



Additional Support Needs

GUIDANCE TO TRIBUNAL MEMBERS NO 01/2023

HEARINGS IN THE HEALTH AND EDUCATION CHAMBER

Purpose of this Guidance

1. This guidance is issued to assist members and to explain the types of hearings which may be conducted in the Health and Education Chamber (**HEC**).

Former President's Guidance Notes

2. President's Guidance 01/2020 *Hearings and the COVID-19 Outbreak* and 02/2020 *Remote Hearings and the COVID-19 Outbreak* are revoked.

A. General

Hearing Types

3. There are three types of hearings which may be conducted in the HEC:
 - An in-person hearing, conducted with all participants in a hearing room.
 - A remote hearing, conducted using Cisco Webex video conference (**VC**) or telephone conference call or a mixture of both.
 - A hybrid hearing, conducted part in-person and part remotely.

Decision without an oral hearing

4. Where parties agree, a decision on the reference or claim may be taken on the written evidence and argument, without the need for an oral hearing. ¹

Rules of Procedure

5. All hearings are subject to The First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018 (schedule to SSI 2017/366) and relevant President's Guidance. This includes the overriding objective at rule 2; and rule 50(1), which allows the First-tier Tribunal to regulate its own procedure.

¹ rule 37 (for references) and rule 83 (for claims).

Judicial decision

6. The decision on hearing type will be taken by the legal member or tribunal, who will determine how best to deal with the reference or claim fairly and justly. The legal member and tribunal shall have regard to President's Guidance: [01 2022 The Child, Young Person and the Tribunal](#).
7. The decision on hearing type will usually be decided during a case management call (**CMC**). The legal member shall record this in the CMC note and inform the caseworker. The caseworker will state the type of hearing on the hearing notification letter.
8. Attendance forms are issued to parties. This includes a section where parties can specify which type of hearing they would prefer. This is included in the bundle at the 'T' section.
9. When considering hearing type, the legal member or tribunal will consider the facts and circumstances of the case and any issues that may present for hearing participants.

Limits on the number of witnesses

10. The caseworker shall send a copy of [Information Note 01/2018 Parties, Representatives, Witnesses and Supporters](#) to the parties and witnesses when a hearing is fixed.
11. Each party may bring up to two witnesses in a reference, and five in a claim.

Documentary evidence

12. President's Guidance [01 2022 Documentary Evidence](#) shall apply to all hearings. This explains the electronic bundle (**e-bundle**). The e-bundle is 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. Page numbering will run in each of these sections so that the numbering in each section will begin as follows: 'T1'; 'A1'/'C1' and 'R1'/'RB1'.
13. The e-bundle is created once the case statement period ends and is circulated to parties and tribunal members.

Sensory Principles

14. Sensory principles will be maintained in all hearings. These include:

- a) Noise kept as low as possible.
- b) One voice at a time.
- c) Uncluttered rooms/backdrops or use of the HEC backdrop in VC hearings.
- d) Access to fresh drinking water for the child or young person.
- e) Clear communication, using a system familiar to the child or young person.

Additional principles in sensory hearing suites:

- f) Sensory paint colours and no more than two main colours in the hearing and waiting rooms.
- g) Sensory fidget toys.
- h) Soft seats in the waiting area.
- i) A round hearing table, with chairs of equal height and design.
- j) A soft seating area in the hearing room.
- k) Access for the child or young person to a break out area in the hearing room.
- l) A sensory wall, which may be personalised with an image of the child or young person's choosing.
- m) A 1:1 room attached to the hearing room where the child or young person may give their evidence or views to one questioner.
- n) Access for the child or young person to a sensory room.

Start and end times

- 15. Hearings will ordinarily start at 10 am and end by 4 pm, with a lunch break in between. A remote hearing must have at least one comfort break in the morning and one in the afternoon, in addition to the lunch break, which itself should last no less than 30 minutes. Participants shall be advised of timings by the legal member.
- 16. Before a break takes place, the legal member will remind witnesses who are giving evidence that they shall not discuss their evidence or the proceedings with anyone, including their representative, during the break.

B. In-person hearings

- 17. In-person hearings must take place in a Scottish Courts and Tribunals Service (SCTS) venue until the President advises otherwise. These include the sensory hearing suite in the Glasgow Tribunals Centre, or Inverness Justice Centre, or George House, Edinburgh. This will allow SCTS sanitisation routines to be followed.
- 18. This may place limits on venue availability, which will be carefully monitored. The caseworker will liaise directly with the legal member should this be a difficulty.

C. Remote Hearings

19. Remote hearings will be conducted using Cisco Webex video conferencing (**VC**) or by telephone. Unless good reason exists to hold all or part of a remote hearing by telephone, the hearing will be conducted by VC. Such good reason includes limited or no access to relevant technology or difficulties communicating using VC.

Planning for remote hearings

20. The hearing clerk shall ask each party to provide contact details (secure e-mail or telephone) for each of their witnesses, so the clerk can keep in touch with witnesses during the hearing.

Noise

21. Tribunal members shall select a room for the remote hearing where they will not be interrupted and where there is likely to be as little external noise as possible.

Delay in communication

22. There is sometimes a short time delay in VC or telephone conferencing. The legal member should check that a participant has finished speaking before proceeding, or allowing questions/interruptions. This is particularly important where a participant has a communication difficulty or a sensory condition.

Seeing and hearing

23. The legal member should check that all the participants can see (VC only) and hear each other. This must be checked each time a new witness joins the hearing. If a tribunal member or participant cannot hear or see all other participants, they should alert the legal member immediately. The legal member will then ensure that any missing information/evidence is repeated and heard or take a break to allow any technological difficulties to be resolved.

Comfort time and breaks

24. Remote hearings can be more tiring due to the extra concentration required. Time should be factored in for comfort breaks, to ensure that all participants are able to concentrate and remain focused during the hearing. This is particularly important where a participant has concentration or communication difficulties or where a party or witness becomes upset or distressed during the hearing.

25. A short break should be taken after each witness.

26. In VC hearings participants will be asked to mute their microphones and blank their screen during a comfort break or adjournment but not to leave the VC platform.

Deletion of documentary evidence

27. Once a witness has given their evidence, the clerk will send an email to the witness to instruct that any case documentation be deleted in such a way that it cannot be retrieved in any form after the hearing is over.

28. Where a party is represented, the representative shall confirm to the clerk, by the following working day, that each of that party's witnesses has complied with this instruction.

Judicial process

29. Parties should not be left with the impression that a remote hearing is a lesser form of justice than an in-person hearing. At the beginning of the hearing the legal member shall remind participants of the judicial nature of the proceedings and that a remote hearing will not compromise the quality of process.

D. VC hearings

Dress code at VC hearings

30. Given the judicial nature of proceedings it is expected that participants will adhere to an appropriate dress code when attending a VC hearing. Members should dress as they would for an in-person hearing.

Sensory principles in VC hearings

31. Where a VC hearing is taking place, the HEC backdrop should be used by members throughout the hearing. If a member is unable to use the HEC backdrop, they should use an uncluttered and depersonalised backdrop. This can be achieved by using a blank wall as a backdrop.

32. It is the responsibility of each tribunal member to check their backdrop before the hearing begins. The legal member should do a final check of this during the pre-hearing session.

Domestic pets

33. Any domestic pets should be prevented from entering the room where tribunal members are conducting the remote hearing.

Confidentiality

34. Participants will be asked to confirm that no other person is present in the room where they are participating in the hearing (apart from a supporter, where this is relevant) and that no person can overhear the proceedings. Participants shall be reminded that the proceedings are private.

VC Test

35. Before a VC hearing takes place, tribunal members, parties, representatives and witnesses may participate in a VC test. This will take place at a time fixed by the caseworker.

Joining the hearing

36. Time will be set aside for tribunal members to join the VC platform at least 45 minutes before the hearing for pre-hearing discussions. This will be a locked session. Tribunal members are responsible for logging into the VC platform in advance of the start of the pre-hearing discussion so that if any technical problem exists, it can be resolved prior to the time for the pre-hearing discussion.

37. Parties and their representatives will be invited to join the VC platform at least 10 minutes before the hearing is scheduled to begin. Participants will see a holding message on screen until the hearing is ready to begin. Once all participants have joined the VC platform, the clerk will inform the tribunal members and the hearing will begin at the instruction of the legal member.

38. The clerk will permit witnesses access to the VC hearing only when directed to do so by the legal member.

Tribunal deliberations

39. Tribunal deliberations will be conducted in a locked VC session, which the clerk will arrange at the instruction of the legal member. This is a private session, which no other participants can enter.

Security during the hearing

40. The clerk is responsible for ensuring the hearing is secure and for alerting the legal member to any suspected security issue.

Connection

41. The legal member will ensure that all participants can see and hear each other at all times during the hearing. Should a participant 'leave' the hearing unexpectedly

due to a technical issue, the legal member shall pause the hearing or adjourn, and resume once the participant has re-joined.

Documentary evidence on screen

42. Where appropriate, any document being referred to may be displayed by the clerk on screen. Where a participant cannot view a document using this function, or where a document is not available to share on screen, the clerk will take steps to ensure that a copy of the document is available to the participant. Where this is not possible, the relevant parts of the document should be read out by the legal member or the representative making reference to the document.

D. Telephone hearings

43. Telephone hearings will be conducted using BT Conferencing. The clerk will test the telephone equipment in advance of the hearing.

Joining the telephone hearing

44. The clerk will telephone into the conference call number as the 'chairperson' at least 30 minutes before the hearing. Tribunal members will also dial in as 'participants' at this time for pre-hearing discussions. The clerk will lock the call so that the pre-hearing discussion takes place in private.
45. The clerk, as 'chairperson', controls the telephone conference as required, including muting the call or putting participants on hold.
46. Everyone is placed on a silent hold by the clerk until all participants and tribunal members have dialled in and the hearing is ready to begin. Once everyone has dialled in, the clerk will check that no-one else has joined the call, lock the call and commence the proceedings. The clerk will also start recording the hearing.
47. The legal member will introduce her/himself followed by the two specialist members. The legal member will confirm the identity of the parties and their representatives and any supporter, if present.
48. When a witness is due to give evidence, the clerk will unlock the call to allow them to join. Once they have joined, the call will immediately be locked again and the clerk shall confirm that no-one else has joined the call while it was unlocked.

Questions in telephone hearings

49. During a telephone hearing where a witness is to be asked questions by a representative or tribunal member, the representative or member should

introduce her/himself to the witness before asking a question, so that the witness is clear who is speaking.

Documentary Evidence

50. Where a witness is to refer to documentary evidence, if the relevant party has not provided this to the witness, or it is not readily available to the witness, the clerk will take steps to ensure that a copy of the document is available to them. Where this is not possible, the relevant parts of the document should be read out by the legal member or the representative making reference to the document.

Comfort time and breaks

51. If a brief comfort break is required, the legal member will advise the parties that they should remain on the telephone line. The clerk will place the parties on a silent 'hold' and mute the participants.

52. If a lengthier break is needed, for example, to stop for a lunch break, which itself should last no less than 30 minutes, the legal member will advise that the hearing is being adjourned until a specific time and that the parties should dial back into the hearing at that time. The clerk will then 'eject' all participants and end the call.

53. A short break should be taken after each witness.

Ending the telephone hearing

54. At the end of the hearing, the clerk will 'eject' all callers and end the call.

Tribunal deliberations

55. The clerk will either continue the existing telephone hearing call for this purpose or provide details of a different call.

E. Hybrid hearings

56. Where possible, the different hearing types should be agreed by the legal member in advance of the hearing, for example, day one conducted in-person and day two remotely (by VC).

May Dunsmuir
President
February 2023