Preparing for a tribunal – pre-hearing

i. Availability

Parties should plan their own and their witness’s availability as soon as the tribunal process begins to save delays when a hearing is being arranged. The President stressed the importance of being able to conclude proceedings with as little delay as possible.

ii. Joint Minute of agreed facts

A joint minute of agreement is a written statement of facts which are agreed between the parties. It assists in focusing the minds of the parties on the matters which remain in dispute. Parties, when preparing a joint minute, often realise there is less in dispute than they may have presumed. A joint minute can also reduce the need for oral evidence.

After the case statement period has ended, the convener will hold a case conference call and at this stage may direct that a joint minute be prepared (where both parties



are represented). The President has issued a new Guidance Note on case conference calls, which is available on the Tribunal's website.

iii. Productions

The President stressed the importance of including only necessary documents in the bundle of productions and preventing duplication of documents, which will improve the efficiency of the process.

Preparing for a tribunal – the child's views

The President is currently reviewing the ASNTS website and developing a Child's section. She will be consulting with children and young people as this is developed. The website development will be used to also create two types of child's views forms, one for able children and young people and the other for those with communication difficulties or who are non-verbal.

The tribunal will be focused on the child's views from the outset. There are many ways in which this can be done, which include:

- Through independent advocates
- Children expressing their views direct to the tribunal
- The use of the new child's views form (coming soon)

The President is also hoping to influence the development of bespoke hearing rooms in the Glasgow Justice Centre which is being developed. She shared the concept of the Nordic 'Barnahus model', and the benefits of some of the physical features of this.

The President has issued guidance on independent advocacy, which can be located on the Tribunal's website.

The Secretary invited people to keep an eye on the ASNTS website, where all of the upcoming changes will be shared.



Education (Scotland) Act 2016

Derek Auchie's presentation is attached and available on our website.



170505 Derek Auchie
Education (S) Act 201

Laura Meikle, from the Support and Wellbeing Unit at the Scottish Government recommended attendees reference the 'keeling schedule' which illustrates the amendments made by the Education (Scotland) Act 2016.



Keeling Schedule.pdf

Enquires to the Tribunal

1. Referrals to independent advocacy for the child or young person?

The President introduced a guidance note (01/2016) on Independent Advocacy to Tribunal Members for the purpose of clarifying the role of independent advocacy in the Tribunal process, which can be found on the website. The Tribunal members and conveners are clear when and how they can instruct an independent advocacy service to take the child or young person's views. In the last year just over half of the cases that proceeded to an oral hearing had been instructed by the tribunal to produce an independent advocacy report.

2. Is there guidance on a time for action after a tribunal decision has been made? i.e. If a placing request is granted, is there a timeline in which this should be: a) communicated to parents and b) action by the appropriate parties?



The Tribunal itself can specify a timescale in their decision, if they deem this necessary. The decision is shared with both parties at the same time. The expectation if no timescale is specified, is the decision should be carried out in a prompt manner. The Act does not provide a timescale. If a decision is delayed from the tribunal, the tribunal may issue a summary decision, if appropriate.

If there is a concern that the education authority isn't complying with the tribunal decision the President can, under request from any party or on her own accord, monitor the implementation of any tribunal decision under Schedule 1 paragraph 11A of the Education (Additional Support for Learning) (Scotland) Act 2004. The President will write to parties and invite responses as to the delay of the implementation of any tribunal decision, where the statutory provisions are invoked.

- 3. i. The challenge for local authorities which result from a cross-over between the Child and Young Persons (Scotland) Act 2014 and the Education (Additional Support for Learning) (Scotland) Act 2004 regarding co-ordinated support plans and the child's plan.*

It is not always necessary for a child's plan to be lodged. Where the reference involves a CSP, it ought to be possible for the CSP to be taken out of the child's plan and lodged.

One education authority commented that they have noted a reduction in requests for CSPs. The President remarked that it is too early to assess the impact, if any, of the statutory Child's Plan on the number of CSPs. She reminded attendees that the CSP is a statutory document in its own right.

- 4. What is the average time a case is taking from acceptance of the reference to a decision from the Tribunal?*



The average time from registration of a case to the last hearing date is 185 days and from registration to a decision is 215 days. Reasons for this have included; request for extension of a case statement period, request for suspension, to allow mediation to take place, postponements and representative, parties or witness availability.

5. Can you provide more details about the Education (Scotland) Act 2016 extension of rights to children to challenge decisions under the Education (Additional Support for Learning) (Scotland) Act 2004? When will the provisions come into force; Can you provide an indicative timescale for when draft Tribunal rules will be available?

This question has been answered via the presentation from Derek Auchie, Tribunal Training Chair and the President's presentation. You will find a link to his handout on our website.

6. Would the President provide guidance on the rules of evidence for tribunals, especially for oral hearings? E.g. What is or is not a leading question?

The President has produced a range of guidance and information notes which are on the website. There are different ways in which a tribunal can hear evidence, which is referred to in the Rules of Procedure. Leading questions are appropriate when an issue isn't in dispute. Contested or disputed issues should be asked as open questions. Tribunals are of their own in nature and type, although they adhere to the general rules of evidence.

7. i. What is the ASNTS procedure in cases where the same family apply to the Tribunal on several occasions? What account is taken of previous hearings and outcomes?



Additional Support Needs
Tribunals for Scotland

Each competent claim or reference will be accepted. No account is taken of previous references or claims or of any previous decision, unless a party lodges previous decisions. A tribunal is not bound by an earlier tribunal's judgement, although they may find it of assistance.

- ii. What advice can the Tribunal provide Therapy managers on how best to prepare and support staff who may be called as witnesses at a Hearing? What can service leads do to ensure that their staff are familiar with Tribunal proceedings and expectations, e.g. relating to aspects of clinical evidence and service delivery?*

The President has issued guidance and information notes, which are available on our website to assist parties, representatives, witnesses and supporters.

- iii. How are different types of additional support needs represented in References to ASNTS and what is the breakdown of Hearings by Reference type?*

Please see the annual report, available on the website, for this information.

- iv. Further information relating to the ways in which ASNTS anticipate seeking the views of the child or young person.*

This question has been covered through the President's presentation.

- 8. Is the decision of a tribunal only shared with parties? If an expert witness is unhappy with how their evidence is recorded within the decision, how can they 'appeal'?*

Only the parties to a tribunal can appeal or request a review. If a witness is provided with a copy of the decision by a party and they are unhappy with the recording of their evidence they can discuss this with the party, but the witness has no right of appeal or review.



9. If the same judges who currently sit in the Court of Session will sit on the new Upper Tribunal, how will this reduce costs?

The President will be able to sit on the Upper Tribunal, as will other Chamber Presidents, the President of Scottish Tribunals, the Lord President and other judges of the Court of Session. The President anticipates that it is likely that she will sit as regularly as needed, which will introduce specialism to the Upper Tribunal process.

The President thanked the speakers, enquirers and those in attendance today, for their valuable input.